of owner or discontinuance of his possession.

2257. In **Yeknath Vs. Bahia (supra)** the Nagpur High Court said where the property in dispute has been attached by Magistrate under Section 146 Cr.P.C., the right to sue accrued when the attachment was made and the limitation would begin to run under Section 23 after the date of attachment by the Magistrate. The Court said:

> *". . . . . what led the Magistrate to take possession is that it was either his inability to decide who was in actual possession or his decision that neither party was in possession. Neither of these can be said to be a wrong by the defendant. . . . . In the circumstances of these cases it is the attachment by the Magistrate and not any wrongful act of the defendants that gave rise to the right to sue and the right accrued when the attachment was made. In this view no fresh period of limitation began to run under S. 23 of the Limitation Act after the date of the attachment by the Magistrate in 1908." (page 236)*

2258. In **Abinash Ch. Chowdhury Vs. Tarini Charan Chowdhury and others (supra)** the Calcutta High Court said:

> *"In the case of Ismail Ghani Ammal Vs. Katima Rowther, (1912) 22 MLJ 154 the Madras High Court, in dealing with a case in which a Receiver had been appointed prior to the institution of proceedings under S. 145, Criminal P.C., held that the possession of the Receiver may, for the purpose of S. 145, Criminal P.C., be properly regarded as possession on behalf of the party who should be ultimately found by the Magistrate to be in possession immediately before the date of his appointment, as, for the purpose of limitation, the possession of the Receiver is held*

to be the possession of the party entitled to possession. . . . . In the case of Rajah of Venkatagiri Vs. Isakapalli Subbiah, (1903) 26 Mad 410 it was held that an attachment under S. 146, Criminal P.C., operated in law for purposes of limitation, simply as a detention of custody, pending the decision by a civil Court, on behalf of the party entitled, and for such purposes the seisin or legal possession was, during the attachment, in the true owner. It was observed that:

such attachment operates in law for the purposes of limitation simply as detention or custody of the property by the Magistrate, who, pending the decision by a civil Court of competent jurisdiction, holds it merely on behalf of the party entitled, whether he be one of the actual parties to the dispute before him or any other person. For the purposes of limitation the seisin or legal possession will, during the attachment, be in the true owner and the attachment by the Magistrate will not amount to dispossession of the owner or to his discontinuing possession." (page 784)

In Brojendra Vs. Bharat Chandra, AIR 1916 Cal 751, it was held that during an attachment under S. 146, Criminal P.C., the seisin or legal possession is in the true owner and that the attachment does not amount to either dispossession of the owner or the discontinuance of his possession. The learned Judges in that case relied for their conclusion upon the decision of the Judicial Committee in the case of Khagendra Narain Chowdhury Vs. Matangini Debi, (1890) 17 Cal 814 in which the attachment under the 530th and 531st section of the Code of 1872 was considered as placing the Government really in the position of stake-

holders, the decision in the case of Ramaswami Vs. Muthusamy, (1907) 30 Mad 12, to which reference has already been made, the decision in the case of Beni Prasad Vs. Shahjada, (1905) 32 Cal 856, in which the possession of the Magistrate after attachment under S. 146 was held to be one on behalf of such of the rival parties as might establish a right to possession on their own account and the decision of the Judicial Committee in the case of Karan Singh Vs. Bakar Ali Khan, (1882) 5 All 1 in which the possession of the Government in the Revenue Department of land which had been attached by the Collector to secure payment of revenue which has been endangered in consequence of disputes relating thereto was considered to be possession not adverse to the owner though the Collector had subsequently paid over the surplus proceeds of the estate to a stranger. Reliance also was placed in that decision upon the principles deducible from the decisions of the Judicial Committee in the case of Trustees and Agency Company Vs. Short, (1888) 13 AC 798 and Secretary of State Vs. Krishna Mani Gupta, (1902) 29 Cal 518 and the observations of Baron Parke in Smith Vs. Lloyd, (1854) 9 Ex 562. The same view was taken of the effect of an attachment under S. 146, Criminal P.C. In a later decision of this Court in the case of Sarat Chandra Maiti Vs. Bibhabati Debi, AIR 1921 Cal 584, in which it was observed that the authority of the decision in the case of Deonarain Vs. Webb, (1900) 28 Cal 86 in which the plaintiff had been dispossessed from his raiyati lands and subsequent to such dispossession there was an attachment under S. 146, Criminal P.C., and it was held that the

plaintiff was not entitled to have a fresh start of limitation from the date of the attachment, as he had already been dispossessed before that date, ***must be considered as shaken by the decision of the Judicial Committee in the case of Secretary of State Vs. Krishna Mani, (1902) 29 Cal 518.*** *The intervention of public authorities for the preservation of peace was considered as operating in the same way as the vis major of floods and by analogy it was held that the constructive possession of the land after such intervention remains, if anywhere, in the true owner." (Page 784-785)*

"The purposes of the two attachments, one under the proviso to Cl. (4) of S. 145 and the other under S. 146, Criminal P.C., are different, and the stakes are not the same. ***In the case of the former, the attachment subsists till the decision under S. 145, Cl. (4), that is to say, till it is decided which party was in possession at the date of the proceedings; in the latter case it lasts until a competent Court has determined the rights of the parties or the person entitled to possession.*** *It may be that an attachment under S. 145, Cl. (1) may terminate on the proceedings being dropped or attachment under S. 146, Criminal P.C., may be withdrawn when the Magistrate is satisfied that there is no longer any likelihood of a breach of the peace; but that does not affect the character of the attachments. The objects of the two attachments are obviously different. The possession in the case of the one enures to the benefit of the party who was in possession at the date of the proceedings and in the case of the other to the party or to any person, either a party to the*

proceedings or not, who may be adjudged, on the basis of his rights to be entitled to possession. Proceedings under Ch. 12, Criminal P.C. are of a quasi civil character and the Magistrate intervenes and attaches the property much on the same lines and with a similar purpose as when a Receiver is appointed by the Court in a civil action, in order to prevent a scramble and to preserve the property until the rights of the parties are ascertained. The possession of a Receiver appointed under such circumstances is exclusively the possession of the Court, the property being regarded as in the custody of the law in gremio legis for the benefit of whoever may be ultimately determined to be entitled thereto. The object of proceedings under S.145, Criminal P.C., being to determine which party was in possession at the date of the proceedings and to declare such party to be entitled to retain possession, the possession of the Court during attachment in the course of those proceedings should enure for the benefit of such party in whose favour such a declaration is made. The object of an attachment under S. 146, Criminal P.C., is to hold the property in anticipation of an action in which the right or title to possession is to be declared by a competent Court and the possession of the Court during such attachment should enure for the benefit of the party or person in whose favour a competent Court would make such a declaration." (Page 785-786)

"The rightful owner may not be a party to the action, in which case time will run against him, but not in his favour."

"For the foregoing reasons, in our judgment, the

common manager and not the plaintiffs must be treated as having been in possession during the attachment under S. 145, Cl. (4), Criminal P.C., and consequently the plaintiffs' suit is barred by limitation." (Page 786)

2259. With reference to Receiver's possession and application of Article 144 L.A. 1908, in **P. Lakshmi Reddy Vs. L. Lakshmi Reddy, AIR 1957 SC 314** the Apex Court considered the nature of Receiver's possession. It referred to Woodroffe on the Law relating to Receivers (4th Edition) at page 63 stating, "*The Receiver being the officer of the Court from which he derives his appointment, his possession is exclusively the possession of the Court, the property being regarded as in the custody of the law, in gremio legis, for the benefit of whoever may be ultimately determined to be entitled thereto."*

2260. The Apex Court said further in para 6 of the judgement:

*"**A Receiver is an officer of Court** and is not a particular agent of any party to the suit, notwithstanding that in law his possession is ultimately treated as possession of the successful party on the termination of the suit. To treat such Receiver as plaintiffs agent for the purpose of initiating adverse possession by the plaintiff would be to impute wrong-doing to the Court and its officers. The doctrine of the Receiver's possession being that of the successful party cannot, in our opinion, be pushed to the extent of enabling a person who was initially out of possession to claim the tacking on of Receiver's possession to his subsequent adverse possession. The position may conceivably be different where the defendant in the suit was previously in adverse possession against the*

real owner and the Receiver has taken possession from him and restores it back to him on the successful termination of the suit in his favour."

2261. In **Deo Kuer Vs. Sheo Prasad (supra) AIR 1966 SC 359** the Court observed that the property in attachment under Section 145 Cr.P.C. would mean that it is "custodia legis". Where the property is custodia legis it would mean that it is not in possession of any private individual and, therefore, there is no need to seek a relief of restoration of possession in a suit filed by the affected party but a simple suit for declaration of title would be sufficient. In **Deo Kuer (supra)** the Apex Court has further held that when the property is under attachment under Section 145 Cr.P.C. no relief for delivery of possession need be sought but the suit ought to be filed only for declaration of title for the reason that the property being in custodia legis no defendant would be in a position to deliver the same to the plaintiff but when a declaration of title is made, the natural consequences would follow. In para 4 of the judgement the Apex Court held:

"In our view, in a suit for declaration of title to property filed when it stands attached under S. 145 of the Code, it is not necessary to ask for the further relief of delivery of possession."

2262. Further the Court held that the Magistrate holds possession during the period of attachment on behalf of the party who ultimately is found entitled for possession. The Apex Court in **Deo Kuer (Supra)** followed and approved Madras High Court's decision in **K. Sundaresa Iyer Vs. Sarvajana Sowkiabi Virdhi Nidhi Ltd., AIR 1939 Madras 853** and Privy Council decision in **Humayun Begam Vs. Shah Mohammad**

Khan, AIR 1943 PC 94 and **Sunder Singh Mallah Singh Sanatan Dharm High School Trust Vs. Managing Committee, AIR 1938 PC 73** but overruled the Patna High Court's decision in **Dukham Ram Vs. Ram Nanda Singh, AIR 1961 Pat. 425.**

2263. **Ases Kumar Misra & others Vs. Kissori Mohan Sarkar & others AIR 1924 Cal. 812** has been relied on to claim that a decision of the Civil Court, if not inter parties, can be relied on by the Magistrate to pass an order for delivery of possession under Section 145/146 Cr.P.C. Therein, a suit was filed for recovery of some money wherein the ownership rights with respect to some part of the immovable property was also considered. The Civil Court passed an order on the same issue. Later on, the immovable property itself became subject matter of a dispute between one of the parties in the suit and another. The Magistrate initiated proceedings under Section 145 Cr.P.C. And placed the property under attachment. Thereafter, relying on the decision of the Civil Court, it passed an order under Section 146 Cr.P.C. for delivery of possession to the party in whose favour the Civil Court decided the issue with respect to the ownership. It was contended that since others were not party in earlier proceedings, the earlier judgment of the Civil Court is not binding on them and, therefore, it would not have been relied by the Magistrate. Rejecting this argument, the Division Bench held that even though a Civil Court's judgment may not be binding on the parties who were not party before the Civil Court, but that would not prevent a Magistrate to look into that judgment for the purpose of passing an order for delivery of possession under Section 146 (1) Cr.P.C. This Judgment would not apply to the case in hand inasmuch it is not a case where the Magistrate has passed order under Section 146 (1) Cr.P.C.

taking into consideration the judgment in Suit-1885 nor it can be said that in the said judgment, the Court has determined the issues of ownership in favour of one or the other party at all. This aspect as to what was the issue and what has been decided in Suit-1885, we have already dealt with in detail while considering the issues relating to res judicata, estoppel etc. and need not be repeated. This judgment, in our view, has no application to any of the issues in these cases.

2264. **Ellappa Naicken Vs. K.Lakshmana Naicken & others AIR (36) 1949 Madras 71** is not an authority for what it has been referred. With respect to the proceedings under Section 146 Cr.P.C., the judgment only says that a suit for declaration ought to be filed within six years from the date of the order passed under Section 146 Cr.P.C., failing which, however, the parties are not left remedy-less for the reason that even then a suit for recovery of profits can be filed within the period of limitation from the date the profits are received by receiver and while adjudicating the rights to receive profits, the Civil Court has to decide the title also and that decision of Civil Court would be a determination according to which the Magistrate would have to deliver possession of the property attached by him under Section 146 Cr.P.C. It is in respect to this kind of decision, the learned Single Judge says that a decision on the title by the Civil Court in a suit pertaining to recovery of profit will be binding and will have the force of res judicata for the purpose of Section 146 Cr.P.C. and would practically operate as a determination of right of the successful plaintiff to the land under attachment as well as the amount in deposit. In our view, this judgment does not help the parties in any manner in respect to the issues in question.

2265. In **Jurawan Singh & Ors. Vs. Ramsarekh Singh & Others AIR 1933 Patna 224,** the concept of possession and dispossession with reference to the proceedings under Section 145 Cr.P.C. came to be considered for the purpose of attracting limitation. There was two sets of cases. In the first one, about 400 bighas of land remained submerged under water for about 13-14 years and on reappearance, the dispute arose with regard to possession. Consequently, proceedings under Section 145 Cr.P.C. commenced resulting in an order dated 15th December, 1916 attaching the property under Section 146 Cr.P.C. being unable to find which party was in actual possession of the land, and the Collector was appointed as receiver.

2266. In the second set of case about 1000 bighas of land was involved which was also submerged and on reappearance in 1918, Section 145 Cr.P.C. proceedings were initiated which ultimately resulted in a final order dated 08th July, 1931 declaring 200 bighas of land in possession of defendants-appellants while remaining 800 bighas was attached under Section 146 Cr.P.C.

2267. In respect to the second case, the argument raised is that the suit having been filed after more than two years from the date of order dated 8th July, 1931, is barred by limitation specially provided under Article 3 Schedule 3 of the Bengal Tenancy Act. It was contended that the land stood 'abandoned' when it was submerged under water and on its reappearance, possession was not taken by the tenants as their holding. Since there was no dispossession by the landlord hence special limitation would not apply.

2268. The High Court said that an attachment made under Section 146 is for the purpose of preventing a breach of peace,

and the attachment is to last until a competent Court has determined the rights of the parties to the land in dispute or the person entitled to possession thereof. When a competent Court has determined the rights of the parties or the person entitled to possession of the land in dispute, it is the duty of the Magistrate to withdraw the attachment and make over possession to such party. Any act done by the Receiver appointed under Section 146 during the period of attachment cannot and ought not prejudicially affect the rights of the party found by the Court to be entitled to possession of the land in dispute. It however agreed with a Division Bench decision of the Calcutta High Court in **Brojendra Kishore (supra)** that it is a continuing wrong under Section 23 of the Act.

2269. If limitation begins to run before the date of the order of attachment under Section 146 Cr.P.C., it is clear that the plaintiffs in a declaratory suit cannot have a fresh start of limitation from the date of the subsequent attachment.

2270. In the case before the Patna High Court as a matter of fact the Court found that there was no dispossession by the landlord before any order of attachment under Section 145 was passed and in these circumstances the matter was decided holding:

> *"....The attached lands being jungle, sandy and waste lands were not capable of actual possession by either party and therefore there was no actual possession by the plaintiffs and dispossession by the defendants after the re-appearance of the lands. The entire 1,400 bighas admittedly went under water between 1901 and 1903 and the raiyats lost possession on account of the submersion, and it is therefore contended that as there was no actual*

possession by the plaintiffs and dispossession by the defendants, Article 3, Schedule 3, Bengal Tenancy Act, did not apply."

"....I am therefore of opinion that having regard to the fact that there was no actual possession of the raiyati holding by the plaintiffs after re-appearance, and no actual dispossession by the landlords in the present case, the special limitation of two years under Article 3, Schedule 3, Bengal Tenancy Act, did not apply in respect of the lands claimed in Schedule 2 of the plaint, and that the period of limitation applicable is that provided in Article 47, Limitation Act, and as such the suit is within time."

2271. The Apex Court in **Shanti Kuamr Panda Vs. Shakuntala Devi JT 2005 (11) SC 122** has said:

"10. *Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in sub-section (2) of S. 145 having arisen, causing a likelihood of a breach of the peace, S. 145 of the Code authorises the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Ss. 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive on police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the*

Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to sub-section (4) of S. 145, and maintain the status quo as to possession until the entitlement to possession was determined by a Court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned."

***"12.** What is an eviction "in due course of law" within the meaning of sub-section (6) of S. 145 of the Code? Does it mean a suit or proceedings directing restoration of possession between the parties respectively unsuccessful and successful in proceedings under S. 145 or any order of competent Court which though not expressly directing eviction of successful party, has the effect of upholding the possession or entitlement to possession of the unsuccessful party as against the said successful party. In our opinion, which we would buttress by reasons stated shortly hereinafter, ordinarily a party unsuccessful in*

proceedings under S. 145 ought to sue for recovery of possession seeking a decree or order for restoration of possession. However, a party though unsuccessful in proceedings under S. 145 may still be able to successfully establish before the competent Court that it was actually in possession of the property and is entitled to retain the same by making out a strong case demonstrating the finding of the Magistrate to be apparently incorrect."

***"15.** It is well settled that a decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court (See Sarkar on Evidence, Fifteenth Edition, page 845). A decision given under S. 145 of the Code has relevance and is admissible in evidence to show:- (1) that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order under S. 145(1) or an attachment under S. 146(1), on the given date, and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent Court and the competent Court is not bound by the findings arrived at by the Magistrate even on the question of possession through, as between the parties, the order of the Magistrate would be evidence of possession. The finding recorded by the Magistrate does not bind the Court. The competent Court has jurisdiction and would be justified in arriving at a finding inconsistent with the one*

arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent Court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent Court."

2272. In **M.P. Peter Vs. State of Kerala & others JT 2009 (13) SC 1**, the Apex Court after referring the above observations in **Shanti Kuamr Panda (supra)** in para 29 of the judgment observed:

"29. *The correctness of some of the observations made therein although may be open to the question, we need not enter into said controversy at present."*

2273. However, in para 30 in **M.P. Peter Peter (supra)**, the Court referred following extract from **Shanti Kumar Panda (supra)**:

(3) A decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a Criminal Court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent Court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the Court, the order of the Magistrate is only one out of several pieces of evidence.

(4) The Court will be loath to issue an order of interim injunction or to order an interim arrangement inconsistent

with the one made by the Executive Magistrate. However, to say so is merely stating a rule of caution or restraint, on exercise of discretion by Court, dictated by prudence and regard for the urgent/emergent executive orders made within jurisdiction by their makers; and certainly not a tab on power of Court. The Court does have jurisdiction to make an interim order including an order of ad interim injunction inconsistent with the order of the Executive Magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as an exception. Even at the stage of passing an ad interim order the party unsuccessful before the Executive Magistrate may on material placed before the Court succeed in making out a strong prima facie case demonstrating the findings of the Executive Magistrate to be without jurisdiction, palpably wrong or self-inconsistent in which or the like cases the Court may, after recording its reasons and satisfaction, make an order inconsistent with, or in departure from, the one made by the Executive Magistrate. The order of the Court final or interlocutory, would have the effect of declaring one of the parties entitled to possession and evicting therefrom the party successful before the Executive Magistrate within the meaning of sub-section (6) of S. 145."

2274. Dilemma on the part of the plaintiffs is further writ large from the fact that they have also claimed title to the property in dispute based on adverse possession. Somebody, if has taken the plea of adverse possession, presupposes that on the date of filing the suit he continued to be in possession of the property in dispute otherwise an adverse possession if has discontinued for one or the other reason before maturing in title,

would dispel the claim based on adverse possession. Here we are not discussing the ingredients of "adverse possession" etc. in detail since dealing with the issues pertaining to "adverse possession", we shall discuss the meaning, scope and ingredients etc. of "adverse possession" thereunder but suffice it to say that for the purpose of issues pertaining to limitation we can say that if a plaintiff has sought to set up a case that he has matured his right by virtue of adverse possession, it presupposes that he continued to be in possession on the date of filing the suit or matured his title after completion of prescribed period and this completely mitigate the condition for attracting Article 142 that the cause of action has arisen due to dispossession or discontinuance of possession of plaintiff.

2275. It is contended that no party can simultaneously plead that either the matter is governed by Article 142 or 144 for the reason that the ingredients of both the provisions are different. The pleadings in one or the other manner are virtually self destructive and that is why both the provisions cannot be pleaded simultaneously. It is contended that the plaintiff has to exercise his option, i.e, right to elect one or the other case and he cannot plead both simultaneously. Article 142 is applicable for recovery of possession of immovable property when the plaintiff's possession of the property has been taken away i.e. he is dispossessed or had discontinued possession. Under Article 142 the burden of proof lies upon the plaintiffs to prove their possession within 12 years before the suit. While Article 144 is a residuary and is applicable for recovery of possession of immovable property or an interest therein not specifically provided for by the Act and in that case burden of proof lies upon the defendants to prove their possession and expiry of 12

years before the suit.

2276. Reliance is placed on **Chairman and M.D., N.T.P.C. Ltd. (supra)** where the Apex Court has held that none can be allowed to approbate and reprobate at the same time. Relevant paras 36 and 37 of the judgment read as follows:

> *"36. In Halsbury's Laws of England, 4th Edition, Vol.16 (Reissue) para 957 at page 844 it is stated:*
>
> *"On the principle that a person may not approbate and reprobate a special species of estoppel has arisen. The principle that a person may not approbate and reprobate express two propositions:*
>
> *(1) That the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile.*
>
> *(2) That he will be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct, which he has first pursued and with which his subsequent conduct is inconsistent."*
>
> *"37. In American Jurisprudence, 2nd Edition, Volume 28, 1966, Page 677-680 it is stated:*
>
> *"Estoppel by the acceptance of benefits:*
>
> *Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction, contract, instrument, regulation which he might have rejected or contested. This doctrine is obviously a branch of the rule against assuming inconsistent positions.*
>
> *As a general principle, one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the*

validity or binding effect on him of such contract or conveyance.

This rule has to be applied to do equity and must not be applied in such a manner as to violate the principles of right and good conscience."

2277. In order to attract Article 142, the plaintiff has to show that either he is owner based on a valid title or that he was in possession over the property in question but has been dispossessed in the past in a period less than twelve years. In case, he pleads that he is the owner but the possession was admittedly with the defendants and such possession has not completed twelve years therefore the ownership or the title of the plaintiff is not extinguished, in such case it is Article 144 which will apply. The ingredients of the two are apparently different and the pleadings have to be made differently. Tentatively it can be said that in a given case simultaneously it may not be possible for a plaintiff to plead a case either of Article 142 or that of Article 144.

2278. Moreover, to attract Article 142 the person who ascertain dispossession has to prove it since the presumption in law is in favour of continuity of possession.

2279. In **Nathoo Lal Vs. Durga Prasad AIR 1954 SC 355** it was held that in order to attract Article 142 of the Limitation Act, it is incumbent to show that dispossession took place and more than 12 years since then had expired. The presumption in law being in favour of continuity of possession, the person who assert dispossession, has to be proved.

2280. To some extent, what has been argued does not appear to be wholly without substance. It cannot be disputed that the question of limitation is a mixed question of law and

facts. The submission of Sri P.N.Mishra and other learned counsels is that the plaint ought to have been rejected at the threshold being *ex facie* barred by time. Suffice it to mention that it is not always correct that a plaint can be rejected on the ground of limitation since many a times, question of limitation is not a pure question of law but a mixed question of law and facts. In such cases, rejection of plaint *ex facie* is not justified. It is always open to the parties to raise plea of limitation and the Court shall consider the same and decide the issue even at the time of final hearing along with other issues.

2281. In **Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others 2006 (5) SCC 638**, the Court said, *"A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact."*

2282. Considering the question as to whether a plaint can be rejected under order 7 Rule 11 (d) C.P.C. in the absence of proper pleadings relating to limitation, in **Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust and Ors. 2006 (5) SCC 658**, it was held that it cannot not be done since the limitation is a mixed question of law and facts. Similar is the view expressed in **Narne Rama Murthy Vs. Ravula Somasundaram and others 2005 (6) SCC 614**. The above proposition has been followed recently in **Kamlesh Babu and others Vs. Lajpat Rai Sharma and others JT 2008 (4) SC 652** with a further rider that there are cases where the question of limitation can be decided or determined only on a mere perusal of the plaint and in such case even without adverting to recording of evidence etc. the issue can be decided at the very

threshold or at the later stage since Section 3(1) of the Limitation Act bars the jurisdiction of a Court to entertain a suit which is beyond the period of limitation. The Court relied and referred to **Lachhmi Sewak Sahu vs. Ram Rup Sahu & Ors. AIR 1944 PC 24**. On this aspect, we find a consistent view of the Apex Court in some other cases also, i.e, **Kamala and others Vs. K.T. Eshwara Sa and others AIR 2008 SC 3174**; **P.T. Munichikkanna Reddy and others Vs. Revamma and others 2007 (6) SCC 59**; **C. Natrajan (supra)**; **Panchanan Dhara and others Monmatha Nath Maity and another 2006 (5) SCC 340**.

2283. The reading of the entire plaint (Suit-4) nowhere shows an averment that the plaintiffs were dispossessed of a property which they already possess. The case on the contrary is that while placing idol in the building in dispute, which was a mosque, the same has been desecrated which has the effect of obstructing and interfering in the right of the plaintiffs of worship thereat.

2284. However, the relief sought by the plaintiffs (Suit-4) is not to continue to exercise their right of worship but instead a declaration has been sought with respect to the status of the property in dispute that it is a "mosque". Meaning thereby the defendants have been called upon to defend an issue about the very status of the property in dispute. A dispute of status and nature of the building as such has been raised and a declaration about its status that it is a mosque has been prayed for. The plaintiff's cause of action and relief, therefore, are quite divergent. At several stages some statements here and there in the plaint and replication were made endeavouring to bring the suit in question within the period of limitation. The counsel for

the plaintiffs have contended that this is an assumption on the part of the defendants that the plaintiffs are dispossessed of the property in question and, therefore, it is this assumption which will attract Article 142 of L.A. 1908 in this case.

2285. We, however, find no substance in the submission. Pleadings have to be clear, specific and unambiguous. Probably to clear the ambiguity in the pleadings, statement was made under Order X, Rule 2 on behalf of plaintiffs (Suit-4) through their counsel explaining that the entire premises, marked as ABCD in the map appended to the plaint, is the disputed premises and it is a mosque which is an Islamic structure and it has no other structures except "*Chabutara"* called as *"Ram Chabutara"* on the south-east side in the outer courtyard and therefore, it should be declared as a mosque.

2286. The evidentiary value of the statement under Order X, Rule 2 C.P.C. has been considered in a catena of decisions. This Court in **Miss Talat Fatima Hasan Vs. His Highness Nawab Syed Murtaza Ali Khan Sahib Bahadur and others AIR 1997 All. 122** in para 42 has said:

> *"A statement of a party, its counsel or agent under Order X, Rule 2 C.P.C. is for all practical purposes a part of pleading and is binding on the party, who makes it or on whose behalf it is made....."*

2287. To the same effect is the decision in **Balmiki Singh Vs. Mathura Prasad & Ors. AIR 1968 All. 259**.

2288. It is contended by the learned counsel for plaintiffs (Suit-4) that though the objection regarding limitation has been raised, but no fact has been pleaded to show as to how the case is barred by limitation. It is, therefore, contended that the declaration by the plaintiffs in the plaint that the cause of action

is continuing one must be deemed to be admitted and the Court is not required to look into the matter further.

2289. This submission is evidently misconceived. Section 3 of the Limitation Act imposes an obligation upon the Court to dismiss a suit which has been filed beyond the period prescribed in the statute. The Court cannot admit a case in the absence of the plea of limitation raised by the defendants though the suit was filed beyond the period prescribed in the statute. We have already referred in this regard **Maqbul Ahmad Vs. Onkar Pratap Narain Singh, AIR 1935 PC 85**. The Apex Court has also taken the same view in **Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. And others AIR 1962 SC 1879**; **Rama Shankar Singh & another Vs. Shyamlata Devi & another others AIR 1970 SC 716** and **Rajendra Singh & others Vs. Santa Singh AIR 1973 SC 2537**.

2290. In **Manindra Land And Building Corporation Ltd. Vs. Bhutnath Banerjee and others AIR 1964 SC 1336**, it was held that the Court has no choice in the matter and the Court is bound to dismiss the suit which is barred by limitation. The burden of proof in the matter of limitation lies upon the plaintiff. It is only when the prima facie plaintiff shows that his case is within limitation, the onus may shift upon the defendants to prove otherwise.

2291. In **District Basic Education Officer and another Vs. Dhananjai Kumar Shukla and another (2008) 3 SCC 481**, it was held that even if no counter affidavit is filed, on the legal issues, the Court has to apply its mind and consider the matter. If a fact is not disputed or expressly admitted, the same in terms of Section 56 of the Evidence Act need not be proved but that does not mean that what constitutes ultimately an issue

formulating a legal question would also not be considered by the Court and it shall proceed as if there was an admission on that aspect also. It held that the principle underlying order VIII Rule 5 C.P.C. does not mean that despite non filing of written statement, Court may not call upon the plaintiff to prove his case.

2292. In order to construe as to whether it would be a case governed by Article 142, we find that the pleadings are extremely vague. In fact the learned counsel for the plaintiffs (Suit-4) also finds it difficult to bring out the requisite pleadings so as to attract Article 142 in the present case. What has been said in para 23 of the plaint is that the cause of action for suit arose on 23.12.1949 when Hindus unlawfully and illegally entered the mosque, desecrated it by placing idols and thus caused obstruction and interference with the rights of Muslims in general of saying prayers and performing their religious ceremonies in the mosque. The above assertions are insufficient to constitute a case of "dispossession" or "discontinuance of possession" of the plaintiffs (Suit-4) of the property in dispute. Placement of idols or desecration of mosque is one thing but dispossession of Muslims from the disputed property is another thing. Dispossession or discontinuance contemplates a total deprivation on the part of the person concerned who was earlier in possession but obstruction or interference means that though possession continues but is not smooth, peaceful and continuous but being disturbed by others.

2293. The dictionary meaning of the word “obstruction” is:

(A) In “**The New Lexicon Webster's Dictionary of the English Language”** (1987), published by Lexicon Publications,

Inc. at page 693:

> *"**ob-struc-tion-**an obstructing or being obstructed; something which obstructs; prevention of legislative enactment by filibuster"*

(B) In "**Oxford Advanced Learner's Dictionary of Current English"** first published 1948 by Oxford University Press, at page 1050:

> *"**ob-struc-tion--1.** the fact of trying to prevent sth/sb from making progress: the obstruction of justice. He was arrested for obstruction of a police officer in the execution of his duty. 2. the fact of blocking a road, an entrance, a passage, etc: obstruction of the factory gates. The abandoned car was causing an obstruction. 3. something that blocks a road, an entrance, etc. It is my job to make sure that all pathways are clear of obstruction. 4. something that blocks a passage or tube in your body; a medical condition resulting from this."*

(C) In "**Mitra's Legal & Commercial Dictionary"** 5th Edition (1990) by A.N. Saha, published by Eastern Law House Prv. Ltd., at pages 517:

> *"**Obstruction.** The word 'obstruction' connotes some overt act in the nature of violence or show of violence. It cannot be said that a man obstructed another if that man runs away from other. Phudki v. State AIR 1955 All 104: 16 Cr LJ 278.*
>
> *Section 283 of the Indian Penal Code punishes a person who causes obstruction to another person in any public way. Anybody obstructing a public service in the discharge of his public duties is punishable under s. 186 of the Code.*

Obstruction to a driver is banned by s. 83 of the Motor Vehicles Act 1939. the leaving of a vehicle in a dangerous position so as to obstruct other users of the road is prohibited by s. 81 of the Act."

(D) In "**The Chambers Dictionary (Deluxe Edition)**" (1993) published by Allied Chambers (India) Limited New Delhi, at pages 1167:

"obstruc'tion *the act, or an act of obstructing; a state of being obstructed; that which hinders progress or action; an obstacle; the offence of obstructing another player; opposition by delaying tactics"*

(E) In **P Ramanatha Aiyar's "The Law Lexicon" with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition 1997), published by Wadhwa and Company Law Publishers, at page 1338:

*"**Obstruction.** An obstacle, an impediment, a hindrance, that which impedes progress. Prevention, making hard, retarding the progress of any business. The word 'obstruction' in S. 186 of the Penal Code is not confined to physical obstruction only. Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to obstruction of the public servant. (1937) AWR 1179=1937 ALJ 1344."*

2294. Similarly the meaning of term "interference" in various dictionaries is:

(A) In "**The New Lexicon Webster's Dictionary of the English Language"** (1987), published by Lexicon Publications, Inc. at page 504:

*"**in-ter-fer-ence-**the act of interfering; (games) obstruction, e.g. (football) the illegal blocking of the*

receiving of the pass"

(B) In "**Oxford Advanced Learner's Dictionary of Current English"** first published 1948 by Oxford University Press, at page 813:

*"**inter-fer-ence-1.** the act of interfering, 2. interruption of a radio signal by another signal on a similar wavelenght, causing extra noise that is not wanted."*

(C) In "**The Chambers Dictionary (Deluxe Edition)**" (1993) published by Allied Chambers (India) Limited New Delhi, at pages 872:

*"**interfer'ence-**the act of interfering; the effect of combining similar rays of light, etc."*

(D) In "**Black's Law Dictionary"** Seventh Edition (1999), published by West, St. Paul, Minn., 1999, at page 818-819:

*"**interference,** 1. The act of meddling in another's affairs. 2. An obstruction or hindrance. 3. Patents. An administrative proceeding in the U.S. Patent and Trademark Office to determine which applicant is entitled to the patent when two or more applicants claim the same invention. This proceeding occurs when the same invention is claimed (1) in two pending applications, or (2) in one pending application and a patent issued within a year of the pending applications' filing date."*

(E) In **P Ramanatha Aiyar's "The Law Lexicon" with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition 1997), published by Wadhwa and Company Law Publishers, at page 970:

*"**Interference.** The action or fact of interfering or intermeddling."*

2295. We are not trying to read the pleadings in plaint of

Suit-4 by construing the words and sentences like that of a statute. But in the absence of anything otherwise to suggest from the entire pleadings, we cannot help the plaintiffs by filling in the gaps and cover up the lacuna. What actually has happened is a matter of fact and better known to the plaintiffs. If the plaintiffs themselves have not been able to say in clear and categorical terms that they are dispossessed or their possession is discontinued, we are clearly of the view that at least this Court cannot provide such pleadings for the plaintiffs and read the requisite averments in pleadings i.e. the plaint.

2396. The time runs from the date of dispossession or discontinuance in the case of Article 142 and from the date the defendant's possession becomes adverse vide Article 144. This in fact provides the cause of action to the plaintiff to file a suit and that is how the limitation comes into picture and begins.

2297. A bit lack of clarity on the part of the plaintiffs (Suit-4) in this regard we find is apparent even in the written argument submitted by them. Instead of putting the same in our words, we find it useful to reproduce the same. Sri M.A. Siddiqui, while dealing with Issue No. 3 (Suit-4), has made the following submissions in his written arguments:

> 3.1. Almost pleas of bar of limitation have been taken by each of defendants in their respective written statements. However, **except a bare assertion that the suit is barred by limitation, nothing has been said that on what account and when it became barred.** Undisputedly issue of limitation is not a pure question of law but a mixed question of law and fact. The facts are necessarily to be seen in the light of the pleadings and evidence of parties.
>
> 3.2. In the plaint necessary averment regarding limitation

finds place in para 21 where issuance of notice to the State and its official and the service on 19.6.1961 - 23.6.1961 is mentioned and in para 23 the accrual of cause of action has been stated to be as 23.12.1949 when the idols were stealthily and surreptitiously kept in the building and Muslims stood prevented from offering their prayer freely and the relief (a) as sought in the plaint is for a declaration that the property indicated by the letters …. is mosque and public Muslim graveyard and the relief (b) is that in case in the opinion of the court delivery of possession is deemed to be proper remedy a decree for delivery of possession of the mosque and the graveyard in suit by the removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship, be passed in plaintiffs' favour against the defendants. Vide an order of the court dated 25.5.1995 after the matter being remitted by the Hon'ble Supreme Court vide its judgment and order dated 24.10.1994 clause (bb) in the relief clause has also been added, wherein the relief has been claimed that the statutory receiver be commanded to handover the property in dispute described in schedule "A" of the plaint by removing the unauthorised structure erected thereon. The pleadings have been read over again and again and a perusal of the plaint reveals that plaintiffs felt some cloud to be casting on their title and as such with a view to remove such an anticipated cloud the relief for declaration as a main relief was sought.

3.3. That Para 20 of the plaint deserves to be seen wherein it is stated that the building in suit claimed by the

Muslims as Muslim Waqf is in the possession of the receiver holding for the real owner and would be released in favour of the plaintiff in case the plaintiff's claim succeeds. But if for any reason in the opinion of the court a relief for possession is proper relief to be claimed, the plaintiffs in the alternative pray for recovery of possession. It has been contended on behalf of the other side property being attached and under custody of court receiver the possession of the receiver is of none but party succeeding in the case and as such relief of possession which has been half heartedly claimed is not at all required. The great reliance has been placed on a decision of Calcutta High Court which lays down that in the case where property is attached in a proceedings under Section 145 Cr.P.C. there is no requirement at all for seeking the relief of recovery of possession and the plaintiffs in the circumstances could only seek the relief of declaration. In this case as order of attachment has been passed on 29.12.1949 and the idols were kept on 23.12.1949 and removal of the idols is must and as such it is submitted that relief of possession is necessary and the plaintiffs basing their claim on title the suit is governed by Article 142 of the Limitation Act 1908 and the period of limitation being 12 years and the date of alleged interference in the possession being 23.12.1949 and the suit having been filed on 19.12.1961 the suit is very much in time.

3.4. As regards applicability of Article 120 providing the limitation of six years, it is submitted that Article 120 comes into play where no other article is applicable and

once Article 142-144 is applicable this Article 120 could not apply and the suit is very much within the time.

3.5. The contention of other side is that the plaintiff stood ousted not on 23.12.1949 but on 16.12.1949 and as such the suit is barred by time even for the purpose of Article 142. This contention is based upon certain averments in the written statement of two earlier suits which read that last Juma prayer was offered on 16.12.1949 and there being no further averment of prayer from 16.12.1949 to 22.12.1949. In 1960 the averment in the plaint of offering prayer up to 22.12.1949 is incorrect and deserves to be rejected.

3.6. An affidavit of one Anisurrahman, copy of which was filed in the Ho'ble High Court at Allahabad in support of transfer application is relied which also avers that last Friday Prayer was offered on 16.12.1949 and the above contention is buttressed on such averment. It is stated that 16.12.1949 was Friday and on 23.12.1949 it was again Friday and Friday prayer comprising a larger gathering as evident as it has come in evidence that even from Faizabad and the adjoining area of Ayodhya city viz Shahjahanpur etc. people came to offer Friday prayer and as regards 5 time daily prayer that being confined to local people, this has been a reason for such assertion. However, assuming for a moment that even if on account of fear no prayer was offered after 16.12.1949 that is absolutely immaterial as regards the suit for possession and even if a mosque is not used for 50 years, it remains a mosque and limitation in case the suit is for possession of such a mosque has to be reckoned from the day from

which the plaintiff discontinued to be in possession. There is lot of difference in non-user and discontinuation and as such such an averment has got no bearing. Moreover, as provided in sub-section (2) of Section 15 of the Limitation Act in a suit where the notice is required under law to be served, the period of notice has to be excluded and as such two months being the period of notice has to be excluded and the suit is in all corners within the period of limitation as a notice was must as provided in Section 80 of the CPC for defendants No. 5 to 8 and as per requirement of the law such a notice was issued and served as such this period of two months further has to be counted and the suit is absolutely within time as regards Article 142/144 of the Limitation Act 1908.

3.7. In the peculiar situation the country passed due to partition special law was enacted extending the period of limitation for suits for recovery of possession relating to waqf property and this matter is expressly covered under the provisions of the said Act and as such as regards suit for recovery of possession seen with either angle it is absolutely within time even assuming non offering of prayer from 16.12.1949.

3.8. The other submission that relief of recovery of possession being not required the suit is only and only for a declaration and limitation for declaration Article 120 of the Limitation Act being only 6 years, this suit for declaration is barred by time. Now in this case it has to be seen what is the effect of such barring. It is still insisted that despite the Hon'ble Calcutta High Court’s pronouncement or other such verdicts the relief of

possession in this regard is necessary. However, as regards effect of not filing a suit within a period of limitation, Section 28 of 1908 Act and Section 27 of 1963 Act does provide "At the determination of the period hereby limited to any person for instituting a suit for possession of any property his right to such property shall be extinguished."

3.9. Now as regards the extinguishment of the right by non-filing a suit for recovery of possession, only the right is extinguished. From the side of the defendant itself it has been strenuously contended that in the given circumstances the property being custodia-legis relief of possession was not at all required and as such even if the suit has not been filed or even the plaint is rejected as being barred by time for the purposes of declaration the right and title of the plaintiffs continues and as such there is no consequence of the same. In the plaint as regards relief for declaration, in para 23 it has been specifically stated the injuries so caused or continuing injuries and the cause of action arising there from is renewed de die in diem. As a matter of fact such averments have not been disputed and such plea is based on Section 23 of 1908 Act and Section 22 of 1963 Act. Now in this case it has to be seen that if by not filing the suit for declaration in time or even by rejection of plaint for such plea if the same enures to the benefit of anybody then it can be said that it has got some value. In case not filing the suit in time produces any result it may have some effect but if not filing the suit for declaration is of no consequence at all the same produces no result. Section 23 of the Limitation Act strictly applies and as regards the fear in the mind of the plaintiffs as

regards cloud being cast upon their title the cause of action for the same is renewed day by day.

3.10. The pronouncement of Hon'ble Calcutta High Court as relied by the other side itself provides that the property in custodia-legis and being so held for the benefit of the true owner, cause of action for such a suit is renewed day by day. In this case on 29.12.1949 an order of attachment is passed, on 5.1.1950 the said order is effected. In January and April 1950 two suits viz suit No. 2 of 1950 and subsequently suit no. 25 of 1950 = OOS No. 1/89 and 2/89 are filed. On 16.1.1950 an order of temporary injunction is passed, 'issue notice and the defendants are refrained from removing the idols and creating any obstruction in Puja being carried on by the plaintiffs. On 19.1.1950 on behalf of the State District Government Counsel moved an application that such an order amounts to allowing one party and prohibiting the other party and is bad, and the learned Civil Judge appreciated and modified its order maintaining the order as regards refraining from removal of the idols but restricting the Puja as being carried on. No order prohibiting the Muslims to offer prayer and go in the mosque has been passed till this date but the entry being restricted being subject to permission of City Magistrate, or Receiver. Now as regards the "Puja as being carried on" directed by the City Magistrate an scheme was prepared, it was approved by the City Magistrate and as per this scheme only the Pujari appointed by receiver could go inside and nobody else can go. The expenses of Puja are to be borne by both the parties and said Puja as per courts order

continued up to 1.2.1986. It is abundantly clear that this order restricted right of entry of Hindus and Muslims both and this cannot be said at all to confer any benefit to anybody and such order being passed by the Civil Court and being affirmed by this Hon'ble Court with the observation that the suit be decided within a period of 6 months, the City Magistrate passed the order on 30.7.1953 that in such a situation there appears no necessity to continue 145 Cr.P.C. proceeding and it may be kept in abeyance till the decision of the suit and file to be consigned to record. This situation continued up to 6.12.1992 and as such the act of ordering attachment and attachment on the spot producing no result affecting the title of the plaintiffs, non-filing of the suit within 6 years is absolutely of no consequence and Section 23 of the Limitation Act is absolutely for such a situation. Even if a plaint is rejected for the reason of being barred by Limitation a fresh suit is not barred and if a fresh suit is not barred then there can be no objection to the continuation of the suit already pending.

3.11. Order VII Rule 11 CPC provides:

"A plaint shall be rejected in the following cases:

(a) where it does not disclose the cause of action;

(b)

(c)

(d) where the suit appears from the statement in the plaint to be barred by time any law."

Now Limitation Act being a law, the plea of bar is based on Section 3 of the Limitation Act and it is this clause (d) of Order VII Rule 11 which is invoked for

dismissing the suit. Rule 12 provides for procedure which reads: "Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order." Rule 13 is little material which reads: "The rejection of the plaint on any of the grounds here-in-before mentioned shall not on its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

3.12. Assuming the worst that the plaint is rejected as being barred by time – limitation, then for the fresh cause of action fresh suit being permissible, in no circumstance the continuation of this dispute could be disputed.

3.13. As regards the embargo in Rule 13 ‘of its own force’ there is nothing to indicate that anything otherwise has been done which may be said to preclude the plaintiffs from filing the suit. As a matter of fact till 7.2.1993 there was no encroachment on the right of the plaintiffs. The Ordinance providing for acquisition and the subsequent Act No. 33 of 1993 take away the right of the plaintiffs even their title is snatched away. Such action was immediately challenged by moving applications on behalf of the plaintiffs in this suit, thereafter the Hon'ble Supreme Court requisitioned all the files and on 24.10.1994 order was passed, and thereafter, the pleadings have been amended and the relief (bb) has been added which is of substantive relief and cause of action for the said relief have accrued on 7.2.1993 even in May 1995 when the relief was allowed to be added by this Hon'ble Court it was absolutely within time, whereas the law of pleading is that the amendment relates back to the

Original pleading even ignoring for a moment even if it is taken to be from the day on which the amendment is allowed, the same being 25.5.1995 which is absolutely within time.

3.14. Filing a suit involves the volition of the plaintiff. It is why the plaintiff is said to be master of the suit and the principle of dominus litus applies. As regards seeking a relief for declaration now if one hears that a particular person disputes his residence, caste, he may just file a suit for declaration, although nothing is going to affect him materially and for such a situation as regards the effect of a suit being barred by time, the principle of compulsory accrual of cause of action is to be seen as laid down by the Hon'ble Supreme Court in its judgment as reported in AIR 1960 SC page 335 and in case a person sleeps to file the suit for such compulsory accrual cause of action only then he has to face the consequences.

3.15. The pronouncements are that if an incorrect entry is made in the khewat the right of the proprietor is not to be as such affected by such incorrect entry in the khewat and he may altogether ignore the same for decades. In the like manner there are large number of pronouncement that a person is not at all required to rush to court for each invasion of his right unless the invasion is so effective bringing his right to an end and in the case of sporadic invasion each invasion gives a fresh right to sue.

3.16. As regards continuation of proceedings in the revenue court, civil court or 145 Cr.P.C., if such proceedings are not in the denial of anybody's right altogether but are to determine as to who is entitled by

initiation of such proceedings and by continuation of such proceedings, as a matter of right no compulsory cause of action accrues. Hon'ble Supreme Court as reported in AIR 1975 SC page 813 as extracted in AIR 1983 Gujarat page 47, has observed that both parties litigate with an expectation to get the case decided in its favour and as such unless the proceedings are finally decided no cause of action arises against the same. This principle has been followed by Gujarat High Court as reported in AIR 1983 Gujarat page 47. In such situation even the right to file suit has been held to have occurred after the decision of the second appeal, the second appeal also being continuation of the suit.

3.17. In the instant matter the 1993 Ordinance and the Act has given a fresh cause of action and a fresh suit could be filed. However, the relief having been sought by amending the plaint, now the question of bar of limitation stands excluded keeping in view the principle that amendment of pleadings relates back to the original date of filing the suit. **AIR 1969 SC page 1267** at page 1270 and **AIR 1921 PC page 50**. The courts have taken a view that by bar of limitation even the cause of action is not destroyed and the title of a person subsisting despite the earlier suit being barred by time or the earlier suit having also been dismissed as barred by time, the second suit is very much permissible as nothing having decided as regards the right and tile and if the title subsists there would be no resjudicata. In many situations a suit for accounting, declaration of rights in mortgage matters at one stage may be held to be barred by time as for such fractional cause

and as such rejecting the plaint following the mandate of Section 3 Limitation Act and Order 7 Rule 11, but right of the plaintiff being intact at a subsequent stage, he is very much entitled even to bring the fresh suit. It has been held that keeping in view the provisions of Section 3 Limitation Act and order 7 Rules 11 clause (d) a court is bound to reject the plaint. See **AIR 1932 Calcutta page 146** and **AIR 1928 Oudh page 495**. The Hon'ble Supreme Court as reported in **1997 Volume 10 Supreme Court Cases at page 1992** in Delhi Waqf Board Versus Jagdish Kumar Narang and others has upheld the filing of second suit in such a situation.

3.18. **The two suits of 1950 only for individual rights and the third suit of 1959 only for the right of management and the controversy going on and the plaintiff of 1950 suit despite being required to convert their suit in a representative suit, the Muslims impliedly being prohibited to offer the prayers inside the mosque, entry inside the mosque being subject to permission of City Magistrate or Receiver it was thought proper to file a declaratory suit to bring to an end the controversy once for all.** Suit No. 12 of 1961 was filed and the title of Muslim Parties being intact there can be no bar of Limitation by such a suit and even if such a pre-mature suit is dismissed without adjudication on merits the title subsisting it has got no effect.

3.19. As regards the principle of continuing cause of action in large number of cases it has been held that if the right has not been extinguished then on each day a fresh cause of action arises. See **AIR 1927 Madras page 568**,

Head Note 'C' column I page 570 and the above proposition is based on large number of decisions as referred in the judgment itself. In **AIR 1927 All page 296** a Division Bench has taken a view that revenue court proceedings furnish a new cause of action and by deleting the name from revenue record the title is not extinguished and unless the title is extinguished every fresh invasion gives a fresh right. In the like manner the Division Bench as reported in **AIR 1934 All 539**, has gone to hold that a fresh cause of action may arise to a plaintiff and he may bring the suit even though the prior cause of action has arisen to him beyond the period of 6 years and this proposition is based upon the decision of the Privy Council. **AIR 1931 PC 302, AIR 1914 All 184, AIR 1919 All page 383**, Column I page 541. A Division Bench of Patna High Court as reported in **AIR 1935 Patna page 33** has laid down that as long as plaintiff's title is not lost by adverse possession of defendant each invasion gives fresh cause of action. **AIR 1935 All 174** is also to the same effect.

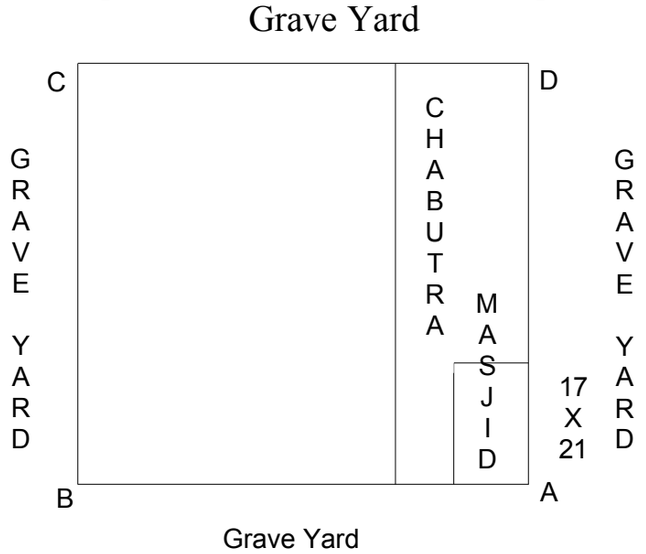
3.20. That the Orissa High Court as reported in **AIR 1968 Orissa page 36** has considered the scope at length viz a viz the proceedings under Section 145 Cr.P.C. and has even gone to the extent that even after final decision of the 145 Cr.P.C. proceeding and thereafter not filing the suit even then the right is not extinguished. **AIR 1961 Bombay Division Bench page 266**, head note B para 32 also says so . A Lahore High Court, **AIR 1940 page 154** lays down that if plaintiff is in possession then a suit for declaration of plaintiffs occupancy right is maintainable and denial of his title furnishes a fresh cause of action.

3.21.In the above circumstances in no circumstance it

could be said that the instant suit is barred by time. Now after 1994 judgment particularly the acquisition of the land itself by a Central Act everything has to be seen in that light.

2298. Sri Jilani has adopted the arguments of Sri Siddiqui stating that the question of limitation would be covered by Sri Siddiqui. The different aspects which Sri Siddiqui has raised in his written arguments much of which is not very clear, yet we shall try to deal with the same as best as possible for the reason that much of the submissions in the written arguments having been taken for the first time therein, we had no occasion to seek any clarification from him but still we will try to find out the real spirit and sense in which they have been advanced and shall deal with the same.

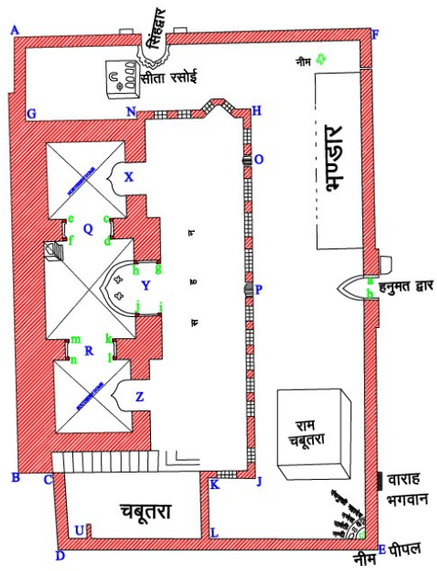
2299. Now, we proceed to consider applicability of Article 142 in the light of the pleadings and relief sought by the plaintiffs and evidence placed on record. The suit has been filed for the property identified as "ABCD" in the sketch map appended to the plaint of the suit, which we reproduce as under:



2300. The outer line in this map does not include the complete four walled structure, as it was, but some part on the extreme southern side is left out which on south west is marked, 'Chabutara' and on south east, just behind 'Ram Chabutara'.

2301. The correctness of this map has seriously been

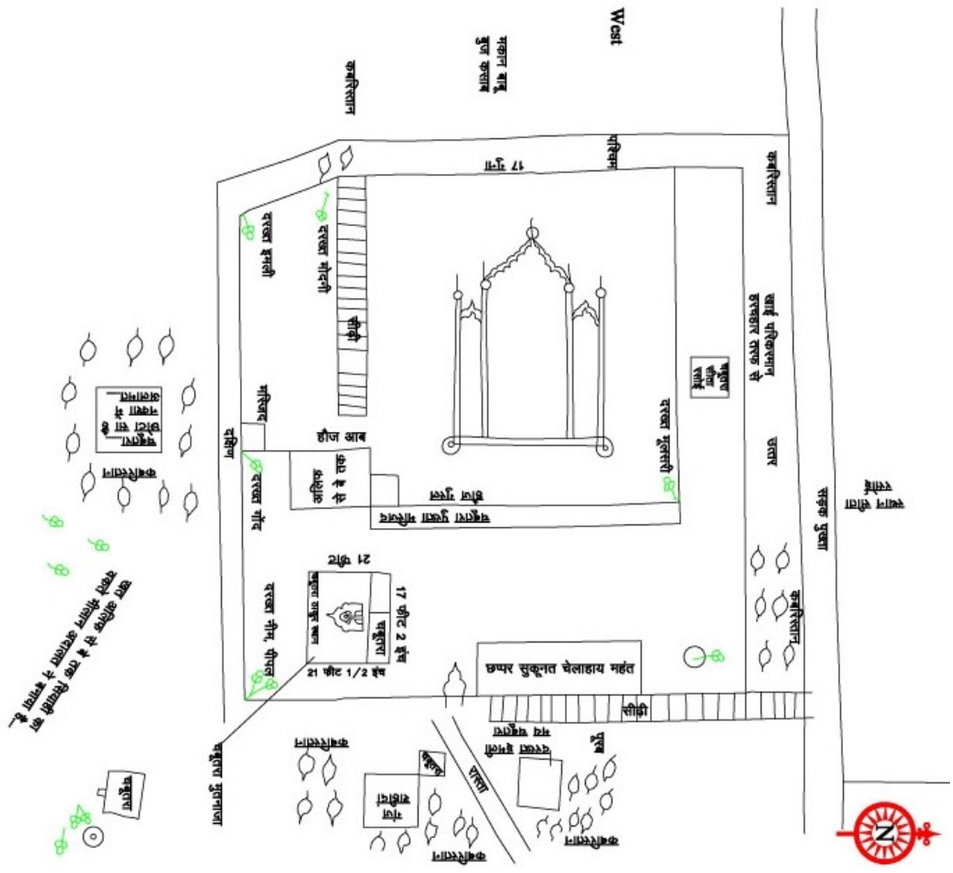
doubted by all the defendants (Suit-4) and in fact, the defendants no. 3 and 4 along with their written statement dated 22/24.8.1962 have filed another sketch map (Annexure-8) a copy whereof is appended herewith. For the convenience purpose, the relevant part of the said sketch map which is now the area of dispute with which we are concerned in view of the Apex Court decision in **Dr. M. Ismail Faruqi (supra)** as a result of the Acquisition Act of 1993 is reproduced as under:



2302. A copy of the complete map is appended as **Appendix No. 2 (2A,B,C)** to this judgment. It may also be mentioned that part of the property shown in this map on the southern side as "CDKL" and the entire part just opposite on the south eastern side parallel to "CDKL" has not been shown in the map appended to the plaint (Suit-4) and therefore, this part has been left for claiming any relief and cannot be treated to be a part of property in dispute for the purpose of Suit-4.

2303. The sketch map filed by defendants no.3 and 4 extract whereof is quoted above, is from the map prepared by Sri Shiv Shanker Lal, Advocate Commissioner on 25th May 1950, pursuant to an order passed by Civil Judge, Faizabad in Suit-1, appointing him as Commissioner for preparing the site

plan and submit his report after spot inspection thereof. Besides above, there is another map which is part of record prepared in Suit 1885, filed by Sri Gopal Sahai, Amin, Commission appointed by the Sub-Judge, Faizabad, copy whereof is appended herewith, and according to the said map the disputed property was as under:

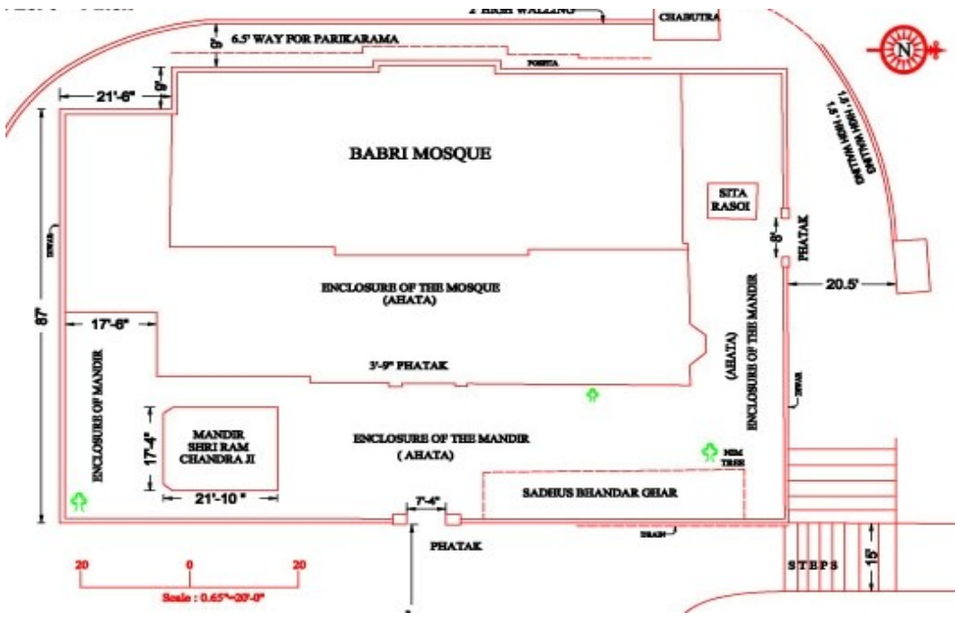


A copy of the complete map is appended as **Appendix No. 3 and 3A** to this judgment.

2304. There is one more record which may be taken note of at this stage. The plaintiffs (Suit 4) in order to prove two documents i.e. letter issued by the District Magistrate, Faizabad in December, 1949 moved an application no. 20(O) of 2002 for summoning the original record from the State Government. Pursuant thereto the District Magistrate, Faizabad produced a file containing official correspondence and other documents which was placed under a sealed cover by this Court's order dated 29.05.2009.

2305. The aforesaid file contains a letter dated 16th December, 1949 of the District Magistrate, Faizabad accompanied by a blue print of the map of the disputed site duly scaled. The position of various structures shown therein is not in any manner different than what is contained in the two maps, one prepared by Gopal Sahai Amin in Suit 1885 and another by Sri Shiv Shankar, Court's Commissioner in Suit-1 on 25.05.1950.

2306. Since it is a scaled map, having been prepared by Government authorities duly signed by the City Magistrate Faizabad, we find no reason not to place reliance thereon particularly in view of the power possessed by this Court under Section 165 read with 35 of the Evidence Act, 1872. The position shown in this map is as under:



A complete map is being appended as **Appendix No. 4** to this judgment. Map of Ayodhya showing distances from disputed site is also filed as Appendix No. 4A and 4B.

2307. We have referred to and relied on the above map prepared by the District Authorities as long back as on 16th December, 1949 which has become available to us pursuant to

the order issued to the authorities for production of certain record. Along with the said record, the above map is made available to the Court. Whether such a document can be utilized or not, which is not an evidence produced by any of the parties, we find the power vested in the Court by virtue of Section 165 of Evidence Act.

2308. The chief function of a judge is to see that justice is done between parties. For inaction or flaw of the parties, the Court should not be guilty of defeating the ends of justice due to lack of information. The position of a judge is not that of a moderator between contestants in a game with no inclination to interfere till the violation of rules. He has a much superior duty to perform which is commonly believed by the people in India the 'divine function'. The proceedings are not only to be conducted strictly in accordance with law but it is the duty of a judge to administer justice and to find out the truth. We are not supposing even for a moment that the judge is being given a *carte blanche* by which the rules of evidence may be relaxed or set at naught. The aid of the section is invoked only with the object of discovering relevant facts or obtaining proper proof of such facts. A judge must always keep in mind that every trial is a voyage of discovery in which truth is the quest.

2309. In **Govind Raghunath Sawant Vs. B.A. Kakade & Anr. 1975 ILR Bombay 829** at page 835 observed that Section 165 confer powers on every court to compel any party to produce any document to meet the ends of justice subject to the restrictions mention in that section.

2310. Similarly in **Shankar Lal & Anr. Vs. Mahbub Shah & Anr. AIR 1923 Oudh 59,** the Court said :

"...it may also be pointed out that under section 165 of the

Evidence Act, the Judge may himself, in order to discover or obtain proof of relevant facts, order the production of any document where Order 13, rule 1 and 2, or section 151 of the Civil Procedure Code do not serve his purpose."

2311. The record in fact has been summoned pursuant to the application no.20(O) of 2002 filed on behalf of the plaintiffs (Suit-4) praying for production of certain documents constituting correspondence between the State Government and District Magistrate, Faizabad pertaining to entry of 1949. The Government filed copies of two letters dated 26th December, 1949 and other documents could not be produced. Thereafter pursuant to our order dated 15th May, 2009 and 26th May, 2009 the District Magistrate, Faizabad produced the above file and we kept it in the custody of the Court in sealed cover after having prepared copies of the documents contained in the file and providing the same to the State Government. The correspondence between the State and the District Magistrate, Faizabad in December, 1949 has also been referred in the judgment of this Court in Mohd. Hashim Vs. State of U.P. & Ors. UPLBEC Vol.1 576 at page 593 and 656 to find out the spot situation in December 1949. The map sent by the District Magistrate, Faizabad to the State Government along with his letter dated 16th December, 1949, which is official document, comes within the definition of "public document" can be looked into particularly when it corroborates the already available maps prepared by the Court's Commissions in the two suits i.e. Suit 1885 and Suit-1.

2312. It is not in dispute that the entire disputed area ABCD consists of two parts, (1) inner court, which included the disputed building and, (2) outer courtyard. This division of the

disputed premises in the inner courtyard and outer courtyard came to exist in 1856-1857 when it is said that an iron-grilled wall was erected separating the disputed building along from the other constructed parts including the Chabutara called Ram Chabutara. The exact date or period is not on record nor the parties could throw any light thereon except that its existence has been noticed in P. Karnegi's **Historical Sketch (supra)** published in 1870 and that shows that it was constructed sometime after 1855 and also admitted by Mohd. Asghar, defendant no.2 in Suit 1885 in his written statement.

2313. Whether the building in dispute was constructed in 1528 AD or not are the issues we have dealt with separately. We have found that there is no reliable evidence to prove that the building in dispute was constructed in 1528 A.D. by Babar or at his command or instance by Mir Baqi or anyone else. The entire belief in this regard is based on certain Gazetteers and documents available from the commencement of 19th century and they, in turn, are founded on the inscriptions, the text and the time of fixation whereof has not been found reliable.

2314. Be that as it may, even if for the purpose of the issues in question we assume that the building in dispute was so constructed in 1528 A.D., there is no evidence whatsoever that after its construction, it was ever used as a mosque by Muslims at least till 1856-57. Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of Namaz in the disputed building at least till 1855. He has also disputed seriously the alleged riots of 1855. For the time being we do not intend to concentrate on this aspect whether this denial of Sri Jilani and Siddiqui and other Muslim counsels about 1855 riot is

correct or not and proceed to consider further material and other aspects.

2315. The first document which Sri Jilani could place before us to show that the building in dispute was in possession of Muslims in its entirety is **Exhibit 19 (Suit 1) (Register 5 Page 61-63)**. It is a report of Sheetal Dubey, Thanedar dated 28th November, 1858 complaining about the worship offered by a Nihang Singh Fakir Khalsa in the middle of the Masjid Janam Asthan and also erecting a religious symbol (flag) thereat. He says that 25 Sikhs were also present for erection of the religious flag at the Masjid Janam Asthan. The complaint reads as under:

نقل درخواست شیتل دوبے تھانےدار اودھ مورخہ ۲۸ نومبر ۱۸۵۸ء

مقدمہنمبر ۸۸۴ عرضی تھانےدار اودھ دوبارہ کھڑا کرنے نشان در مسجد جنم استھان سنتھ ٹیک سنگھ فقیر خالصہ محلہ رام کوٹ (کوٹ رام چندر) پرگنہ حویلی اودھ تھسیل و ضلع فیض آباد مورخہ ۱۵ دسمبر ۱۸۵۸ء

غریب پرور سلامت

خداوندآج کے روز مسمی نہگ سنگھ فقیر خالصہ ساکن ملک پنجاب بیچ مسجد جنم استھان کہ ہون اور پوجا گورگویند سنگھ مقرر کیا اور نشان شری بھگوان کہ کھڑا کیا اور پچیس نفرسیکھ بہی واسطے حفاظت وقت کھڑا کرنے نشان کہ وہاں پر- واجب تھا عرض کیا~افتاب دولت اقبال کا روشن ہو فقط

عرضی

فدوی سیتل دوبے تھانے دار اودھ مورخہ ۲۸ نومبر ۱۸۵۸ء

''नकल दरख़्वास्त शीतल दुबे थानेदार अवध मोरखा 28 नवम्बर सन् 1858 ई0 मुकद्दमा नं0 884 अर्ज़ी थानेदार अवध दोबारा खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त टेक सिंह फ़क़ीर ख़ालसा मुहल्ला राम कोट (कोट राम चन्द्र) परगना हवेली अवध तहसील व जिला फ़ैज़ाबाद मोरखा 15 दिसम्बर सन् 1858 ई0

गरीब परवर सलामत,

खुदावन्द आज के रोज़ मुसम्मी निहंग सिंह फ़क़ीर खालसा साकिन

मुल्क पंजाब बीच मसजिद जन्म अस्थान के हवन और पूजा गुरू गोाबिन्द सिंह मुकर्रर किया और निशान श्री भगवान के खड़ा किया और पच्चीस नफ़र सिख भी वास्ते हिफ़ाज़त वक़्त खड़ा करने निशान के वहां पर हैं। वाजिब था अर्ज़ किया। आफ़ताब दौलत इक़बाल का रौशन हो खुश।

फ़क़त

अर्जी

फ़िदवी शीतल दुबे थानेदार अवध मोरखा 28 नवम्बर सन् 1858 ई.

(Hindi Transliteration)

"Copy of the application of Sheetal Dubey Thanedar Oudh, dated November 28, 1858, along with the application of Thanedar Oudh for re-erecting symbol within the Masjid Janam Asthan Sant Tek Singh Faqir Khalsa resident of Mohalla Ram Kot (Kot Ramchandra Pargana Haweli, Oudh, Tahsil and District Faizabad. Dated December 15, 1858.

Gareeb Parwar salamat Khuda wand,

Today Mr. Nihang Singh Faqir Khalsa resident of Punjab, organised ***Hawan and Puja of Guru Govind Singh and erected a symbol of Sri Bhagwan, within the premises of the Masjid****. At the time of pitching the symbol, 25 Sikhs were posted there for security. Deemed necessary so requested. May your regime progress. Pleasure.*

Applicant.
Your obedient servant
Sheetal Dubey, Thanedar Oudh
Dated November 28, 1858.

2316. This document only shows worship by a non-Muslim inside the building in dispute. We find no help from the above document in support of the plaintiffs' case that the Muslims were offering Namaz in the building. The report does not say that erection of symbol and Havan and Puja by the said non-Muslim person was complained of by Muslims as

obstructing in offering Namaz.

2317. **Exhibit 20 (Suit-1) (Register 5 Page 65-68B)** is a complaint dated 30th November, 1858 submitted by Syed Mohd. Khateeb Muazzim Masjid Babari at Oudh, i.e., Ayodhya. This document has been heavily relied by both the parties. It says:

نقل درخواست محمد خطیب موزن مسجد بابری واقع اودھ
مورخہ ۳۰ نومبر ۱۸۵۸ء مقدمہ نمبر ۸۸۴ متعلقا عرضی تھانےدار
اودھ دوبارہ کھڑا کرنے نشان در مسجد جنم استھان مھنت ٹیک سنگ
فقیر خالصہ کے محلہ رام کوٹ کوٹ رام چندر پرگنہ حویلی اودھ
تہصیل وضلع فیض آباد مفصلے ۱۵ دسمبر ۱۸۵۸ء

غریب پرور عادلے جہاں سلامت جناب عالی سانحہ جدید سرزد
ہوا ہے کہ مسمی نیھنگ سنگھ سکنی پنجاب سکھان ملازم سرکاردولت
مالداراعوامی بیراگیان جنم استہان پر بانی فساد ہیں- بیچ مسجد بابری
واقع اودھ قریب محراب و ممبر کہ ایک چبوترہ مٹی کا بہ بلندی چ ہار
انگشت بناءی کنکرو نسےمامورکرکے کی جاےعقیدت------بوجہ روشنی
اتش کے قرار دیا ہر وہ چبوترہ مسجد اندر کٹہرے کے اوپر چبوترہ مسجد
کے چبوترہ جدید ہےکہ موقوف ہوا ہے یہ بلندی تخمینہناً سواگز کی تیار
کرکے نشان تصویر بت پر استفادہ کیا ہے و برابر اسی کے ایک گڑھا
کھودکر منڈیر پختا کرکے اسکو تیار کرکے اتش روشن کی ہے پوجا و ہوم
میں مصروف ہیں-و جابجا مسجد میں کوئلہ سے رام رام لکھا ہے عادل
زمانہ یہ مقام انصاف کا ہے کی صریحاً ظلم و زیادتی اہل ہنود ا ہل اسلام
پر کرتے ہیں و حضور مالک فریقین کے ہیں- و مضمون امیتاز بادشاہ
سے صاف مترشح ہی کہ وہیں پرکوی فریق بغرض کرنے بنادےگا و
اگراصباباً ---------بہادری کرےگا تو سرکار سے سزایاب ہوگا جناب عالی
مقام غور کا ہے مسجد مقام عبادت مسلمانان ہے نہ کہ بخیلاف اسکے
بوجہے ہنود کی و سابق میں قبل میں عملداری سرکار بمقام جنم استھان
کا صدہا برس کے نشان پڑا رہتا تھا و اہل ہنود پوجا کرتے تھے چبوترہ
کوشازش شیو غلام تھانےدار اودھ کے بیراگیوں نے شباشب میں تا
صدور حکم سرکار کے واسطے ممانعت کے نافذ ہوا تھا بہ بلندی ایک
بالشت تیار کرا لیا- اس وقت صاحبِ ڈپٹی کمیشنر بہادور نے بموجب

حکم جناب صاحب کمیشنر بہادور کے تھانےدار کو موقوف کیا و بیراگی پر جرمانہ متعین ہوا اب فلحال اس چبوترے کی بہی تخمیناً سوا گزتیار کرا لیا ہے اس صورتِ صریح زیادتی ثابت ہے لیہذاامیدوار ہوں کی بنام مرتضی خان کوتوال شہر صودور حکم ہوے کہ کوتوال بہ چشم خود معانہ کرکے امورات جدید کھدواڈالیں و مردمان ہنود کو بابرمسجد سے کریں و نشان بت اٹھواں دیں ہنود کو باہر مسجد کریں و نشان بت الہ ٹوا دیں و نام ہاہ لکھے کو دھلواڈالیں وآیندہ کو حکم ہوے (پہٹاہوا ہے) کریں۔

واجب جانکی عرض کیا۔

سید محمد خطیب

مؤزن مسجد بابری واقع اودہ

۳۰نومبر ۱۸۵۸ ۔

''नक़ल दरख़वास्त मोहम्मद ख़तीब मोअज़्ज़िन मस्जिद बाबरी वाक़ै अवध मोर्रख़ा 30 नवम्बर 1858 ई0 मुकदमा नं0 884 मुतालिक़ा अरज़ी थानेदार अवध दोबारा खड़ा करने निशान दर मस्जिद जन्म स्थान महन्त निहंग सिंह फ़क़ीर ख़ालसा के मोहल्ला राम कोट (कोट राम चन्द्र) परगना हवेली अवध तहसील व ज़िला फ़ैज़ाबाद मुन्फसले 15 दिसम्बर 1858 ई0

ग़रीब परवर आदिले ज़हां सलामत जनाब आली सानेहा जदीद सरज़द हुआ है कि मुसम्मी निहंग सिहं सकनी पंजाब सिक्खान मुलाज़िम सरकार (दौलतमदार बअवामी बैरागियन जनम स्थान पर बानी–ए–फ़साद हैं। बीच मस्जिद बाबरी वाक़ै अवध करीब मेहराब व मेम्बर के एक चबूतरा मिट्टी का ब बुलन्दी चहार अन्गुश्त बना कर कंकरों से मामूर करके की जाय अक़ीदत बवजेह रौशनी आतिश के क़रार दिया है ***व चबूतरा मस्जिद अन्दर कटेहरा के ऊपर चबूतरा मस्जिद के चबूतरा जदीद है के मौकूफ़ हुआ है यह बुलन्दी तख़मीनन सवा गज़ की तय्यार करके निशान तसवीर बुत पर इस्तफादा किया है व बराबर उसी के एक गढ़ा खोदकर मुंडेर पुख़्ता कर व उसको तय्यार करके आतिश रौशन की है व पूजा व होम में मसरुफ़ हैं व जा बजा मस्जिद में कोयला से राम राम लिखा है*** *आदिले ज़माना यह मुक़ाम इन्साफ़ का है कि सरीह जुल्म व ज़ियादती अहले हुनूद अहले इसलाम पर करते हैं व हुज़ूर मालिक फ़रीक़ैन के हैं। व*

मज़मून इस्तियाज़ वादशाही से साफ मुतर्रश्शह है कि वहीं पर कोई फ़रीक बग़रज़ करने बना देगा (अपठनीय) अगर असबाबन बहादुरी करेगा तो सरकार से सज़ायाब होगा जनाब आली मुक़ाम ग़ौर का है मस्जिद मुक़ाम इबादत मुसलमानान है न कि बख़ेलाफ़ उस के बवजेह हुनूद की व साबिक़ में क़ब्ल में अमलदारी सरकार ***मुक़ाम जनम स्थान का सदहा बरस के निशान पड़ा रहता था व अहले हुनूद पूजा करते थे।*** *चबूतरा बसाजिश शिव गुलाम थानेदार अवध के बैरागियों ने शबाशब में ता सुदूरे हुक्म सरकार के वास्ते मुमानियत के नाफिज़ हुआ था बबुलन्दी एक वालिश्त तैयार करा लिया। उस वक़्त साहेब डिप्टी कमिश्नर बहादुर ने बमोजिब हुक्म जनाब साहब कमिशनर बहादुर के थानेदार को मौकूफ़ किया व बैरागी पर जुर्माना मुतअय्यन हुआ अब फ़िलहाल इस चबूतरे की भी तरवमीनन सवा गज़ तैयार करा लिया है इस सूरत सरीह जियादती साबित है लेहाज़ा उम्मीदवार हूँ कि बनाम मुरतजा खां कोतवाल शहर सुदूर हुक्म होवे कि कोतवाल बचश्म खुद मोआईना करके उमुरात जदीद खुदवा डालें व मरदुमान हुनूद को बाहर मस्जिद करें व निशान बुत उलटवा दें व नाम हाय लिखें को धुलवा डालें व आयन्दा को हुक्म होवे (फटा हुआ है) करें। वाज़िब जानकर अर्ज़ किया।*

सैय्यद मोहम्मद ख़तीब
मोअज्ज़िन मस्जिद बाबरी वाक़ै अवध
30 नवम्बर 1858 ई''

"Copy of the application of Mohammd Khatib Moazzin of the Masjid , dated Novermber 30, 1858 case no. 884 regarding application of Thanedar Oudh, for reconstructing the symbol within the Masjid Janam Sthan Mahant Nihang Singh Faqir Khalsa Mohalla Ram Kot, Kot Ram Chander Pargana Haweli, Oudh, Tahsil and District Faizabad decided on December 15, 1858.

Gharib Parwar Aadil-e-Zaman Salamat

Sir, In a recent incident one Nihang Sikh resident of Punjab Sikkhan, a government employee (Sic) is creating riot on Janam Sthan Masjid situated in Oudh. ***Near***

Mehrab and Mimber, he has constructed, inside the case, an earth Chabutra *measuring about four fingers by filling it with Kankars (concrete). Lighting arrangement has been made. . . . and after raising the height of Chabutra about 1¼ yards* ***a picture of idol*** *has been placed and after digging a pit near it, the* ***Munder wall has been made Pucca. Fire has been lit there for light and Puja and Home is continuing there.*** *In whole of this Masjid 'Ram Ram' has been written with coal. Kindly, do justice. It is an open tyranny and high handedness of the Hindus on Muslims. You are the master of both the parties since the Shahi era (sic) if any person constructs forcibly he would be punished by your honour. Kindly consider the fact that Masjid is a place of worship of the Muslims and not that of Hindus.* ***Previously the symbol of Janamasthan had been there for hundreds of years and Hindus did Puja.*** *Because of conspiracy of Shiv Ghulam Thandedar Oudh Government, the Bairagis constructed overnight a Chabutra up to height of one 'Balisht' until the orders of injunction were issued. At that time the Deputy Commissioner suspended the Thanedar and fine was imposed on Bairagis. Now the Chabootra has been raised to about 1¼ yards. Thus sheer high-handedness has been proved. Therefore it is requested that Murtaza Khan Kotwal City may be ordered that he himself visit the spot and inspect the new constructions and get them demolished (sic) and oust the Hindus from there; the* ***symbol and the idol may be removed from there and writing on the walls be washed.*** *Orders may be issued for the future (paper torn). Deemed necessary, so requested .*

Sd/- Syed Mohammad Khatib,
Moazzim Masjid Babri sites in Oudh
Dated November 30, 1858."

2318. The above letter referred to something which happened in the disputed building i.e. inner courtyard. In fact, the learned counsels for the defendants Hindu parties have submitted that the complaint of Syed Mohd. Khateeb was in respect to the disputed building and the premises in the inner courtyard wherein worship by Hindus said to have continued from hundred of years. The genuinity of this document has not been disputed by the plaintiffs (Suit-4) and on the contrary they also rely upon it. Being one of the earliest document, in our view, it is a very important Exhibit. It is contended by the various learned counsels appearing for defendants Hindu parties, that the same being a document of one of the earliest period available having been written by a person whose identity and authority is not disputed by the Muslim parties. Being an admission must be treated as a sole conclusive evidence to prove that the disputed building and premises throughout has been in possession of Hindus and not of Muslims. Hindus have continuously offered prayer inside the disputed building as well as the premises in the inner courtyard as also at the Ram Chabutara and Seeta Rasoi which was in the outer courtyard. It is not stated anywhere in the said application that Muslims ever offered Namaz in the disputed building or were obstructed. The only averment is that, being a mosque, it is a muslim religious place which is being defiled and defaced by Hindus by offering their worship and keeping their religious marks etc. for the past hundreds of years ("*Sadaha Baras*").

2319. We find substance. It thus appears that in 1858 a

Chabutara was constructed in the inner courtyard also and the complaint was made in respect thereto. Had the building in dispute and the inner courtyard been in possession of Muslims, such an act on the part of the Hindus could not have been possible at all.

2320. It appears that some order was passed on 30th November, 1858 pursuant whereto Sheetal Dubey, Thanedar visited the disputed premises and informed Nihang Faqir about the order but he replied that the entire place is of Nirankar and the government of the country should impart justice.

2321. Sri Sheetal Dubey Thanedar submitted his report dated 1st December, 1858; **Exhibit 21 (Suit 1) (Register 5 Page 69-72A)**. The report says:

نقل رپورٹ شیتل دوبے تھانیدار آوده مورخہ ۱ دسمبر سن ۱۸۵۸ء مقدمہ نمبر ۸۸۴ بمقدمہ عرضی تھانیدار اوده دو بارہ کھڑا کرنے نشان در مسجد جنم استھان سنت نیہنگ سنگھ فقیر خالصہ واقع محلہ رام کوٹ (کوٹ رام چندر) پرگنا حویلی اوده تحصیل و ضلع فیض آباد منفسلہ ۱۵ دسمبر سن ۱۸۵۸ء

غریب پرور سلامت

خداوندِ پرواز

حضور واسطے طلبی نیھنگ سنگھ فقیر جو کی مسجد جنم استھان میں مقیم ہیں ، تاریخ ۳۰ نومبر سن ۱۸۵۸ء کو صادر ہوا چنانچہ بطورواسطے پروانہ وقار والوں کے تابیدارجومقرر تھانہ نزدیک فقیر مزکورکے کیا اور مضمون پروانہ سے بخوشی اطلاع کی و زبانی بھی ہرچند کے فہماش کر کے کہا لیکن فقیر مزکورنے صرف یہ بات کہی کی راجگ□نیرنکار کی □□و صاحب ب□ادر ما لک الملک انصاف کرنا چاہئے اور اپنےجانے کے بارےمیں کچھ نہیں کہا و نہ جاتا ہے- آنیدہ جو حکم ہوئے مطابق اسکے تعمیل کریں-

فضا میں تلوار ایک سرحد ہے -

واجب جان کر گزارش کیا مورخہ ۱ د سمبر ۱۸۵۸ء

العبد

شیتل دوبے تھانیدار اودھ

''नकल रिपोर्ट शीतल दुबे थानेदार अवध मोरखा 1 दिसम्बर सन् 1858 ई0 मुकद्दमा नं0 884 बमुकद्दमा अर्ज़ी थानेदार अवध दोबारा खड़ा करने निशान दर मसजिद जन्म अस्थान सन्त निहंग सिंह फ़क़ीर ख़ालसा वाकै मुहल्ला राम कोट (कोट राम चन्दर्र) परगना हवेली अवध तहसील व जिला फ़ैज़ाबाद मुनफ़सिला 15 दिसम्बर सन् 1858 ई0

गरीब परवर सलामत,

खुदावन्द परवाज़ हजूर वास्ते तलबी निहंग सिंह फ़क़ीर जो कि मस्जिद जन्म अस्थान में मुक़ीम है, तारीख़ 30 नवम्बर सन 1858 ई0 को सादिर हुआ चुनॉचे बतौर वास्ते परवाना वकार वालों के ताबेदार जो मुक़र्रर थाना नज़दीक फ़कीर मज़कूर के किया गया और मज़मून परवाना से बखूबी इत्तला किया, यह ज़बानी भी हर चन्द के फहमाइश करके कहा लेकिन फ़क़ीर मज़कूर ने सिर्फ यह बात कही कि यह जगह निरंकार की है व साहब बहादुर मालिके मुल्क इन्साफ़ करना चाहिए और अपने जाने के बारे में कुछ नहीं कहा न वो जाता है। आइन्दा जो हुकुम होवे मुताबिक उसके तामील करें बतौर फिजा में तलवार एक सरहद है (अपठनीय)। वाजिब जान कर गुजारिश किया। मोरखा 1 दिसम्बर सन् 1858 ईस्वी ।

अलअब्द

शीतल दुबे थानेदार अवध

"Copy of the report of Sheetal Dubey, Thanedar Oudh dated December 1, 1858 in the case no. 884, application of Thandedar Oudh regarding erecting Darbar and pitching on symbol within masjid Janam Sthan. Sant Nihang Singh Faqir Khalsa resident of Mohalla Ram Kot (Kot Ramchandra) Pargana Haweli Oudh, Tahsil and District Faizabad, decided on December 15, 1858.

Khudawand-e-Parwaz Huzoor for summoning ***Nihang Singh*** *Faqir who is* ***residing within the Masjid.*** *Order passed on November 30, 1858. So the parwana was taken to the said Faqir by this obedient servant who is*

posted there and the subject/contents thereof was explained to him. He was explained the text of 'it' orally also - He was admonished (for his act) but the said ***Faqir continued to insist that every place belonged to Nirankar and justice should be done to him.*** *Neither he said a word about leaving the place he was illegally occupying nor left. Therefore, I am here to carry out any further orders given in the matter. Deemed necessary so requested*

Dated Dec. 1, 1858

Sd/- Sheetal Dubey Thanedar Oudh"

2322. Another report about service of the order on 6th December, 1858 vide **Exhibit 22 (Suit-1) (Register 5 page 73-75)** reads as under:

نقل رپورٹ تھانیدار اودھ مورخہ ۶ دسمبر سن ۱۸۵۸ء و مقدمہ نمبر ۸۸۴ عرضی تھانیدار اودھ در بارہ کھڑا کرنے نشان در مسجد جنم استھان سنتھ نیھنگ سینگھ فقیر خالصہ کے واقع رام کوٹ (کوٹ رام چندر) پرگنہ حویلی اودھ تحصیل و ضلع فیض آباد منفصلہ ۱۵ دسمبر ۱۸۵۸ء-

غریب پرور سلامت

پروانہ قار الطلب نیھنگ سینگھ فقیر ساکن مسجد جنم استھان کے وارد ہوا چنانچہ حسبل حکم حضوروالا کے بذریعہ رپورٹ ہذا فقیر مزکور بخدمت بندگان والا ہے حاضر ہوتا ہے- واجب جان کر گذارش کیا فقط مورخہ ۶دسمبر سن ۱۸۵۸ء

العبد

شیتل دوبے تھانیدار اودھ

"नकल रिपोर्ट थानेदार अवध मोरखा 6 दिसम्बर सन् 1858 इस्वी व मुकद्दमा नं0 884 अर्ज़ी थानेदार अवध दर बारह खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त निहंग सिंह फ़क़ीर ख़ालसा के वाकै राम कोट (कोट राम चन्दर) परगना हवेली अवध तहसील व जिला फ़ैज़ाबाद मुनफ़सिला 15 दिसम्बर सन् 1858 ई0।

गरीब परवर सलामत,

परवाना वकार तलब निहंग सिंह फ़क़ीर साकिन मस्जिद जन्म अस्थान के वारिद हुआ चुनॉचे हस्बुल हुक्म ह़जूरे वाला के वजरिये रिपोर्ट ह़जा फ़कीर मज़कूर व ख़िदमत बन्दगान वाला है हाज़िर होता है। वाजिब जानकार गुज़ारिश किया फ़क़त मोरखा 6 दिसम्बर सन् 1858 ईस्वी

अलअब्द

शीतल दुबे थानेदार अवध''श्श

"Copy of the report of Thanedar Oudh dated December 6, 1858 in case no. 884. Application of Thanedar Oudh regarding erecting Darbar and pitching a symbol in the Masjid Janamasthan Sant Nihang Singh Faqir Khalsa resident of Ram Kot (Kot Ram Chandra) Pargana Haweli Oudh, Tehsil and District Faizabad, decided on December 15, 1858.

Ghareeb Parwar Salamat,

***Parwana** Wakarul Talab Nihang Singh **Faqir** resident of Masjid Janamasthan **has been received.** The Faqir has appeared and is present. As per orders a report in respect of the above said Faqir is being submitted for perusal deemed necessary, so requested.*

Dated December 6, 1858.
Sd/- Sheetal Dubey Thanedar Oudh.

2323. It appears that some order was passed by the authority concerned that the Faquir sitting in the mosque be ousted and if he does not move therefrom, he should be arrested and sent to the Court.

2324. Exhibit A-70 (Suit-1) (Register 8, page 573) is a copy of the order dated 05.12.1858 and reads as under:

نقل حکم مقدمہ ۵۸ءمقدمہ ۸۸۴ عرضی تھانیدار اودھ دوبارہ کھڑا کرنے نشان در مسجد جنم استھان ٹیک سنگھ فقیر خالسہ کے منفصلے ۶دسمبرسن ۱۸۵۸ء

آج یہ مقدمہ روبکار ہوکہ دریافت ہوا کہ حسب حکم ۳۰ نومبر سن

فقیرکو جو مسجد بابری میں بیٹھا ہے روانہ کیا۔

حکم ہواکہ

پروانہ بنام تھانیدار آودہ کہ جاوے کہ اگر فقیر نہیں آتا ہے تو اسکو گرفتار کرکے روانہ حضور کریں۔ ۵ دسمبر سن ۵۸ء

''नकल हुकुम मुकदमा 10 दिसम्बर 1858 मुकदमा नं0 884, अर्जी थानेदार अवध दोबारा खड़ा करने निशान दर मस्जिद जन्मस्थान टेक सिंह फकीर खालसा के मुनफसला 5 दिसम्बर 1858 ई0

आज यह मुकदमा रोबकार होके दरयाफ्त हुआ कि हस्वे हुकुम 30 नवम्बर सन् . . . .फकीर को जो मस्जिद बाबरी में बैठा है रवाना किया।

परवाना बनाम थानादार अवध को जावे कि अगर फकीर नही आता है तो उसको गिरफ्तार करके रवाना हुजुर करे 5 दिसम्बर 1958

"Copy of the order dated 05.12.58, Suit No.884. Application of Thanedar Oudh for re-erecting the symbol in the Majid Janam Asthan, Tek Singh Faqir Khalsa..... (Sic)...decided on December 5, 1858.

In the case Robekar was issued today. It was noticed that as per order dated November 30, 1858, Robekar was issued that the Faqir sitting in the Masjid Babri be ousted. Parwana issued to the Thanedar Oudh that if the Faqir does not move from there, he should be arrested and sent to the Court. December 5, 58."

2325. Exhibit A-69 (Suit-1) (Register 8, page 569) is a report dated 10.12.1858 submitted by Thanedar P.S. Oudh and order thereon and reads as under:

نقل حکم مورخہ ۱۰ دسمبر ۱۸۵۸ء مقدمہ نومبر ۸۸۴ عرضی تھانیدار اودہ دربارہ کھڑا کرنے نشان درمسجد جنم استھان سنت ٹیک سنگھ فقیر خالصہ کے محلہ رام کوٹ (کوٹ رام چندر) منفصل ۱۵ دسمبر سن ۱۸۵۸ء

آج روبکار ہوا جسمیں جھنڈا مسجد جنم استھان سے اکھاڑا گیا جو فقیر آ کے رہا تھا نکالا گیا۔

حکم ہوکہ

مقدمہ خارج ہوکے داخل دفتر ہو ۱۰ د سمبر ۱۸۵۸ء

''نकल हुकुम मोरखा 10 दिसम्बर 1858 ई0 मुकदमा नं0 884 अर्जी थानादार अवध खड़ा करने निशान दर मस्जिद जन्मस्थान सन्त टेक सिंह फकीर खालसा के मोहल्ला रामकोट कोट रामचन्दर मुनफसला 15 दिसम्बर 1758 आज रोबकार हुआ जिसमें झंडा मस्जिद जन्मस्थान से उखाड़ा गया जो फकीर आके रहता था निकाला गया।

हुकुम हुआ कि मुकदमा खारिज होके दाखिले दफ्तर हो।''

"Copy of the order dated December 10, 1858 Suit No.884 on the application of Thanedar Oudh for re-erecting the symbol within Masjid Janam Sthan. Saint Tek Singh Faqir, Khalsa, resident of Mohalla Ram Kot, (Kot Ram Chandra), decided on December 15, 1858. Robekar issued today in which Jhanda (flag) was uprooted from the Masjid Janam Asthan and the Faqir residing therein was ousted. Ordered that the case be consigned to the office. Dec. 10, 1858."

2326. It thus appears that the order of ouster of Faquir and removal of *Jhanda* from the mosque was complied with. Here also it does not say anything about observance of Namaz or its revival by the Muslims in the said mosque.

2327. **Exhibit 23 (Suit -1) (Register 5 Page 77-80 A)** is an application dated 9th April, 1860 filed by Dwadgo Mohammadi Shah R/o Ramkot complaining that the Government has declared Mauza Ramkot Nazul, he was required to get a lease deed executed in his favour of the property he claimed possession, though he had raised objection there against, therefore matter may be examined properly. Its contents are:

نقل درخواست محمدی شاہ ساکن رام کوٹ مورخہ ۹ اپریل ۱۸۶۰ء

بروے مثل ۸۸۴ مقدمہ عرضی تھانےدار اودھ دربارہ کھڑا کرنے نشان

در مسجد جنم استھان ٹیک سینگھ فقیر خالصہ محلہ رام کوٹ (کوٹ

رام چندر) پرگنہ حویلی اودھ تحصیل و ضلع فیض آباد منفصلہ ۱۵ دسمبر سن ۱۸۵۸ء

دعا گومحمدی شاہ ساکن محلہ رام کوٹ ساءل بدرخواست ملتوی فرمایا جاے پٹہ آراضی موضع رام کوٹ تصفیہ نزول

غریب پرور سلامت

جناب عالی

گذارش یہ ہے کہ حسب الحکم سرکار اقدس عالی کے حضور میں موضع رام کوٹ کو نزول قرار دیا اور اظہار جمعی گواہ کا سرکار نے قلم بند فرمایا اور دو قطہ سند حقیت آراضی ذرے خرید محکمہ نزول کہ تعدادی ۳ بیگہ پختہ و دو بیگہ خام مثل مقدمہ داخل سرکار ہے و تاریخ ۱۴ واسطے تحقیقات جمعیی سوساءٹی و بیراگیان مہنتان اودھ کے مقرر فرمایا اب منسیلم صاحب واسطے دینے پٹہ کے ہم کو طلب کرکے کہتے ہیں کہ پٹہ لے لو اور ہمکو بوجہ زمینداری جدید ہونے------ محمد جعفر کے پٹہ لینا منظور نہیں ہے اور حق تلفی ہماری متصوری ہے و بعد تحقیقات نزول کے جیسے رای حضور کی ہوگی ویسا بجالاوینگے لہذا امیدوار ہے کہ بنام منتسم صاحب کہ حکم ہو تصفیہ حضور کے پٹہ ملتوی رکھا جاوے-

واجب جان کر عرض کیا

دعا گو محمدی شاہ ساکن رام کوٹ مورخہ ۹ اپریل ۱۸۶۸ء

''नक़ल दरख्वास्त मुहम्मदी शाह साकिन राम कोट मोरख़ा 9 अप्रैल सन 1860 ई0 बरुए ***मिसल नं0 884*** *मुक़द्दमा/अर्ज़ी थानेदार अवध दर बारह खड़ा करने निशान दर मस्जिद जन्म अस्थान सन्त टेक सिंह फ़क़ीर ख़ालसा मुहल्ला राम कोट (कोट राम चन्दर) परगना हवेली अवध तहसील व ज़िला फ़ैजाबाद मुन्फ़सला 15 दिसम्बर सन् 1858 ई0*

दुआगो मुहम्मदी शाह साकिन मुहल्ला राम कोट सायल

बदरख़्वास्त मुल्तवी फरमाया जाय पट्टा आराजी मौज़ा राम कोट तसफिया नज़ूल

ग़रीब परवर सलामत,

ज़नाब आली, गुज़ारिश यह है कि हस्बुल हुक्म सरकार उक़दस आला के हज़ूर ने मौज़ा राम कोट को नज़ूल क़रार दिया और इज़हार जमा गवाह का सरकार ने क़लम बन्द फ़रमाया और दो क़िता सनद हक़ियत आराज़ी ज़रे ख़रीद महकमा नज़ूल के तादादी 3 बीघा पुख़्ता व दो बीघा

ख़ाम मिसिल मुक़द्दमा दाख़िल सरकार है व तारीख 14 वास्ते तहकीक़ात जमींह सुसाइटी व बैरागियान महन्तान अवध के मुक़र्रर फ़रमाया अब मुत्सिम साहब वास्ते देने पट्टा के हमको तलब करके कहते हैं कि पट्टा ले लो और ***हमको बवजह ज़मींदारी जदीद होने*** *(अपठनीय)* ***मुहम्मद ज़ाफ़र के पट्टा लेना मन्जूर नहीं है*** *और हक़तल्फी हमारी मुतसव्वर है व बाद तहक़ीक़ात नजूल के जैसी राय हजूर की होगी वैसा बजा लावेंगे। जिहाज़ा उम्मीदवार है कि बनाम मुन्सलिम साहब के हुक्म हो तसफिया ताफैसला हजूर के पट्टा मुल्तवी रखा जावे। वाजिब जान कर अर्ज़ किया।*

दुआगो मोहम्मदी शाह साकिन राम कोट मोरखा 9 अप्रैल 1868 ई0''

"Copy of the application Mohammadi Shah resident of village Ramkot dated April 9, 1860. (According to file no. 884, the application of a Station Officer Oudh for re-erecting the symbol within Masjid Janmsthan Sant Tek Singh Fakir Khalsa Mohalla Ramkot (Kot Ram Chandra) Pargana Haveli Oudh Tahsil and District Faizabad decided on December 15, 1858).

Dwago Mohammadi Shah resident of Mohalla Ram Kot. . . . . .Applicant.

The application for postponing grant of lease in respect of village Ramkot till the decision of Nuzul.

Garib Parwar Salamat,

Respected Sir,

It is requested that under the orders of your honour Mauja Ram Kot has been declared Nuzul and statement of all the witnesses were recorded and they proved documents of rights, two documents regarding purchase of Arazi from the department of Nuzul, three Bigha Pokhta and two Bigha Kham and the file has been placed in the case and date 14 has been fixed for inquiry in the land of society and Bairagies, Mahants of Awadh. Now Mutsim Saheb calls us

and offers lease and says to accept it but we do not agree because of it being new Zamidari of Mohd. Zafar and will forfeit our rights. Whatsoever orders would be of your honour after the inquiry regarding Nuzul, we shall abide by the same. Therefore, it is prayed that orders may be issued to Mutsim Saheb that grant of lease may kindly be postponed till the decision of the case. Being proper, so requested.

Applicant Dwago Mohammadi Shah resident of Ram Kot dated 9th April 1868."

2328. This document shows an admission that the entire Mauja Rampur was entered as Nazul. This fact is admitted before us by the learned counsel for the parties. Sri Jilani though sought to argue that the entry of disputed land as Nazul in the records of the British Government at that time was wrongly made but the fact remains that in the first settlement of 1861 also, the land was shown Nazul and this was never disputed by anyone or challenged before the appropriate Forum in appropriate proceedings and has continued as such.

2329. **Exhibit 31 (Suit-1) (Register 5 page 117-121)** is a copy of the application dated 05.11.1860 filed by Mir Rajab Ali. The aforesaid document has also been relied upon heavily by learned counsels for the parties and it reads:

نقل درخواست میر رجب علی مورخہ ۵ نومبر ۱۸۶۰ء مقدمہ نمبر ۲۲۳

ساکن محلہ کوٹ رام چندر پرگنہ حویلی اودھ ضلع فیض آباد اجلاسی

جناب ڈپٹی کمشنر صاحب بہادور فیض آباد منفصلہ ۱۸ مارچ ۱۸۶۱ء

میر رجب علی بنام اسکالی سنگھ

میر رجب علی خطیب مسجد بابری ساکن اودھ

درخواست ہے کہ با ملاحظہ مضمون عرضی ہذا جو چبوترہ تھا کہ فرق مسجد بابری واقع اودھ مدعا علیہ بنا لیا ہے بعد تحقیقات منہدم فرمایا جاے و نیز مجھکو مدعا علیہ سے عدم مزاحمت واسطے داد رسی انڈل

طلب لے لیا جاوے-

غریب پرور سلامت

حال خودی حاکمی نشوہ پیشتر و نیز ہنگی مدعا علیہ کاہوگا حضور میں کیا گذارش کروں عرصہ قریب تیس روز کہ ہوتا ہے کہ مدعا علیہ نے ایک چبوترہ ازراہ زبردستی و خلاف عمل درامد قبرستان ملحقہ مسجد بابری میں پاس قبر قاضی قدوہ مرحوم کہ بنا لیا ہے وہ ہرروز چبوترہ بڑہتا جاتا ہے حالانکہ اس کو منع کیا جاتا ہے مگر کسی طرح باز نہیں اتا ہے امادہ ہنگامہ و تکرار ہوتا ہے و فدوی بخوف سرکار طرح دیتا ہے ساءبکان عرصہ قریب ڈیڈہ برس کہ ہوا ہوگا- ہری داس مہنت ہنومان گڈہی نے زبردستی مکان بنوانا چاہتا تھا کہ وہ مقدمہ داءر عدالت ہو کر ڈیگری بحق مدعی صادر ہوی و فیصلہ ضلع تامحکمہ عالیا کمیشنری بحال رہا بلکہ مچلکہ عدم مزاحمت ہری داس مزکور سے لیا گیا کہ وہ مثل سیرستہ میں موجود ہے و نیز کمیشنری صاحب بہادر مدعا علیہ مذکورنے جہنڈا واسطے پہروا ہونےکے قریب مسجدکے سامنے صحن مینصب کیا تھا کہ جناب صاحب محتمم الہ نے بعد ملاحظہ جنڈا نسب ساختہ مدعا علیہ اوک پہڑاوا ڈالا و نیز پیمایش فرمایا تھا کہ سراقوں کبھی اسکی مدعا علیہ ازراہ عدل حکمی سرکارمرتب قرب جوار کا مقرر ہے اور ورثانی قبرستان ہوے ایسی بدعت سے بہت پریشان ہیں علاوہ اسکے جب موزن مسجد میں اذان دینا ہی تو وہ ناخوش یعنی سنکھ بجاتا ہے تو عالی جا ایسا کبھی نہیں ہوا و سرکار حاکم دونوں فریق کہ ہیں لہذا درخواست لہذا حضور میں گزارش کر امیدوار ہے کہ مدعا علیہ حرکت بیجا سے باز رکھا جاکر بعد تحقیقات چبوترہ جدید تعمیر ساختہ مدعا علیہ سے جو کبھی وہاں نہ تھا بنا لیا ہے منہدم فرمایا جاوے و نیز قطع مچلکہ عدم مزاحمت دی جاے بجانے سنکھ وقت اذان مدعا علیہ سے لے لیا جاوے کہ ہم غریب پرور مدعا علیہ سے نجات پاوے -

واجب جان کر عرض کیا-

عارض

میر رجب علی

خطیب مسجد بابری واقع اودہ ساکن اودہ

مورخہ ۵ نومبر سن ۱۸۶۰ء

''नकल दरख्वास्त मीर रज्जब अली मोरखा 5 नवम्बर 1860 ई0 मोकद्दमा नं0 223 साकिन मोहल्ला कोट रामचन्दर परगना हवेली अवध जिला फैजाबाद

इजलासी जनाब डिप्टी कमीश्नर साहब बहादुर फैजाबाद मुनफसला 18 मार्च 1861 मीर रज्जब अली बनाम असकाली सिंह

मीर रज्जब अली खतीब मस्जिद बाबरी साकिन अवध

दरख़ास्त यह है कि बमुलाहिजा मजमून अर्जी दावा हाजा जो चबूतरा था कि फर्क मसजिद बाबरी वाकै अवध मुद्दाअलेह ने बना लिया है वाद तहकीकात मुनहदिम फरमाया जाय वो नीज मुझको मुद्दाअलेह से अदम मजाहिमत वास्ते दादरसी अन्दुल तलब ले लिया जावेः

गरीब परवरसलामत,

हाल खुद हाकिमी नशूह नेहन होगी मुद्दाअलेह का होगा हुजूर मै। क्या गुजारिश करूं अरसा करीब 30 रोज का होता है कि मुद्दाअलेह ***ने एक चबूतरा*** *अजराह जबरदस्ती वो खिलाफ अमल दरामद कबरिस्तान मुलाहिका* ***मसजिद बाबरी में*** *पास कबर काजी किदवा मरहूम के बना लिया है वो हर रोज चबूतरा बढ़ता जाता है हालांकि उसको मना किया जाता है मगर किसी तरह बाज नहीं आता बल्कि आमादा हंगामान को तकरार होता है वो फिदवी बखैाफ सरकार तरह देता है साविकान अरसा करीब डेढ़ बरसा के हुआ होगा कि हरी दास सन्त हनुमान गढ़ी ने जबरदस्ती मकान बनाना चाहता था कि वह मोकदिमा दायर अदालत हो कर डिगरी बहक मुद्दई सादिर हुई वो फैसला जिला ता मोहकिमा आलिया कमिश्नरी बहाल रहा बल्कि मुचलिका अदम मजाहिमत हरी दास मजकूर से लिया गया कि वह मिसिल शिरिस्ता में मौजूद है (अपठनीय) व नीज कमिश्नरी साहब बहादुर मुद्दाअलेह मजकूर ने झण्डा वास्ते (अपठनीय) होने (अपठनीय) के करीब* ***मसजिद के सामने सहन में नसब किया था कि साहब मोहतमिम अलैह ने बाद मुलाहिजा झण्डा नसव साख्ता मुद्दाअलेह उखडवा डाला व नीज पैमाइश फरमाया था कि शराकूं उसकी कभी (अपठनीय) मुद्दाअलेह अजराह अदूल हुक्म सरकार मुरत्तव कुरवाजवार (अपठनीय) और नजवाज*** *का मुकर्रर है और वरसानी कबरिस्तान होने ऐसी बिदात से बहुत परेशान हैं अलावा इसके जब मुअज्जिन मसजिद में अजान देता है तो वह नाखूश यानी शंख बजाता है तो आली जा ऐसा कभी नहीं हुआ व सरकार*

हाकिम दोनों फरीक के है लिहाजा दरखास्त हाजा हुजूर में गुजारिश कर उम्मीदवार है कि मुद्दाअलेह हरकत बेजा से राज रख्खा जाकर बाद तहकीकात चबूतरा जदीद तामीर शाख्ता मुद्दाअलेह का जो कभी वहां न था बना लिया है मुनहदिम फरमाया जावे व नीज किता मुचलका अदम मुजाहमत दी जाय व बजाने शंख वक्त अजान मुद्दाअलेह से ले लिया जावे कि हम गरीब पर मुद्दाअलेह से नजात पावें वाजिब जान कर अर्ज किया :

आरजी

मीर रज्जब अली

खतीब मसजिद बाबरी वाके अवध साकिन अवध

मोरखा 5 नवम्बर सन 1860 ई0''

"Copy of application filed by Mir Rajjab Ali, dated 05.11.1860 case no. 223, resident of Mohalla Kot Ram Chander, Pargana Haveli, Oudh, District Faizabad.

In the Court of Janab Dy. Commissioner Saheb Bahadur decided on 18.03.1861.

Mir Rajjab Ali Vs. Askali Singh.

Mir Rajjab Ali Khatib Babri mosque resident of Oudh.

The application is to the effect that as per the text of the plaint the ***Chabutra which had been constructed within Babri Masjid Oudh may kindly be removed after due enquiry.*** *Moreover the respondent may be ordered to furnish proper undertaking/personal bond (Muchalka) for not interfering in the matter."*

Garib Parwar Salamat,

The story of mucelemanship of the Nihang respondent is being told in this Hon'ble Court. ***About 30 days back*** *the respondent made a small* ***Chabootra in violation of law, in the graveyard, adjacent to Babri Masjid****, between the graves of late Qazi Hadood which he*

is extending day by day. Although he is told not to do so , but he does not refrain from doing so and at times, he becomes violent. But the applicant owing to fear of law avoids occurrence of any untoward incident or situation which may arise in future. About half year back, Hari Das Mahant of Hanuman Garhi tried to build his house forcibly. Against this act, a case was registered in the court wherefrom a decree was issued in favour of the applicant which was affirmed and continued as such from the district level upto the commissionary. Even the said Mahant Hari Das was made to execute personal bond/undertaking for non-interference, which is available in Sarishta (file). ***The commissioner found that a flag within the lawn of the Masjid was pitched to create tension and terror. The commissioner after seeing himself on the spot, got the flag unpitched.*** *He also noted the measurement of the place. (sic). That the opposite party has broken every law and order of the Government putting the owners of the Qabristan and the applicant in trouble. Besides,* ***When the Moazzin recites Azaan, the opposite party begins to blow conch (Shankh/Naqoos).*** *This has never happened before. I would pray that your honour is the Judge for both the parties. The opposite partiy should be restrained from his unlawful act and after proper* ***inquiry the newly constructed Chabootra which had never existed, may kindly be demolished and a bond be got executed from the opposite party to the effect that he will not unlawfully and illegally interfere in the Masjid property and will not blow conch (Shankh/Naqoos) at the time of Azaan.*** *We are poor and weak persons and cannot protect*

our rights from the opposite party. Deemed necessary so prayed.

Yours faithfully,
Khatib Masjid and Warsi
Resident of Oudh, Dated November 5, 1860"

2330. This is the first document which we have with us going to the extent that in the inner courtyard, the muezzin used to recite Adhan (ajjan) which obviously call the Muslim people for offering Namaz otherwise there do not arise any reason for calling Adhan (ajjan). The document of 5th November, 1860 thus is evident that a Muezzin used to recite Adhan (ajjan) in the building in dispute i.e. inner courtyard.

2331. Exhibit 54 (Suit 4) (Register 12 Page 359) is another application dated 12th March, 1861 by Mohd. Asgar, Mir Rajab Ali and Mohd. Afjal reiterating the complaint already made on 5th November, 1860 that some Imkani had made Chabutara near Babari Masjid at Janam Asthan Oudh and despite orders, has not removed the same. There is no further information on record about the consequences.

2332. The decision on the said application was taken by Deputy Commissioner, Faizabad on 18.03.1962 directing to consign the record to office.

2333. **Exhibit A-12 (Suit-1) (Register 6, page 167-171)** is a copy of register namely *"Nakal Intkhab register no. 6 (jeem) maffi shartiya Tahsil Faizabad mashmula fehrist register no. 6 Mauza Bahoranpur Pargana Haveli Oudh, Tahsil wa Zila Faizabad."* It mentions in column 6 the name of Mohd. Asghar and in column 7 the name of Mohd. Asghar and Rajjab Ali. In column 14 it is mentioned:

"14. Navaiyat wa Tarikh Hukm Government.

*Chitthi numberi 2321 Mubrikha **29 June 1860** Ei. Meem Baj Taq Mahasil Deh Sirf Masjid Mein Rahe Yani Bawajah Timawat Dawami."*

In column 15 it mentions as follows:

"***Jabti Maafi wa Wajah Khilaf Vajri Sharawat***

x "

2334. **Exhibit A-10 (Suit-1) Register 6** is copy of the Register Tehkikat Maafi filed in Case No. 53 register Misil Band Mukadma Rajab Ali relating to village Sahnawa Pargana Haveli It has several columns and different columns contained therein have been translated in Hindi by Sri Jilani and supplied to the Court. It reads as under:

S.N.	*Particulars*	
1.	*Number:*	*51*
2.	*Name of Tehsildari and Talluqa*	*Faizabad, Pargana Haveli, Oudh*
3.	*Name of Village wherein Maafi is granted.*	*Sahanwa*
4.	*Tadad Aarazi Maafi Khwahkul, Mauza Khawahajaj, May Shumar Chah Wa Tadad Arazi, Baqaid Acre.*	*Naqadi (Cash)*
5.	*Tadad Zama Salana (Total Annual receipt)*	*Rs.302-3 Anna, 6 Pie.*
6.	*Name Wahib*	*Babur Shah, Badshah Delhi. Ajrue Ijharat (Courtesy Babar Shah Emperor, Delhi)*
7.	*Register Tehqikat (Register of inquiry)*	
	A. Taarikh Ata (Date of grant)	*Unknown*
	B. Name Mauhoob May Quaumiyat	***Syed Baqi resident of Oudh MoazzinMasjid Babri situated***

	(Name of the person to whom Maafi was granted)	***at Oudh***
	C. Tafsil Kism Maafi Ki Yani Kab Di Gayi Aur Har Ek Maafidar Ke Baras Tak Kabij Raha (details of nature of Maafi i.e. when granted and for how many years every Maafidar had been in possession)	*Ye Maafi Azruye Izaharat Barwaqt Taiyari Masjid Babri Bake Oudh Babar Shah Ne Vaste Sarf Masjid.... Moazzin wa Khatib Ke Mukarrer Kiye Bataur Waqf sun wa Tarikh La Maloom Syed Baqi Tahyat Baad Unke Syed .... Ali Ladka Uska Ta Hayat Baad Uske Syed Husain Ali Ladka Uska Ausatan Sath Baras Kabiz Raha Ab Syed Rajab Ali Damad Uska wa Mohammad Asghar Nawasa Uska Maujud Hai Sun 1263 Fasli Tak Bamojib Dehanid Naqdi Amdani Mauza Shahnawa Se Bazriye Rasid .... Pata Raha sun 1264 Fasli Mein Tahkiqat maafi Shuru Hui Thi Ki Balwa Ho Gaya ... Fasli ... sun 63 Fasli Paya Gaya .... Asal ... Ke Aur Dastavez Hai .... Babat Maafi Ke ... Hai Bandobast Mauza Mazkoor Ka Banam ... (This grant was given at the time of construction of Babri mosque situated at Oudh by Babar Shah to meet the expenses to Syed Baqi appointed as Moazzin and Khatib of Waqf (date and year not known) till his lifetime, thereafter his son Ali till his lifetime, thereafter his son Syed Husain Ali who was in possession of about sixty years. Now Syed Rajab Ali his son-in-law and Mohammad Asghar his grandson were presently Moazzin till 1263 Fasli and used to receive the income from village Shahnawa against*

		receipt. Tahkiqat Maafi commenced in 1264 Fasli when riot broke out. . . 63 Fasli noticed. . . original document regarding Maafi illegible. Settlement regarding village aforesaid illegible . . . (sic) regarding)
	D. Name Kabiz Hal Bakaid Waldiyat Wa Quamiyat Wa Umar Wa Rishta Maafidar Sabiq Ke (Name of the person in possession with parentage, caste, age and relation with previous grantee.)	*Rajab Ali Wald Fatehali Quam Syed Umra Takhminan 70 Saal* ***Asal Maafidar Ke Pote Ka Damad Hai Mohammad Asghar*** *Wald Rajab Ali Quam Syed Umra Takhminan 30 Saal Asl Maafidar Ke Pote Ka Nawasa Hai. (Rajab Ali son of Fateh Ali Caste-Syed aged about 70 years is the son-in-law of grandson of real grantee (Maafidar) and Mohammad Asghar son of Rajab Ali Caste-Syed aged about 30 years is the Navasa of grandson of real grantee (Maafidar)*
8.	*Kaifiyat Sahab Mohatmim Tahkiqat (Details of enquiry officer)*	*Chunki Naksha Angrezi Mein Tahrir Munasib Ho Chuka Hai Isliye Hukm Hua Ki Shamil Misil Ke Rahe 14 March sun 1860 Ie. Bamako Dastkhat Hakim Bakhat Shikayat (since the map prepared in English was accepted, so ordered that it be kept on file. 14th March 1860 Sd/)*
9.	*Tajbiz Hukkam Tahkiqat Upar Chaal wa Chalan Maafidar Ke Babat Anjam Ujra (Recommendation of the authorities after enquiry about character of grantee and result of objection)*	

10.	*Hukum Sahab Commissioner Bahadur (Order of the Commissioner)*	
11.	*Hukum chief Commissioner Bahadur (Order of the Chief Commissioner)*	
12.	*Hukum Board (Order of the Board)*	*Bamojib Hukm Government Chiththi Numberi 2321 Morkha 29 June Sun 1860 Ie. Jis Kaam ke Waste Yeh Maafi Di Gayi Hai Jab Tak Wah Kayam Rahe Tab Tak Yeh Bakhshish Hayat Rahe Isliye Hukm Hua Ki Sanad Maafidar Ko Wa Rasid Hasb Sarishta Li Jave Markooma 6 October Sun 1860 Ie.* *Dastkhat Angrezi Bakhat Shikast* *Nakal Kiya* *Muqabla Kiya* *Verified to be Hindi Transliteration (Z.Jilani) Advocate* *(Order of the Government vide letter no. 2321 dated 29th June 1860 to the effect that the grant for which it has been granted, will continue till the purpose for which it has been granted survives it was ordered that Maafidar receipt certificate to grantee and receipt be taken and the placed on file dated 6th October 1860)*

2335. **Exhibit A-3 (Suit-1) (Register 6, page 33)** and **Exhibit 1 (Suit-4) (Register 10, page 27)** is copy of a certificate of grant executed in favour of Rajjab Ali and Mohd. Asghar

(father and son). It bears the seal of Chief Commissioner. It reads:

> *"It having been established after due inquiry that Rajjab Ali and Mohd. Asghar received a Cash Nankar of (Rs. 302-3-6) Rupee Three Hundred and two three annas six pie from Mauza Shahanwa District Fyzabad, in rent free tenure under the former Government. The Chief Commissioner, under the authority of the Governor General in Council is pleased to maintain the grant for so long as the object for which the grant has been made is kept up on the following conditions. That they shall have surrendered all sunnds title deeds and other documents relating to the grant in question. That* ***they and their successors shall strictly perform all the duties of land holders in matters of Police, and any Military or Political service that may be required of them by the Authorities and that they shall never fall under the just suspicion of favouring in any way the designs of enemies of the British Government****. If any one of these conditions is broken by Rajjab Ali and Mohammad Asghar or their successor the grant will be immediately resumed."*

2336. The above documents though show that some grant was allowed to Mir Rajjab Ali and Mohd. Asgar but it does not appear that any kind of inquiry was made by the authorities concerned and if so, what was the basis therefor. According to the claim of Muslims, the Commander of Babar, who was responsible for construction of the building in dispute was Mir Baqi while Mir Rajjab Ali claimed himself to be the son-in-law of the daughter of grand son of Syed Baqi. Mohd. Asgar was son of Mir Rajjab Ali, therefore, the son and father claimed

relation with the 4th generation of the alleged original Mutwalli and staked their claim for grant. No material exists to show that earlier such grant was awarded by any one though stated by the aforesaid two persons. If we go by the averments of the plaint that the alleged waqf was created in 1528, it is wholly untrustworthy to find out that in the last more than 325 years, it could only be the fourth generation or at the best 5th generation. The authorities in 1860-61 were not under a duty to act judicially in this matter and therefore, might not have given any details of their enquiry as to on what basis the alleged enquiry was conducted. Ex facie, to us, the genealogy of Mir Rajjab Ali commencing from Syed Baki who must have existed in 1528 is unbelievable. It is not out of context that the story of grant might have been set up by the two persons i.e. father and son for the purpose of obtaining valuable grant from Britishers in their favour. In any case, these documents only show that a financial assistance was provided by the British Government for the purpose of the mosque in question but this by itself may not be a proof that the building in dispute was used by Muslims for offering Namaz or for Islamic religious purposes to the extent of ouster of Hindu people or otherwise.

2337. **Exhibit A-15 (Suit-1) (Register 7, page 183)** is a copy of the letter dated 6th September (probably of 1863) sent by the Financial Commissioner, Oudh to the Commissioner Faizabad Division stating as under:

> *"Janamsthan mosque in Ajudhia.*
>
> *In reply to his no. 3 dt/ 4th January last approval the selection of land made by the Offg. Deputy Commissioner of Fyzabad for above."*

2338. **Exhibit A-16 (Suit-1) (Register 7, page 185-191)** is

a copy of the order-sheet (Roobkar) of 9th, 16th, 28th and 30th September, 1863 and reads as under:

روبکار کچہری کلیکٹری ضلع فیض آباد باجلاس مسٹر بابرک کارنیگی صاحب بہادور ڈپٹی کمشنر واقع تاریخ ۳۱ماہ اگست ۱۸۶۳ء چٹھی نمبری ۲۴۸۲مورخہ ۲۵ماہ اگست ۱۸۶۳ء مرسلہصاحب سکریٹری چیف کمیشنر بہادورذریعہ ڈاکٹ نمبری ۱۱۰۶ مورخہ ۲۸ماہ اگست ۱۸۶۳ء صاحب کمیشنر بہادور بدی مضمون موصول ہوی کہ بعوض مبلغ ۳۰۲-۳-۶پای- جو واسطے مسجد جنم استھان دوام کے لئے گورمینٹ نے منظور کیا تھا کسی زمین نزول قریب ایودیا بلاادا ئے محصول سرکاربطور معافی دوام بہ جمعی آمدنی مبلغ ۳۰۲-۳-۶ پای سالانہ کے ہوے- صاحب ڈپٹی کمشنر بہادوریک نقشہ زمین جو دینے کیواسطے تجویز کی جاوے بھیجیں- اس نقشہ میں سرحد صاف صاف واقع ونا چاہئ ہ اور وے نقشہ بحساب پیمانہ تیارہونا چاہئیے معہ ایک رپوٹ صاحب کمشنر بہادور کے بھیجا جاو ئ- حکم ہوا کہ بجنسہ ہی روبکار بجلاس منسی رامے رام دیال صاحب اکسڑا اسیسٹنٹ کمیشنر بہادور حسب تعمیل کاروای کرنے کے پیش ہوے- اور لکھا جاوے کی منشی صاحب باتفاق راءے مسٹر بابرق کارنگی صاحب بہادور کے کاروائ اسکی کریں-

فقط

د ستخط حاکم

اجلاس رامے رام دیال صاحب ہادور

اکسٹرا اسیسٹینٹ کمیشنر نمبر روزنامچہ ۲۰۸

حکم ہوا کہ

مع مثل سابقہ کے پیش ہوے- المرقوم تاریخ ۹ ستمبر ۱۸۶۳ء

دستخط حاکم

بعد ملاحظہ مثل کے دریافت ہوا کہ رجب علی و محمد اصغر حاضر نہیں ہے-اور انسے دریافت اس امر کا ضرور ہے کہ حسب منشہ حکم کوئ زمین کی خواہش ہے اسلئےحکم ہوا کہ

آج ۱۴ ستمبر سن ۱۸۶۳ء کو پیش ہوے ۱۲ ماہ ستمبر سن ۱۸۶۳ء

دسخط حاکم

-۱۶ستمبر ۱۸۶۳ء

بعدازینکہ بمقابلہ رجب علی و محمد اصغرواسطے تجویز پیش ہوا- نا مبردگان نے کہا کہ زمین مسمولہ شولہ پوری اور بہورن پور جو متعلق نزول کہ ہیں عیوض ۳۰۲ روپیہ کے مل جاوے دریافت سرشتہ سے واضح ہوا کہ جمعی ادابے موضع بہورن پور ۱۹۳ روپیہ اور جمعی آراضی شعلہ پوری ۱۶۲ روپیہ جملہ ۳۵۵ روپیہ ادا سال تمام ہے- یعنی ۶-۱۲-۵۲ بشرط کہ دیا جانا قطعات مذکورین کا صاحب اسیسٹینٹ کمیشنر بہادور منظور فرماویں- توزمین جمعی ۲۲-۵۲-روپیہ کہ زمیں شعلہ پوری سے منتخب ہو سکتی ہیں اور موضع بہورن پور موضع سالم بدستور ہے اس لے

حکم ہوا کہ حمراہ صدور حکم واجلاس صاحب اسیسٹینٹ کمیشنر بہادور انچارج ضلع پیشہو ٔ- ۱۶ ماہ ستمبر ۱۸۶۳ ء

د ستخط حاکم اجلاس

ڈاکٹر ہیگ صاحب اسیسٹینٹ کمیشنر صاحب بہادور ضلع فیض آباد -

حکم ہوا

منشی را ٔے رام دیال صاحب ایکسٹرا اسیسٹینٹ کمیشنر بہادور صاحب تجویز اپنی زمین جس کے ۵۲،۱۲،۶ روپیہ منتخب و منہ کرکے بقیہ ہر دو قطعات کا نقشہ حسب منشا چ ٹھی صاحب سیکریٹری چیف کمیشنربہادور مرتب فرما کر ارسال فرمایں- تب رپیورٹ باضابطہ بھیجا جاءگادر مقدمہ میں ڈاکٹ تاکیدہے آج برائے مہربانی جلد ارسال فرمایں-

دستخط حاکم

ستمبر سن ۶۳ء- ۲۸

اجلاس منشی راءے رام دیال صاحب بہادور حاکم

آج پیش ہوا اور سایل سے پونچھا گیا کہ اجرت امین تم داخل کروگےبیان کیا کہ ہم داخل کرینگے- اس لے حکم ہوا کہ ایک امین اجرت پر مقرر ہو کہ اس کے معارفت نقشہ بہورن پور بطورحلقہ حد بستہ اور نقشہ صاف تیار کیا جاوے اور جو زمین جمع ۶-۱۲-۵۲ سرکاری حلقہ شعلہ پوری میں رہیگا زمین رنگ ذرد سے اس میں واسطے شناخت نزول سرکارپورا

کر دیوے- المرقوم تاریخ ۳۰ ستمبر سن ۱۸۶۳ء
دستخط حاکم لچھمن پرساد

रोबकार कचेहरी कलेक्टरी जिला फैजाबाद बइजलास मिस्टर बाबरक कारनेगी साहब बहादुर डिप्टी कमिश्नर वाकेय तारीख 31 माह अगस्त 1863 चिट्ठी नम्बरी 2482 मोर्रिखा 25 माह अगस्त सन् 63 ई0 मुरसला साहेब सिक्रेटरी चीफ कमिश्नर बहादुर जरिये डाकट नम्बरी 1106 मोर्रिखा 28 अगस्त सन 1863 ई0 साहब कमिश्नर बहादुर बरी ***''मज़मून मौसूल हुई कि बाएवज मुबलिग 302रू0 3 आ0 6 पाई0 जो वास्ते मस्जिद जन्म–स्थान दोआम के लिये गवनमेंट ने मन्जूर किया था।*** *किसी ज़मीन नजूल करीब अयोध्या बिला अदाय महसूल सरकार बतौर माफी दोआम मजमू आमदनी मोबल्लिग 302 रू0 3 आ. 6 पा0 सालाना के हो, दिया जावे। साहेब डिप्टी कमिश्नर साहेब बहादुर एक नक्शा जमीन जो देने के वास्ते तजबीज़ किये जावें भेजे, उस नक्शे में सरहद साफ–साफ वाकै होना चाहिये और वह नक्शा बहिसाब पैमाना तैयार होना चाहिये मय एक रिपोर्ट साहेब कमिश्नर बहादुर के भेजा जावे।*

हुकम हुआ कि

बजिन्सहू रोबकार बइजलास मुन्शी राय राम दयाल साहब इक्सट्रा असिस्टेन्ट कमिश्नर बहादुर हस्ब तामील व कार्यवाही करने को पेश होंवे। और लिखा जावे कि मुन्शी साहेब बइत्तफाक राय मिस्टर बाबरक कारनेगी साहब बहादुर के कार्यवाही उसकी करें।

ह0 हाकिम
इजलास राय राम दयाल साहेब बहादुर
इक्सट्रा असिस्टेन्ट कमिश्नर,
नं. रोजनामचा 408´

हुकुम हुआ कि

मिसिल साबिका के पेश होवे। अलमरकूम तारीख 9 सितम्बर 1863 ई0 दस्तखत हाकिम।

बाद मुलाहिजा मिसिल के दरयाफ्त हुआ कि रज्जब अली व मोहम्मद असगर हाजिर नहीं हैं। और उनसे दरयाफ्त इस अमर का ज़रूर है कि हस्ब मन्शा हुकुम कोई ज़मीन की ख्वाहिश है इसलिये हुकम हुआ कि आज़ 14 सितम्बर सन् 1863 ई0 को पेश होवे 12 माह सितम्बर सन् 1863 ई0द0 हाकिम

16 सितम्बर सन् 1863 ई0 बाद आं जां के बमुकाबिले रज्जब अली व मोहम्मद असगर वास्ते तजवीज पेश हुआ। नम्बरदिगान ने कहा कि जमीन मशमूला शोलापुरी और बहोरनपूर जो मुतालिक नुजुल के है एवज 302रू0 3 आ0 6 पा0 के मिल जावे दरियाफत सरिश्ता से वाज़े हुआ कि जमा अदाये मोजे बहोरनपुर 193 रूपया और जमा आराजी शोलापुरी 162 रूपया जुमुला 355 रू0 अदा साल तमाम है। यानी 52–12–6 रूपये अदा कर बशर्ते दिया जाना कताआत मज़कूरैन का साहेब असिस्टेन्ट कमिश्नर बहादुर मन्जूर फरमावें। तो जमीन जमई 52–12–6 रूपये के ज़मीन शोलापुरी से मुनतखिब हो सकती है और मौजा बहूरनपूर मौजा सलिम बदस्तूर रहे इसलिये हुकुम हुआ कि . . . . हमराह सुदूर हुकुम बइजलास साहेब असिस्टेन्ट कमिश्नर बहादुर इन्चार्ज जिला पेश होवे। 16 माह सितम्बर 1863 ई0 दस्तखत हाकिम . . . . . इजलास डा0 हेग साहेब असिस्टेन्ट कमिश्नर साहेब बहादुर जिला फैजाबाद।

हुकुम हुआ कि

मुन्शी राय राम दयाल साहेब इक्सट्रा साहेब कमिश्नर साहेब बहादुर हस्ब तजवीज़ अपनी जमीन जिसके 52–12–6 मुन्तखिव करके बकिया हर दो कतआत की नक्शा हस्ब मन्शा चिट्ठी साहेब सेक्रेटरी चीफ कमिश्नर बहादुर मुरत्तब फरमा कर इरसाल फरमाये। तब रिपोर्ट बाज़ावतान भेजा आवेगा दर मुकदमा मय डाकेट ताकीद है आज बराह मेहरबानी जल्द इरसाल फरमायें। 28 सितम्बर सन् 63 ई0।

द0 हाकिम

इजलास मुन्शी राय राम दयाल साहेब बहादुर द0 हाकिम आज पेश हुआ और सायल से पूछा गया कि हुजरत अमीन तुम दाखिल करोगे। बयान किया कि हम दाखिला करेंगे। इसलिए हुकुम हुआ कि एक अमीन उजरत पर मुकर्रर हो के उसके मारफत नक्शा बहुरनपूर बतौर हल्का हद बस्त और नक्शा शोलापुरी किस्तवार साफ तैयार कराया जाये। और जो ज़मीन सरकारी हल्का शोलापुरी में रहेगी ज़मीन रंग ज़रद से उसमें वास्ते शिनाख्त नजूल सरकार पूरा कर देवे। अलमरक्म तारीख 30 सितम्बर सन् 1863 ई0 द0 हाकिम लक्ष्मण प्रसाद नकलनवीस ।''

"Robekar Kutchery Collectorate, District Faizabad.

In the Court of Mr. Babrak Carnegi, Deputy commissioner, dated August 31, 1863, letter no. 2482, dated August 25,

1863 from the Secretary, Chief Commissioner, Docket number 116 dated August 28, 1863, received on the subject for ***providing a piece of Nazul land exempted from rent near Ayodhya as Maafi Dawam fetching annual rent of Rs.302/3/6 (Rupees Three hundred two Annas three and Pai six) which was sanctioned by the Government as Maafi Dawam (forever) to the Masjid Janam Sthan.*** *The map of the proposed land marked for the purpose should clearly indicate boundaries and be prepared on scale and be sent by the Deputy Commissioner to the Commissioner alongwith report and Naksha Amin.*

It was ordered

That this Robekar be sent, as it is, to the Extra Commissioner, Munshi Rai Ram Dayal. Put up for compliance and necessary action. It should be mentioned that Munshi Saheb may take necessary action in consultation with Mr. Babrak Carnegi.

Sd/- Rai Ram Dayal
Extra Asst. Commissioner.
No. Roznamcha 208 (sic)

Ordered:

Put up along with the previous file.

Dated September 9, 1863 Sd/- Officer.

After perusal of the file it appeared that Rajjab Ali and Mohammad Asghar are not present. It is to be ascertained from them whether they require the land as per the orders. So it was ordered to be put up today, the 12th of September 1863(sic) Sd/- officer 16th September, 1863.

Later on the case of Rajjab Ali and Mohammad Asghar was put up for proposal. The Numbardargaan told that

land including Sholapuri and Bahoranpur which is that of Nazul, fetching rent of Rs. 302, 6 Annas and 6 Paie may be given to them. Inquiry from the 'Sharishta' record revealed income of Rs. 193 from Bahoranpur and Rs. 172 from the land in Sholapuri (total Rs. 355 annually). The land as requested above may be given to us with suitable conditions by the Asstt. commissioner for the land. The land fetching rent of Rs. 52-12-6 can be selected from Shoplapuri and the entire village of Bahoranpur should remain intact.

Order:

Put up along with the orders of Assistant Commissioner, In-charge district.

Dated September 16,1863
Sd/- officer

Court of Dr. Hegh Saheb Asstt.

In-charge District Faizabad.

Munshi Rai Ram Dayal Extra Commissioner as per his own choice selected land 52-12-6 – the map of the two plots–as per orders of the secretary to the Chief Commissioner, alongwith the proper report be sent as per instructions. Therefore, the report will be duly sent. Compliance be ensured. May be sent today.

Dated September 28, 1863.

Ijlasi Munshi Rai Ram Dayal. Presented for orders. ***The applicant was asked as to whether he would deposit 'Ujrat' (fees) of Amin. He said that he would.*** *Therefore, it was ordered that an Amin may be appointed who would prepare clear maps of the lands of Bahoranpur and Sholapur, indicating their respective boundaries clearly with Kishtwar details. The land of Government Nazul should be marked by yellow colour, for identification.*

Dated September 30, 1863.

Sd/- Officer Lachhman Prasad."

2339. **Exhibit A-14 (Suit-1) (Register 7, page 181)** is said to be a copy of the letter dated 25.08.1863 sent by the Secretary, Chief Commissioner Oudh to the Commissioner Faizabad Division stating as under:

> *"With reference to your letter no. 826 dt. 9th ..... I am directed to inform you that the* ***Governor General has sanctioned the Chief Commr's proposal for the commutation of the cash payment of Rs. 302.3.6 granted in perpetuity for the support of the Janamsthan mosque at Fyzabad*** *to a grant of land rent free estimated to yield a yearly rental of that amount and to request that you will provide for the change by a grant of some Nazool land near Ajudhia."*

2340. **Exhibit A-17 (Suit-1) (Register 7, page 193-197)** is also a copy of the order-sheet dated 16th September, 1865 of the office of Assistant Commissioner Faizabad and reads as under:

نقل بطور سند

روبکار کچہری کلکٹری ضلع فیض آباد باجلاس مسٹر بابرک کارنیگی صاحب بہادر ڈپٹی کمیشنر واقع ۱۳ ستمبر ۱۸۶۵ء ڈاکٹ نمبری ۲۱۰۵ مورخہ ۶ ستمبر سن ۱۸۶۵ء مرسلہ صاحب فانینسیل کمیشنربہادور بذریعہ ڈاکٹ نمبر ۸۶۷ مورخہ ۹ ستمبر سن ۱۸۶۵ء صاحب کمیشنر بہادور بدیں مضمون صادر ہوا جو زمین واسطے معاوضہ مسجد جنم استھان کے پسند کیا ہے منظور کی گی۔

لہذا حکم ہوا کہ

روبکار ہٰذا خدمت میں منشی نند کشور صاحب بہادور ایکسٹرا اسیسٹنٹ کمیشن میں رپورٹ پیش ہوے کہ بہت جلد ساتھ صحت کہ زمین موضعہ کے کریں۔

فقط دستخط حاکم اجلاس منشی نند کشور صاحب بہادور۔

حکم ہوا کہ

جو زمین معاوضہ میں تحریر کی گی ہے اس پر دخل دے دیا جاوے- اور دخل نامہ لیا جاوے المرقوم ۱۴ ستمبر ۱۸۶۵ء دستخط حکم

جناب عالی دام حسمتہ

زمین جمعی ۳۰۲ روپیہ ساڑھے ۳ آنے حسب تجویز ہوی ہے- بہرن پور معاوضہ مسلم آراضی شولہپوری مگرور ۱۲۷۳ فصلی مبلیغ ۷ روپیہ جمعی معاوضہ بہرن پور ہوکر پٹہ دیا گیا ہے- یعنی ۱۹۳ مبلیغ ۲۰۰ روپیہ کا پٹہ ہوا چنانچہ رپورٹ ۶ ستمبر سن ۱۸۶۵ء میں مفصل عرض کیا- لہذا قبل دخل دیہانی کے مقرر عرض رساں ہوں کہ بلا لیحاظ پیشی جمع زمین تجویز شدا سابقہ پر دخل دلایا جاوے یہ جسطرح سے کہ ارشاد ہو معروضہ ۱۴ ستمبر ۱۸۶۵ء

اجلاس منشی نند کیشور

صاحب ایکسٹرا اسیسٹنیٹ کمیشنر بہادور معلوم ہوتا ہے- کہ وقت تجویز معاوضہ جمعی ہے کہ معاوضہ بہورن پور کے مبلیغ------ ۱۹۳ روپیہ ہے- کہ سن ۱۲۷۱ و ۱۲۷۲ امیں وہی جمعی قدیم رہی اب وقت بندوبست سن ۱۲۷۳ء کہ جمع مذکور میں ۷ روپیہ اضافہ ہوکر ۲۰۰ روپیہ کا پٹہ قبولیت ہوا اس صورت میں اب حکام تجویز معاوضہ و بندوبست حال سے سات روپے کا اضافہ ہے جب کہ نقشہ معاوضہ مرتب ہوکر واسطے منظوری ارسال ہوا تھا تو جمع ۱۹۳ تھے تواب تعمیل صدور منظوری جو اضافہ قلیل ۷ روپیے کے فیصدی ڈاھی روپیے ہوتا ہے ہو گیا ہے- چندالاءق لیحاظ نہیں ہے- مگر اطلاع اسکی ضروری ہے- اس واسطے حکم ہوا کہ اطلاعاً یہ کاغذ بحضور جناب صاحب ڈپٹی کمیشنر بہادورپیش ہوی کہ بلالحاظ لحافہ دخل دلایا جاوے اور اسکی مجرای زمین شعلہ پوری سے کرلی جاوی ۱۶ ستمبر ۱۸۶۵ء

دستخط حاکم

لچھمن پرساد حاکم

''نکل بتاور سند

روبکار کچہری کلیکٹری جلا فیجاباد بإجلاس مسٹر بابرک کارنیگی صاحب بہادر ڈپٹی کمشنر واکیا 13 ستمبر سن 1865 ای0 ڈاکٹ نمبری 2105 مورخہ 6 ستمبر سن 1865 مرسلہ صاحب فائنینشیل کمشنر بہادر بجریہ ڈاکٹ نں0 867 مورخہ 9 ستمبر

सन 1865 ई. साहब कमिश्नर बहादुर बदीं मज़मून सादिर हुआ, डिप्टी कमिश्नर बहादुर ने जो जमीन वास्ते मुआवजा मस्जिद जन्म–स्थान के पसन्द किया है मन्जूर की गई लिहाजा।

हुकुम हुआ है कि

रोबकार हाज़ा खिदमत में मुन्शी नन्द किशोर साहब बहादुर एक्सटरा एसिस्टेन्ट कमिश्नर मय रिपोर्ट पेश होवे कि बहुत जल्द साथ सेहत के ज़मीन मुआवजा करें फक्त दस्तखत हाकिम इजलास मुन्शी नन्द किशोर साहब बहादुर।

हुकुम हुआ कि

जो ज़मीन मुआवजा में तहरीर की गयी है उस पर दखल दे दिया जावे। और दखलनामा लिया जावे अलमरकूम 14 सितम्बर 1865 दस्तखते हाकिम।

जनाबे आली दाम हश्मतहू

ज़मीन जमा 302 (अपठनीय) रू0 साढ़े 3 आने हस्ब जेल तजबीब हुई है। बहूरनपूर मौज़ा मुसल्लम आराज़ी शोलापुरी मजरूर सन् 1273 फसली मुबलिक 7 रू0 जमा मौजा बहूरनपूर इजाद होकर पट्टा दिया गया है। यानी बजाय 193 मुबलिक 200 रू0 का पट्टा हुआ चुनांचे रिपोर्ट 6 सितम्बर सन् 1865 ई0 में मुफस्सल अर्ज किया। लिहाजा कबल दखल देहानी के मुकरर्र अर्जे रसा हूं कि बिलालिहाज पेशी जमा जमीन तजवीज शुदा साबिका पर दखल दिलाया जावे। या जिस तरह से इरशाद हो। मोरखा 14 सितम्बर सन् 1865 ई0

इजलास मुंशी नन्द किशोर साहब एक्सटरा असिस्टेन्ट कमिश्नर बहादुर

मालूम होता है कि वक्त तजवीज़ मोअवजा जमा है कि मौजा बहूरनपूर के मुबलिग 193 रू है के सन् 1271 व 1272 में वही जमा कायम रही अब वक्ते बन्दीबस्त सन् 1273 के जमा मजकूर में 7 रू0 इज़ाफा होकर 200 रूपये का पट्टा कबूलियत हुआ इस सूरत में अब हुकाम तजवीज मुआवजा व बन्दोबस्त हाल से सात रूपये का इजाफा है जबकि नक्शा मुआवजा मुरत्व होकर वास्ते मन्जूरी इरसाल हुआ था तो जमा 193 थे। तो अब तामील सुदूर मन्जूरी जो इज़ाफा कलील 7 रुपये के फीसदी ढाई रूपये हो गया है। चन्दा . . . . .लायके लिहाज़ नहीं है। मगर इत्तिला इसकी ज़रूरी है। इस वास्ते हुकुम हुआ कि इत्तिलान यह कागज़ बहुजूर जनाब साहब डिप्टी कमिश्नर बहादुर . . . .पेश होवे बिला इजाफा

अज़ाफा दखल दिलाया जाये और उसकी मुजराई ज़मीन शोलापुरी से कर ली जाये। 16 सितम्बर सन् 1865 दस्तखत हाकिम लक्षमन प्रसाद ।''

"Robekar Collectrate, District Faizabad, before the Court of Mr. Babrak Carnegi Deputy Commissioner, Dated – September 1865- docket number 2105 dated September 6, 1865 passed by the Financial Commissioner through docket no. 867 dated September 9, 1865, according approval of the land selected for compensation for Masjid Janam Sthan, Sd/-

Ordered.

Roobkar be put up before Munshi Nand Kishore, Extra Assitt. Commissioner and the land may be allotted.

Sd/-Munsi Nand Kishore.

Ordered:

Possession over the land for compensation as proposed be given and receipt/certificate of possession be obtained..

Sd/- Munshi Nand Kishore.
Dated September 16, 1865. Sd/-.

Respected Sir,

The land yielding revenue of Rs. 302, 3 and half Annas has been selected. The lease of village Bahooranpur (whole) and Aarazi Sholapuri (Part) as per 1273 Fasli was given on deposit of Rs. 7/- , i.e., instead of Rs. 193/ lease was granted for Rs. 200/- the details whereof have been given in the report dated September 6, 1865. Therefore, before handing over the possession, I would pray once again that the possession over the demarcated land be given or as your honour may deem proper.

Dated September 16, 1865.

Ijlas Munshi Nand Kishore, Extra Asstt. Commissioner.

It seems that at the time of proposing the land as compansation, for Bahooranpur revenue was Rs. 193/-. The same figure continued during 1271 and 1272 Fasli.. But at the time of Bandobast in 1273 F, Rs. 7/- was increased, making the total amount to Rs. 200/- at which the lease was accepted/approved.. In these circumstances, there was an increase of Rs. 7/- whereas, when the map was prepared and submitted, the said amount was Rs. 193/- only. Now after the orders of approval Rs. 7/- which is 2.5%.. Though it does not deserve attention/consideration but furnishing of the information regarding it is necessary. Therefore it was ordered that necessary papers be put up before the Deputy Commissioner—sic—that possession may be given without considering the increase and its adjustment be made from the land in village Sholapur.

Dated September 16, 1865

Sd/- Officer."

2341. **Exhibit A-18 (Suit-1) (Register 7, page 199-205)** is a copy of the order dated 30th October 1865 from the office of the Assistant Commissioner, Faizabad and reads as under:

جناب عالی دامم حشمتہ

تعمیل حکم رقم زدہ ۵ ستمبر سن ۱۸۶۵ء درباب دیے جانے نقد ی وزمین خطیب مسجد جنم استھان کو عرض رساں ہوں- کہ حال دیے جانے نقد اور نیز یہ کہ اب کس سال سے سیال کو ملنا چاہیے- مفصیل رپورٹ ایکاونٹینٹ سے دریافت بزرگان عالی ہوگا اور صورت عیوضانہ یہ ہے کہ بتاریخ ۱۶ ستمبر ۱۸۶۳ء بہرنپور موضع مسلم جمع ۱۹۳ اور زمین جمع ۱۰۹ روپیہ ساڑھے ۳ آنا حلقہ آراضی شعلہ پوری واقع صاحب گنج سے حمانگیں ۳۰۲،۳۰۱۰۹ ------کے آراضی تجویز ہو کے- ۲۳ دسمبر سن ۱۸۶۴ء رپورٹ بحضور صاحب کمیشنربہادور صاحب

بھیجا گیا کہ یہ سب کارواءی مثل میں موجود ہے- اور وہ سن ۱۲۷۳ءمثل پٹہ موضع بہرنپور جمع ۲۰۰ روپیہ اور پٹہ آراضیات شعلہ پوری مطابق جمع ۱۲۷۲ روپیہ تقسیم ہو گیں-

مورخہ ۶ ستمبر ۱۸۶۵ء

العبد

بھولا ناتھ

اجلاس منشی نند کشور صاحب بہادور ایکسٹرا اسیسٹنٹ کمیشنر چونکہ حسب واقعہ روبکار علاحدہ کے حکم دخل دیہانی کا دیا گیا- اس لے حکم ہوا کہ یہ رپورٹ شامل مثل کے رہے-

المرقوم ۱۴ ستمبر ۱۸۶۵ء

دستخط حاکم

اجلاس مسٹر بابرک کارینگی صاحب بہادور

بعد ملحظہ حکم منشی نند کشور صاحب بہادور ڈپٹی کمیشنر کےحکم ہوا کہ بلا لیحاظہ اضافہ کے فےالعوز بایندہ معاوضہ کو دخل دلایا جاوے- بجینسہ باجلاس منشی نند کشور صاحب پیش ہو کہ براء مہربانی بلالیحاظ رپورٹ داروغہ کے شاید ابھی کوئ رپورٹ نہ دیویں یابندہ معاوضہ کو دخل دیا جاوےجو ایک سوال سالٔ بابت پانے نقدی جوسابق سے مقرر تھا شامل مثل کےہے اسکی بابت بھی ڈپٹی صاحب بدریافت رشتے خزانہ کے ایسی تجویز فرمادیں کہ جسمیں فوراً یہ مقدمہ ختم و طے ہو جاوے-

تاریخ ۱۰ اکتوبر ۱۸۶۵ء

دستخط حاکم روزنامچہ

اجلاسی منشی نند کشور صاحب بہادور ۱۰۱۱

فوراً دخل دلایا جاوے اور دخل نامہ لیا جاوے اوراس طرح دلای جاوے نقدی کے یہ کاروای بھیجیا جاوے کہ دوسری دفا میں تحریرکیفیت مفصل بنام اکانٹنٹ دیا گیا - بعد گزرے رپورٹ کے حکم مناسب دیا جایگا-

اکتوبر ۱۸۶۵ء دستخط حاکم ۱۰

جناب عالی دام حشمتہ کاروای دی جانے زمین کے ختم ہوئ اور ایندہ کو دخل دلایا گیا اور دخل نامہ بھی روبرو حضور کے و تصدیق ہو گیا- اب نسبت ان کاغذات کے حکم مناسب ہوجاتا ہے-

معروضہ ۱۹ اکتوبر ۱۸۶۵ء

کمترین بھولا ناتھ اجلاس منشی نند کشور صاحب بہادور۔
بعد ملاحظہ کیفیت تعمیل کے حکم ہوا کہ موضع بہرون پور آراضی شعلہ پوری جو معاوضہ میں دی گی رجسٹر سے خارض ہو اور بعد تکمیل کاغذات داخل دفتر ہو اور اگر ضروت جواب کہ ہو توانگریزی میں لکھا جاے۔

المرقوم ۳۰ اکتوبر سن ۱۸۶۵ء

دستخط حاکم

जनाबे आली दामै हशमतहु।

तामील हुकुम रकम जदा 5 सितम्बर सन् 1865 ई0 दरबाब के दिये जाने नगदी व ज़मीन खतीब मस्जिद जन्म स्थान को अर्ज रसा हूं। हालाकि दिये जाने जर नगदी और नीज यह कि अब किस साल से सायल को मिलना चाहिए। मुफस्सल रिपोर्ट एकाउन्टेन्ट से दरयाफ्त बन्देगानी आली होगा और सूरते एवजाना यह है कि बतारीख 16 सितम्बर सन् 1863 बहूरनपूर मौजा मुसल्लम जमा 193 और ज़मीन जमा 109 रूपया साढ़े तीन आना हल्का आराज़ी शोलापुरी वाकेया साहेब गंज से हमांगी 302–2–6109 के आराजी तजवीज हो कर 23 दिसम्बर सन् 1864 ई0 रिपोर्ट बहुजूर साहेब कमिश्नर साहेब भेजा गया कि यह सब कार्यवाही मिस्ल में मौजूद है और यह सन् 1273 फ0 पट्टा मौजा बहोरनपुर बजमा 200 रूपया और पट्टा आराजियात शोलापुरी मुताबिक जमा 1272 फ0 तक्सीम हो गयी मारूजा 6 सितम्बर 1865

अलअब्द भोलानाथ

इजलास मुन्शी नन्द किशोर साहेब एक्सटरा असिस्टेन्ट कमिश्नर चूंकि हस्ब वाकया रोबकार अलहदा हुकुम दखल देहानी का दिया गया इसलिए–हुकुम हुआ कि यह रिपोर्ट शामिल मिसिल के रहे। अलमरकूम 14 सितम्बर सन् 1865 ई0 द0 हाकिम

इजलास मिस्टर बाबरक कारनेगी साहेब बहादुर बाद मुलाहिजा मुन्शी नन्द किशोर साहेब बहादुर के हुक्म हुआ कि ब लिहाजा इज़ाफा के फिलआवाज बाईन्दा मुआवजा को दखल दियाया जावे। बजिन्सहुबइजलास मुन्शी नन्द किशोर साहब पेश हो कि बराय मेहरबानी बिला लिहाज रिपोर्ट दरोगा के कि शायद अब भी कोई रिपोर्ट न देवे या बन्दा मुआवजा को दखल दिलाया जावे जो एक सवाल सायल बाबत पाने नगदी जो साबिक

से मुकर्रर था सामल मिस्ल की है उसके बाबत भी डिप्टी साहेब बदरियाफ्त सरिश्ते खज़ाना के ऐसी तजवीज फरमावे कि जिसमें फौरन यह मुकदमा खत्म व तय हो जावे। तारीख 10 अक्टुबर 1865 दस्तखत हाकिम

बइजलास मुन्शी नन्दकिशोर साहेब बहादुर फौरन दखल दिलाया जावे और दखल नामा लिया जावे और वास्ता दिलाये जाने नगदी के यह कार्यवाही भेजे कि दूसरी दफा आज तहरीर कैफियत मुफस्सल बनाम इकाउन्टेन्ट दिया गया बाद गुज़रने रिपोर्ट के हुकुम मुनासिब दिया जायेगा 10 अक्टुबर 1865 द0 हाकिम

जनाबे आली दाम हशमजहू कार्यवाही दी जाने ज़मीन के खत्म हुई और आयन्दा को दखल दिलाया गया और दखलनामा भी रूबरू हुजूर के तस्दीक हो गया। अब निस्बत उन कागज़ात के हुकुम मुनासिब होना चाहिये–मारूजा 19 अक्टुबर 1865 ई0

इजलास मुन्शी नन्द किशोर साहेब बहादुर कमतरीन भोला नाथ वाद मुलाहिजा कैफियत तामीली के . . . .हुकुम हुआ कि . . . . मौजा बहूरन पूर आराजी शोला पूरी जो मावजा में दी गयी रजिस्टर से खारिज हो और बाद तकमील . . . .काग़ज़ात तामीर दाखिल दफ्तर और अगर जरूरत जवाब के हो तो अंग्रेजी में लिखाया जाये। अलमरक्म 30 अक्टुबर सन् 1865 ई0 दस्तखत हाकिम''

"Before Munshi Nand Kishore Extra Asstt. Commissioner Respected Sir,

In compliance of the order dated September 5, 1865 for giving cash and land to the Khatib Masjid Janamm Sthan, I pray as under:

That it is to be decided as to from which year the aforesaid cash should be payable to the applicant. *A detailed report may be required from the Accountant. A report dated December 23, 1864 was sent to the Commissioner which contained the position of compensation as follows: On September 16, 1863, Moawza Musallm Jama 193/- and land Jama Rs 109/- and 3 and a half anna, Halka Aarazi Sholapuri, situated at Sahebganj*

—sic—306, 302–was marked/proposed. The proceedings are available in the file. In 1273 F. lease of Mauza Bahooranpur Jama Rs. 200/- and for Aaraziat Sholapuri, previous deposit .....1272 F. (sic) was allotted..

Dated September 6, 1865 commissioner Bhola Nath.

Ijlasi Munshi Nand Kishore Extra Asstt.Commissioner

Since in this matter orders for handing over possession was given through robekar separately, it was ordered that report may be placed in the related file.

Dated September 14, 1865.

Order

In the Court of Mr. Babrak Carnegi.

After perusal of the order of Munshi Nand Kishore it was ordered that without taking into account the increase, the allottee should immediately be given Dakhal (Possession) sic—Ijlas Munshi Nand Kishore Saheb. Possession may kindly be given without waiting for the report of Inspector because he may not give one. The allottee may be given possession. Another question/matter regarding the fixation of the year from which the cash amount would be payable, is enclosed in the file. The Deputy Commissioner after enquiry from the Treasury, may pass suitable orders so that the case is disposed of immediately.

Dated October 10, 1865 Sd/- Officer.

Order.

Possession may immediately be given and Dakhal Nama/acknowledgement thereof be taken. For payment of cash, file may be sent for necessary action. For the second time, detailed orders have been given to the Accountant.

After a proper report is obtained, and after perusal thereof, suitable orders would be passed.

Dated October 10, 1865 Sd/- Officer.

Respected Sir,

Proceedings regarding handing over of the possession over the land have been completed and the land has been given to the applicant and Dakhal Nama has also been verified/confirmed before your honour. Now suitable orders may be issued regarding these documents.

Dated October 19, 1865

yours faithfully.

Bhola Nath.

Ijlas Munshi Nand Kishore Saheb.

After perusal of the details regarding service, it was ordered --- Mauza Bahoranpur and – sic—Sholapuri which have been in Moawza (compensation), may be struck off from the register and after completing all the papers, be consigned to the office. If there is any need of answer to any query, it should be written in English. Dated October 30, 1865

Sd/- Officer. Lachhman Prasad Naqal Nawees."

(E.T.C.)

2342. The above documents refer to the cash grant and thereafter the grants of land in lieu of cash grant to Mir Rajab Ali and Mohd. Asgar. Here also there is nothing to support or even to suggest that the Muslims actually attended the disputed building or site for offering Namaz at all.

2343. The factum of grant, as is evident from the above record, has been heavily relied by Sri Jilani contending that this is an impeccable evidence that the premises in dispute was in

possession, control and management of Muslims since 1860 and onwards. It is contended that this grant was allowed after due enquiry by the authorities at that time, as is mentioned in the order passed by the Commissioner. Official acts are presumed to have been done in accordance with law unless shown otherwise. He, therefore, submits that no other evidence need be required to show that the property in dispute remained throughout in possession of Muslims as is fortified from the factum of the grant being allowed for maintaining the mosque in question. It is submitted on behalf of the other side that this grant was allowed on account of personal service and on certain conditions mentioned in the certificate unattached with the mosque in question and therefore, it does not prove anything.

2344. We take the documents as it is and having gone through the same very carefully, find that Mir Rajab Ali and Mohd. Asgar claim to be 4th and 5th in generation in genealogy and that too as the daughter's son of the 4th generation claimed for grant which was allowed by the British authority. There is no occasion for us to look into its correctness or validity since it is a fact accomplished. However, *ex facie* it is absolutely unbelievable that commencing from 1528, Mir Rajjab Ali and Mohd. Asgar had rightly shown the genealogy running only in five generations within a period of more than 325 years.

2345. Besides, the grant, no doubt was allowed to them in their names, though for maintaining the mosque in question but the fact remains that there is not even a whisper in any of the above documents that the Muslims visited the place in dispute and offered namaz thereat. On the contrary, continuous visit of Hindus and worship by them at the disputed site is mentioned in a number of documents as well as in the historical records.

2346. It is really a peculiar case of its own kind where despite the fact that the building commonly known as mosque existed yet it continued to be visited by Hindus and they performed Darshan, Puja etc. therein ignoring the apparent nature and shape of the construction as also the fact as to who made it.

2347. **Exhibit A-13 (Suit-1) (Register 6, page 173-177)** is a copy of an application dated 25.9.1866 said to have been given by Mohd. Afzal Mutwalli Masjid Babari making a complaint of construction of a Kothari Chabutara and placement of idols within the compound of the disputed building which reads as under:

نقل درخواست مورخہ ۲۵ ستمبر ۱۸۶۶ء بمشولہ مقدمہ نمبری ۲۲۳ مفصلہ

۱۸ مارچ ۱۸۷۱ء

محلہ کوٹ رام چندر اجودھیا اودہ ضلع فیض آباد

میر رجب علی خطیب مسجد بابری

مدعی

بنام

امیبکا سنگھ

مدعا علیہ

	خلاصہ	مسجد
تلسی داس وغیرہ بیراگیان جنم استھان رام ساکنان اودہ مدعا علیہ	بدرخواست کھودے جانے ایک کوٹھری جدید جو مدعاعلیہ نے جدید مالکانا رکھنے مورت وغیرہ اندورنی دروازہ مسجد محلق چبوترہ بنا لیا ہے-	سید محمد افضل متولی بابری واقع اودہ خاص سایل مدعی

غریب پرور سلامت

مسجد بابری واقع قریب جنم استھان مقام اودہ خاص میں بنای ہوی شاہ بابر کی کہ جسکی وجہ صفای جاروں بکشی بنام فدویان متولی مسجد مذکور سرکار دولت مدار انگریز بہادر سے تھی آج تک معین و بحال ہے- ہنود کو ہمیشہ سے کدوکاوش امر مسجد میں چلی آتی ہے چنانچہ پیش ازیں دوبارہ امتناع امرجدید موقوفہ سکستہ بجاے میں مچلکہ واقرارنامےنقد فرمان داخل

سرکار ہو چکا ہے- دفتر سرکار میں اکثر نابش ان مقدمات کے ملیں موجود ہیں- فقط اعانت و انصاف سرکار ہے آج تک مسجد محفوظ رہی تھوڑی عرصہ سے بیراگیان جنم استھان نے بہیت فکریں کیں کہ ایک شوالہ قریب مسجد بنا دیں مگر ہم فدویان کے اطلاع حال کرنے سے ممانیت سرکار اس فساد سے نجات رہی- قریب مہینے کے عرصہ ہوتا ہے کہ تلسی داس غیرہ بیراگیان جنم استھان نے ایک چھوٹی کوٹھری بارادہ رکھنے مورت وغیرہ کے چوری سے پھر بھر کے عرصہ میں اندرون احاطہ طیار کر لیے فدوی فوراً بعد دریافت روز نامچہ تھانہ میں خبر دی اور لکھوایا-مگر اب تک کوی حکم سرکار بنا پر انہدام اسکے صادر نہیں ہوا- چونکہ اس کوٹھری کے رہنے سے روز بروز فساد بیراگیان مقصود ہے گویا بنانے شوالہ قایم ہونے سابق میں تازمانے کمشنری گولڈن صاحب بہادر کمشنر یہ چبوترہ بھی جسکے پاس کوٹھری بنای تھی میں نے نہیں پایا-عین شروع غدر میں کہ حاکم منصف رہا- دو دن کے عرصہ میں شباشب یہ چبوترہ بیراگیان نے بنوالیا- اسکے بن جانے سے کس قدر فساد بڑھ گیا- اب چھوٹی کوٹھری بنانے سے تھوڑی عرصہ میں آہستہ آہستہ جیسا انکا طریقہ ہے زیادہ تعمیر کر سکتے ہیں- لہذا عرض حالی کر کے امید وار انصاف ہوں کہ واسطے گرانے کوٹھری مذکور حکم حضور صادر ہو کہ فساد بیراگیان سے مسجد محفوظ رہے واجب تھا عرض کیا-

عرض دشت فدوی محمد افضل متولی مسجد بابری واقع مورخہ ۲۵ ستمبر ۱۸۶۶ء-

''नकल दरख्वास्त मोरखा 25 सितम्बर 1866 ई0 बमशमूला मय नम्बरी 223 मुंफसिला 18 मार्च 1861 ई0 मोहल्ला कोट राम चन्द्र अजोध्या अवध जिला फ़ैज़ाबाद

मीर रजब अली खतीब मस्जिद बाबरी ——— मुद्दई

बनाम

अम्बिका सिहं ——— मुद्दआ अलैह

मस्जिद	***खुलासा***	
सय्यद मोहम्मद अफजल मुतवल्ली बाबरी वाके अवध खास सायल मुद्दई	*बदरख्वास्त खोदे जाने एक कोठरी जदीद जो मुद्दआ अलैह ने जदीद माल्काना रखने मूरत वगैरा अन्दरून दरवाजा मस्जिद मुहलर चबूतरा बना लिया है।*	*तुलसीदास वगैरा बैरागयान जनम स्थान राम साकिनान अवध मुद्दआ अलैह*

गरीब परवर सलामत

मस्जिद बाबरी वाके करीब जनम स्थान मुकाम अवध खास में बनाई हुई शाह बाबर की कि जिसकी वजह सफाई जारोबक्शी बनाम फिदवियान मुतवल्ली मस्जिद मजकूर सरकार दौलतमदार अंग्रेज़ बहादुर से थी आज तक मुअय्यन व बहाल है हुनूद को हमेशा से कदोकाविश अम्र मस्जिद में चली आती है चुनांचे पेश अज़ी दुबारा इमतनाअ अम्र जदीद व मौकूफी शिकस्ता बजाये मय मुचलका व इकरारनामा नक्द जुर्माना दाखिल सरकार हो चुका है दफतर सरकार में अकसर नालिश इन मुकदमात की मिसलें मौजूद हैं फकत इआनत व इंसाफ सरकार से आज तक मस्जिद महफूज़ रही थोड़े अर्से से बैरागियान जनम स्थान ने बहुत फिकरें कीं कि एक शिवाला करीब मस्जिद बनादें मगर हम फिदवियान की इत्तला हाल करने से मुमानियत सरकार इस फसाद से निजात रही। करीब महीने के अर्सा होता हैं कि तुलसीदास वगैरा बैरागियान जनम स्थान ने एक छोटी सी कोठरी ब–इरादा रखने मूरत वगैरा के चोरी से पहर भर के अर्सा में अन्दरून अहाता तैयार कर लिये, फिदवी फौरन बाद दरायाफ़्त रोज़नामचा थाना में खबर दी और लिखवाया मगर अब तक कोई हुक्म सरकार बिना वर इंहदाम इसके सादिर नहीं हुआ चुंकि इस कोठरी के रहने से रोज बरोज फसाद बैरागियान मकसूद है गोया बनाने शिवाला कायम होने साबिक में ताजमाने कमिशनरी गोल्डेन साहब बहादुर कमिशनर यह चबूतरा भी है जिसके पास कोठरी बनाई थी मैंने नहीं पाया। ऐन शुरू गदर में कि हाकिम मुंसिफ रहा दो दिन के अर्से में शबाशब यह चबूतरा बैरागियान ने बनवालिया उसके बन जाने से किस कदर फसाद बढ़ गया, अब छोटी कोठरी बनाने से थोड़े अर्से में आहिस्ता आहिस्ता जैसा उनका तरीका है ज्यादा तामीर कर सकते हैं लिहाजा अर्ज हाल करके उम्मीदवार इंसाफ हूं कि वास्ते गिराने कोठरी मजकूर के हुक्म हुजूर सादिर हो कि फसाद बैरागियान से मस्जिद महफूज़ रहे वाजिब था अर्ज किया।

अमान सरकारी सामान है।

अर्जदास्त फिदवी मोहम्मद अफज़ल मुतवल्ली मस्जिद बाबरी वाके अवध मोर्खा 25 सितम्बर 1866 ई0

Copy of the application dated 25th of September 1866 included with case no. 223, decided on March 18, 1861 Mohalla Kot Ram Chander, Ayodhya, Oudh, District

Faizabad

Mir Rajab Ali Khatib Masjid Babri -- Petitioners
Vs.
Ambika Singh -- Respondent

Masjid	*Details*	
Syed Mohammad Afzal Mutawalli Babri situated at Oudh Khas Applicant/plaintiff	*Application for* ***demolishing the new Kothri which has been newly constructed*** *by the respondent for placing idols etc* ***inside the door of the Masjid where he has constructed a Chabootra.***	*Tulsidas etc Bairagiyan Janam Sthan Ram residents of Oudh-Defendants.*

Gharib Parwar Salamat

Masjid Babri situated near Janam Sthan in Oudh Khas constructed by Shah Babar. ***The work of scavenging and cleaning was given to the applicants by the Mutawalli by the British Government, which still continues.*** *There had always been a tussle with Hindus who have ever been expressing their interests in the affairs of the Masjid. Therefore on complaints several undertakings and sureties have been filed and a compromise has also been entered by them not to interfere with it. A good number of files of frequent such complaints in past are kept in the Collectorate, Yet, only due to the wisdom and justice of the Court,the Mosque could remain safe and protected. But for the last few days the Bairagis of Janam Sthan are trying to build a Shivala near Masjid. But due to our vigilance and reporting of the matter to the authorities and restriction imposed by the Government it remained free from any*

dispute. ***About a month back the defendants Tulsidas etc., Bairagis Janamasthan with the intention of planting idols etc in it have constructed a Kothri in an illegal manner within few hours inside the compound of the Mosque. The applicant informed the police vide Roznamcha Thana but till now no orders regarding demolition of the Kothri have been issued by the Government.*** *Since owing to continuance of the existence of Kothari, there is apprehension of daily tussle and clash caused by Bairagiyan. Mr. Goldane Commissioner did not find even the Chabootra built near the Kothri in the past. At the time of Gadar,* ***within two days Bairagiyan got the Chabootra constructed overnight.*** *Because of this construction, there occurred so much rioting in the local populace.* ***Now a small Kothri has been constructed within a short span of time.*** *They can increase such constructions gradually as is their nature or habit. Therefore, after putting the real situation before your honour, it is prayed that* ***mosque may remain protected from the dispute or quarrel of Bairagis and orders for dismantling the Kothari may be passed.*** *I deemed it my duty to inform you. Applicant Mohammad Afzal Mutawalli Masjid Babri situated at Oudh, dated September 25, 1866"*

2348. **Exhibit 29 (Suit-1) (Register 5 page 103-105)** is a copy of the order dated 12.10.1866 of Deputy Commissioner, Faizabad in case No. 223 Mohd. Afzal against Tulsi Das and others directing for consignment of record to office. It says:

نقل حکم مورخہ ۱۲ اکتوبر ۱۸۶۶ء برطبق درخواست محمدافضل متولی مسجد بابری واقع اودھ خاص خلاف تلسی داس وغیرہ بہراگیان جنم استھان معروضہ ۲۵ ستمبر سن ۱۸۶۶ء بمقدمہ نمبر ۲۲۳ ساکن محلہ

کوٹ رام چندر پرگنہ حویلی اودھ ضلع فیض آباد اجلاسی جناب ڈپٹی کمیشنر صاحب بہادر فیض آباد منفصلہ ۱۸ مارچ سن ۶۱ء

مسٹر رجب علی بنام اسکالی سنگھ

حکم ہوا کہ

داخل دفتر ہووے ۱۲ اکتوبر سن ۱۸۶۶ء

دستخط بہ انگریزی

''नकल हुकुम मोरखा 12 अक्टुबर सन 1866 ई0 वरतबक दरख्वास्त मुहम्मद अफजल मुतवल्ली मसजिद बाबरी वाके अवध खास खिलाफ तुलसी दास वगैरह बैरागियान जन्म स्थान मकरूजा 25 सितम्बर सन 1866 ई0 बमुकदमा नम्बर 223 साकिन मुहल्ला कोट राम चन्द्र परगना हवेली अवध जिला फैजाबाद इजलासी जनाब डिप्टी कमिश्नर साहब बहादुर फैजाबाद मुनफसिला 18 मार्च सन 61 ई0।

मिस्टर रज्जब अली बनाम असकाली सिंह

हुकुम हुआ कि

दाखिल दफ्तर होवें *12 अक्टुबर सन् 1866 ई0*

दस्तखत बखत अंग्रेजी''

"*Copy of the order dated 12.10.1866, on the application of Mohd. Afzal Mutawalli Masjid Babri situated at Oudh Khas against Tulsi Das and others, Bairagiyan, Janamsthan, dated September 25, 1866 in case no. 223, resident of Mohalla Kot Ramchandar Pargana Haveli Oudh District Faizabad; In the Court of Deputy Commissioner Saheb Bahadur Faizabad decided on March 18, 61. Mr. Rajab Ali vs. Askali Singh*

order.

Be consigned to office.

Dated October 12, 1866.
Sd/ in English"

2349. **Exhibit A-19 (Suit-1) (Register 7, page 207-213)** is a copy of the order and decree dated 03.02.1870 of Settlement Officer's Court Faizabad in Case No. 5, Mohd. Afzal Ali and

Mohd. Asgar Vs. Government regarding Mauja Bahoranpur Taluka, Pargana Haveli Awadh. The dispute pertains to superior propriety right revenue free. The order reads as under:

"Parties present. The plaintiff who has been present at all the sittings in the other cases connected with this village is today absent, but as all the other cases are now concluded and his suit is under a grant from the British Government, his case is proceeded with.

I find that in answer to the Chief Commr's circ. 43/1463 of 21st May 1863 enquiring about endowment for support of mosques and other religious purposes in the Fyzabad District, a letter (No. 53 of 2nd July 1863) was sent by the D.C. stating that a sum of 302/2 was paid annually from the imperial revenue for the support of the Janamsthan mosque in Ajudhia. On the 28th Augt. the Commr. forwarded copy of the letter from the Secretary to the Chief Commr. to his address No. 2492 of 25th August 1863 which is as follows:

"With reference to your letter no. 829- of 9th ult I am directed to inform you that the Governor General has sanctioned the Chief Commr's proposal for the commutation of the cash payment of Rs. 302-2-0 granted in perpetuity for the support of the Janamsthan mosque at Fyzabad to a grant of land rent free estimated to yeild a yearly rental of that amount and to request that you will provided for the change by a grant of some Nazool land near Ajudhia."

In obedience to these orders a proposal was made and statement submitted (D.C's No. 381 dt. 16th Nov. 1864) to

give over mauja Sholapur and Bahoranpur.

To this Commr replied in no. 1289 of 20th Nov: Reply to No. 381 dt/ 16th inst. states that the land included in Bahoranpur and Sholapur seems exactly to suit the requirement of the case. The cultivated area gives the exact nikasi wanted and there is no land likely to come under cultivation and thus give the muafidar larger income at the expanse of the state. ..... Beg D.C. will take an agreement from the manager of the Cantonment (Endowment) and Offg. Commr. will then report the grant for the sanction of suit Finl. Commr.

In No. 493 of 23rd Dec: 1964 submitted this argument.

The argument is on record under signature of Mohammad Asghar and Mohammad Afzal Ali.

Commr: in his No. 867 Dt/ 9th Septer: 1865 forwarded copy of J. C.'s 2105 dT/ 5/6 Septer: approving of the selection of land made by the Off: Dy. Commr. of Fyzabad for Janamsthan mosque.

In accordance with these orders all other suits relating to the village having been disposed of, I now decree as follows:

Decree

The superior proprietory right in Mauza Bahoranpur is decreed revenue free to Mohammad Asghar and Mohammad Afzal Ali."

2350. **Exhibit 26 (Suit-1) (Register 5 page 91-93)** is the plaint dated 22.02.1870 of the suit filed by Mohd. Asghar. It says:

نقل عرضی دعوی مشملہ مثل حقیت موضع کوٹ رام چندر پرگنہ حویلی اودہ تحصیل وضلع فیض آباد جلد سوم بستہ ۱۳۲ محمد اصغر وغیرہ

مدعیان بنام سرکار بہادر مدعا علیہ دعوی عرضی رام کوٹ پرگنہ حویلی اودہ

فیصلہ ۲۲ اگست ۱۸۷۱ء

بصیغہ بندوبست ۱۲۵ نمبر

سرکار بہادور مدعا علیہ

سیدمحمد اصغر و محمد افضل نواسہ سید حسین علی متوفی خطیب و موزن مسجد بابری واقع جنم استھان اودہ

بدعوی فیصلہ اوپر ۲-/۷ بیگھ گاضربی میں ۲۱ درختان املی وکھنڈل واقع دروازہ مسجد بابری واقع مسجد جنم استھان اودہ بموجب نمبر خسرہ حسب عملدرآمد قدیم

غریب پرور سلامت

عہدہ خطابت و موزن جامع مسجد بابری وقع جنم استھان اودہ پشتہ پشت سے و نسلاً بعد نسل بیچ فیض و تصرف بزرگان ہم ساءل کے چلا اتا ہے بلکہ درختان ۲۱ املی پنچ و تصرف ہم ساءلان و بزگان ہم ساءلان کہ رہا ہے مدت ہوا کہ اس پر قابضہ و متصرف ہوں و سبب مصیعت حقیت کہ رجب علی شاہ فقیر آباد کچھ بزرگان ہم ساءل کا تھا و ملازم ہم ساءل کا رہا ہے جس وقت فقیر مذکور نے عہد شاہی میں خلاف راے ہم ساءل کا ہوا تب اسکو باہر مکان سے کر دیا تب سے قبضہ اس پر نام (نشان پھٹہ ہوا ہے) کنڈیل کے بحال ہے وہ کبھی کچھ مداخلت مدعا علیہ کو نہیں ہوی بلکہ مداخلت جانب ہم مدعیان و مقابلہ برمداس وغیرہ ہو کہ ڈگری ہم ساءل لانےکی ہوی ہے وہ صدر حاکم بحال رہا ہے وہ قبضہ حقیت میں بمقدمہ مادہو داس چیلا برم داس مدعی بنام سرکار بہادر مدعا علیہ مثل میں موجود ہیں اس میں اجردار تھا کہ ڈگری ہم ساءلان کے ہوے لیکن عدالت سے ہدایت داءر کرنے مقدمہ ثانی میں نمبرخسرہ کے ہوے اسکے علاوہ اسکے اور ہم مدعیان عدالت ضلع تحت قبضہ موجود ہے اسلیے درخواست میں نمبرداری حضور سے کرا دی گی- امیدوار ہوں کہ بعد تحقیقات لوازمہ عدالت ڈگری تکیہ و درختان املی و کنڈیل بنام ہم مدعیان کہ فرماءی جاوے واجباً عرض کیا معروضہ ۲۲ فروری ۷۰ء

ہم محمد اصغر و محمد افضل کہ نام پر و عرضی دعوی میں موجود ہے

اقرار یہ ہےکہ جو کچھ عرض کیا ہے ازروے علم ویقین کے صحیح ہے

----------محمد اصغر و محمد افضل

نواسہ سید حسین علی و خطیب و موزن مسجد بابری

''نकल अरजी दावा मशमूला मिसिल हकीयत मौजा कोट राम चन्द्र परगना हवेली अवध तहसील व जिला फैजाबाद जिल्द सोयम, बस्ता 132 मोहम्मद असगर वगैरह मुद्दैयान बनाम सरकार बहादुर मुद्दालेह दावा आराजी राम कोट परगना हवेली अवध फैसला 22 अगस्त सन् 1871 ई0

वसेगा बन्दोबस्त 125 न0 हदबस्त

सैय्यद मुहम्मद असगर व मोहम्मद अफजल नैवासा सैय्यद हुसैन अली मुतबफ्फी खतीव व मुतवल्ली मसजिद बाबरी वाके जन्म स्थान अवध

सरकार बहादुर मुद्दालेह

बदावा फैसला ऊपर कब्जा 7/–2 जरीवी बीघा में 21 दरख्तान इमली वजो खन्डहल वाकै दरवाजा मसजिद बाबरी वाके मसजिद जन्म स्थान अवध बमौजिव नम्बर खसरा हस्व अमलदरामद कदीम।

गरीब परवर सलामत,

ओहदा खिताबत व मुअज्जिन जामा मसजिद बाबरी वाके जन्म स्थान अवध पुश्ताहापुश्त से व नसलन वाद नस्ल बीच फैज वो तसरूफ बुजुरगान हम सायल के चला आता है बल्कि दरख्तान 21 इमली पंच जो तसवरु हम सायलान व बुजुरगान हम सायलान रहा है मुद्दत हुआ उस पर काबिज व मुतसरिफ हूं वो सबबे मशीयत हकीयत के रजब अली शाह फकीराबाद बुजुरगान हम सायल का था बे मुलाजिम हम सायल का रहा है जिस वक्त फकीर मजकूर ने अहद शाही में खिलाफ राय हम सायल का हुआ तब उसको बाहर मकान से कर दिया तब से कब्जा इसपर नाम सनिशान फटा हुआ है। आपके (अपठनीय) खन्डहल के बहाल है वो कभी कुछ मोद्दाअलेह को नहीं हुई बल्कि मुदाखलत जानिब हम मुद्दैयान व मौकालमा ब्रह्मदास वगैरह हो के डिग्री हम सायलान की हुई है वो तासदूर हाकिम बहाल रहा है वो कब्जा हकीयत में बमोकदमा माघो दास चैला वरम दास मुद्दई बनाम सरकार बहादुर मुद्दालेह मिसिल में मौजूद हैं उसमें उजुरदार था कि डिग्री.

हम सायलान की हुई है लेकिन बअदालत से हिदायत दायर करने मोकदमा सानी में नम्बर खसरा के हुए इसके अलावा उसके और हम मुद्दयान अदालत जिला तहत कब्जा मौजूद है इसलिए दराख्वास्त में नम्बरदारी हुजूर से करा दी गई उम्मेदवार हूं कि बाद तहकीकात लबाजमा

बदालत डिग्री तखलिया दरख्तान इमली की खण्डहल बनाम हम मुद्देयान के फरमाई जाये बाजबन अर्ज किया।

ता0 22 फरवीर 70 ई0

हम मो0 असगर वो मो0 अफजल कि नाम मेरा अरजी दावा में मॉजूद है इकरार यह है कि जो कुछ अर्ज किया है अजरुये इल्म व यकीन के सहीह है।

(अपठनीय) मो असगर वो मो0 अफजल

नेवासा सै0 हुसैन अली खतीम मोउज्जुन मसजिद बाबरी।

"Copy of plaintiff included in the file of Haqiyat; Mauza Kot Ram Chandar Pargana Haveli Oudh, Tehsil and District Fazabad Vol. 3, Basta 132, Mohd Asghar etc. Plaintiffs vs. State defendant. Dawa Arzi Ram Kot Pargana Haveli Oudh, decided on August 22, 1871 Bandobast 125 No. Hadbast. ***Syed Mohd. Asghar and Mohammad afzal maternal grandsons (Nawasa) of*** *Late Syed Husain Ali, Khatib and Moazzin Masjid Babri situated at Janamsthan Oudh vs. the Government-defendant. Claim over 71.2 Jaribi 21 trees of tamarind according to Khasra number as per Amaldaramad Qadeem (old).*

Garib Parwar Salamat,

The ***post of Khatib and Moazzin****, Jama Masjid Babri situated at Janamsthan Oudh* ***is ancestral*** *(Pusht Dar Pusht and Naslan Baad Naslan).....21 Imli trees have been in the possession and use of the applicants and their ancestors since ancient times. The said right was of Rajab Ali Shah, Fazirabad, ancestor of the applicants. The Faqir was residing there with the permission of the plaintiff's ancestors. He was our servant. During the Shahi period, when the said Faqir became against the plaintiffs' ancestor\, he was ousted from the premises. Since then we have been in possession over Bagh Imli (sic) There was*

interference/resistance by us and against Baram Das and others a decree was issued by the Court in favour of the objector, i.e. the applicant which remained in force in case of Haridas Chela Baram Das but on filing of another case Khasra number was given and the applicants are in possession thereof..... . .It is requested that this Hon'ble Court may after due inquiries, ***pass decree for eviction from trees of Imli, Khandhal and graveyard may be issued in favour of applicants****. Deemed necessary, so prayed.*

Dated Febraury 22, 70.

We Mohd. Asghar and Mohd. Afzal aver that our names are there in theplaint. Whatever is said is correct to the best of our knowledge and belief.

Sd/ Mohd. Asghar and Mohd Afzal. Mohd. Asghar and Mohd. Afzal are the matriarchic grandsons of Khatib and Moazzin Masjid Babri.

2351. **Exhibit 25 (Suit-1) (Register 5 page 87-89)= Exhibit A-20 (Suit-1) (Register 7, page 231)=Exhibit 9 (Suit-4) (Register 10 Page 45)** is a copy of the judgment dated 22.08.1871 dismissing the claim of Mohd. Asghar regarding ownership of Kabristan in the vicinity of Masjid Babar Shah Mauja Kot Ram Chandar while decreeing the claim over the tree of Tamarind *(Imli).* The contents are:

نقل تجویزمورخہ ۲۲ اگست ۱۸۷۱ء متمولہ مثل حقیت موضع کوٹ رام چندر پرگنہ حویلی اودھ تحصیل فیض آباد جلد سوم محمد اصغر وغیرہ مدعیان بنام سرکار بہادورمدعا علیہ دعوی آراضی رام کوٹ پرگنہ حویلی اودھ فیصلہ ۲۲ اگست ۱۸۷۱ء-

اظہار گوا ہان مدعی تحریر ہوکر روداد ملاحظہ میں درآے مدعی داویےداحقیت عالی آراضی قبرستان ی درختوان املی واقعے اسکے جو حایل

دروازہ مسجد بابر شاہ و جنم استھان کے ہیں- تحقیقات سے قبضہ مالکانہ درختوان املی دعوی مدعی کا ثابت ہوتا ہے مگرزمین ملکیت مدعی کی نہیں ہے- یہ قبرستان عام و صحن دروازہ مسجد جنم استھان کے ہیں- ایسے آراضی میلکیت کسی کی نہیں ہو سکتی لہذا

حکم ہوا کہ

ڈگری حق ملکیت مدعی درختان املی واقع قبرستان عام مندرجہ ---- خسرہ مثل اندر موضع رام کوٹ برگنہ حویلی اودھ بحق مدعی کے ہو- دعوی مدعی بابت ملکیت اراضی قبرستان نقشہ ڈگری فریقین کو دیا جاے و پروانہ بنام صدر منصرم واسطے عمل در آمد بیچ گاغذات بندوبست کے تحریر ہوکر مثل مقدمہ داخل دفتر ہو لکھا-

اگست ۱۸۷۱ ۲۲

دستخط بخط انگریزی شیکشت

''नक़ल तजवीज़ मोरखा 2 अगस्त 1871 मसमूला मिसिल हकीयत मौजा कोट रामचंदर परगना हवेली अवध तहसील व जिला फैजाबाद जिल्द सोयम वास्ता 134 मा मोहम्मद असग़र वग़ैरह मुद्दईयान बनाम सरकार बहादुर मुद्दाअलय दावा आराज़ी रामकोट परगना हवेली अवध। फैसला 22 अगस्त 1871

इज़हार गवाहान मुद्दई तहरीर होकर रुदाद मुलाहज़ा में दर आये मुद्दई दावेदार हक़ीयते आ़ला आराज़ी कब्रिस्तान व दरख़्ताने इमली वाक़ै उसके जो हायल दरवाज़ा मस्जिद बाबर शाह व जनम स्थान के हैं। तहक़ीक़ात से क़ब्ज़ा मालिकाना दरख़्ताने इमली मुतदाविया मुद्दई का साबित होता है मगर ज़मीन मिलकियत मुद्दई की नहीं हो सकती। यह कब्रिस्तान आम व सहन दरवाज़ा मस्जिद जनम स्थान के हैं। ऐसी आराज़ी मिल्कियत किसी की नहीं हो सकती लेहाज़ा

हुक्म हुआ कि

डिग्री हक़ मिलकियत मुदई दरख़्ताने इमली वाक़ै कब्रिस्तान आम नम्बरी ख़सरा मशमूला मिस्ल (अपठनीय) मौज़ा रामकोट परगना हवेली अवध बहक़ मुद्दई के हो। दावा मुद्दई बाबत मिल्कियत आराज़ी कब्रिस्तान के डिसमिस हो व नक्शा डिग्री फ़रीक़ैन को दिया जाये व परवाना बनाम सदर मुंसरिम वास्ते अ़मल दरआमद बीच काग़ज़ात बन्दोबस्त के तहरीर होकर मिस्ल मुक़दमा दाख़िल दफ़्तर हो लिखा

22 अगस्त सन् 1871

दस्तख़त बख़त अंग्रजी शिकस्त''

"*Copy of the judgment dated August 22, 1871, included in the Haqqiat , Village Kot Ram chandra, Pargana Haveli Oudh. Tehsil and District Faizabad Vol. 3 Basta no. 132. Mohd. Asghar and others petitioners vs. Government respondent. Claim over Arzi Ram Kot, Pargana Haveli Oudh.*

Judgment dated August 22, 1871.

Statements of the witnesses of the plaintiffs were recorded and perused. The plaintiffs are the claimants of the ownership right of Arazi Qabristan and trees of Tamarind (Imli), ***in front of the door of Masjid Babar Shah and Janamsthan****. Enquiries reveal that possession of the plaintiffs over the tamarind trees is well established,* ***but the right of the ownership of the land cannot be of the plaintiffs.*** *This is a general graveyard and courtyard* ***in front of the door of the Masjid Janamsthan.*** *Therefore such an Arazi (piece of land) cannot be a private property. As such it was ordered.*

Decree for the ownership of 21 tamarind trees standing in the Qabristan, bearing Khasra number, (included the file) in Mauza Ram Kot pargana Haveli Oudh in favour of the plaintiffs is passed but suit regarding ownership of the plaintiffs with respect to the aforesaid Arazi qabristan (graveyard) is dismissed. . . . . Copies of the decree be given to the parties. Parwana be issued to Sadar Munsarim for necessary action. Except necessary documents, the file be consigned to office.

Dated August 22, 1871.

Sd/- Secretary (Urdu)"

2352. **Exhibit 30 (Suit-1) (Register 5 page 107-116-C)** is a copy of memo of appeal no. 56. It was filed by Syed Mohd. Asghar Ali before the Commissioner, Faizabad against the order dated 03.04.1977 of Deputy Commissioner, Faizabad. This appeal was decided by the Commissioner, Faizabad on 13.12.1877. The contents of the memo of appeal are as under:

دفہ ۱ :- ہر گاہ دیوار احاطہ مسجد کی ہے تو جو تعمیارات مسجد کی ہے وہ متولی مسجد کے جسکو معافی مسجد کی سند سرکار سے مرحمت ہوی تھی متعلق ہونا چاہیے نہ ہندو سے

دفہ ۲:- یہ کہ یہ اصول عام ہے کہ کل امور متولی مساجد مسلمانوں کی مسلمانوں کے سپرد ھونا چاہیے امور متعلق شیوالہ و منادر ہندوں کو سپرد ہونا چاہیےبلکہ کسی قانون کےمنشہ بھی خلاف ان اصول کہ نہیں ہے باوجود اسکے حاکم ماتحت نے اجازت بنانے دروازہ جدید و دیوار احاطہ مسجد جانب شمال رسپانڈیڈ کردی ہے- یہ امر خلاف اصول عام ونیز خلاف عمل درامدقدیم ہے کیونکہ زمانہ قدیم سے رسپونڈیڈ کو کچھ علاقہ دیوارمسجد سےنہ رہا انصاف اسکا حضور سے امید کیا گیا ہے کہ حضور فیض گنجور امور متعلق مذھب اہلے اسلام کو اور متعلق مذھب اہل ہنود سے علاحدہ فرماونگیں-

دفہ ۳ :- ملاحظہ مثل مقدمہ محمد اصغر اپیلانٹ بنام مہنت بلدیو داس مورخہ ۷ نومبر سن ۱۸۷۳ء اجلاسی حضور کہ واقع ہوگا کہ ایک پشتگاہ حضور کے حکم اٹھا دی جاےگی- مورت یعنی چڑن پادوکا ہو چکا ہے- بس جب کی اختیار رکھے جانے مورت کا چبوترے پر نہ دیا گیا تو وایسی کسی صورت میں اخیتار دی جانے دیوار مسجد کا رسپورنڈینٹ دیا جا سکتا ہے اور اس طور کا اختیار رکھے جانے مورت کا چبوترے پر نہ دیا گیا تو پس کسی صورت میں اخیتار بنانے دیوار مسجد کا رسپورڈنٹ دیا جا سکتا ہے اور اس طرح اختیار دیا جانا ایک امر خلاف انصاف عدالت ہے-

دفہ ۴:- یہ کہ ثبوت تحریری جو حاکم ماتحت نے مندرجہ حکم فرمایا ہے کیفیت اسکی یہ ہے کہ ایک عمدہ ثبوت یہ ہے کہ دیوار احاطہ بیرونی مسجد کہ دروازے پر نام اللہ کا کندہ و تحریر ہے- چونکہ یہ ثبوت

تحریری سے حسب و حرکت------- بے لاءق ملاحظہ موقع کہ ہے پس کیونکہ عدالت ماتحت میں پیش ہو سکتا تھا اندریں اس ثبوت اپلیلانٹ امیدوار ہے کہ بنظر انصاف ملاحظہ موقع فرمایا جاوے تاکہ ثبوت بوجہ اصل وبحق اپلیلانٹ ظاہر ہو جاوے-

دفہ ۵:-جس حالت میں کہ اپیلانٹ کی درخواست یہ تھی کہ اسی خرچہ اپیلانٹ پر دروازہ بنوایا جاے جس پر اپیلانٹ حمایت مستعد بھی تھا اور تیار ہونا دروازہ کا ۱۰ یا ۱۵ روپیہ میں ممکن تھا اس صورت میں اپیلانٹ کو اجازت میلانا چاہے تھا اوریا خود سرکار اپنے احتیمام سے تیار کرا دیتی- ریسپانڈنڈ خلاف مذہب کو کسی طرح اجازت نہیں میلنا چاہے تھا- یہ صرف چالاقی ریسپانڈنڈ بنظر فساد آءندہ کی ہے کہ رسپانڈیٹ اصول اجازت تعمیر دروازہ کی حیلا سے زیادہ روپیہ صرف کرنے دروازہ میں مورت حاے معاقف مذھب کے رکھنے کا ہو رہا ہے- انصاف کا مقام ہے کہ دیوار دروازہ مطلق مسجد پر مورتی کا بننا کس قدر خلاف مذھب اہلے اسلام بلکہ ظلم بت پرستان اوپر اہلے مسلمان کے ہے- لہذا اپیلانٹ با امید استنداد فصاد اینده کی مستدعی انصاف حضور کا ہے-

دفہ ۶ :- قدیم سے اپیلانٹ و ریسپانڈیٹ سے تنازع چلا آ رہا ہے اور حکم سرکار قدیم سے یہ ہے کہ ریسپانڈیٹ کوی امر جدید نہ کرے پوجہ روپوش ہونے بلدیوداس بیراگی کی حکم مورخہ ۷ نومبر سن ۱۸۷۳ء تعمیل نہیں ہوا- یعنی ابھی تک وہ مورت مطابق حکم حضور نہیں اٹھای گی- ریسپانڈنٹ و بغرض قبضہ کرلے دیوار مسجد پر انواؤ و اقسام کے امور تا ہے *होता है मगर* جدید کیا کرتا ہے- وہ وقت ممانیعت کے عمدہ فساد ہو چنانچہ اندر احاطہ مذکور کے چولہ بنایا ہے اور رسوی کرتا ہے کہ یہ امر پہلے کبھی نہ ہوا وہاں فقط ایک چھوٹا سا چولہا واسطے پوجہ کےسابق میں تھا اسکو بھی اسنے وسیع کر لیا ہے-

دفہ ۷:- اپیلانٹ شیتم رشیدہ امیدوار انصاف حضورکا ہے کہ بعد ملاحظہ مثل حکم مورخہ ۷ نومبر سن ۱۸۷۳ء کہ سررشتہ میں موجود ہے- ملاحظہ فرما کر ان امور جدید کا جو بنیاد باعث فساد و تقرار ہے تدارک و انستعدادفرمایا جاوے و حق رسی اپیلانٹ کی ہو- واجب تھا عرض کیا

فقط

العبد

عرضی

''दफा अव्वलः— हर गाह दीवार अहाता मस्जिद की है तो जो तामीरात मस्जिद की है वह मुतवल्ली मस्जिद जिस को माफ़ी मस्जिद की सनद सरकार से मरहमत हुई थी मुतालिक़ होना चाहिए न रेसपान्डेन्ट हिन्दू से । दफाः—2 यह एक उसूल आम है कि कुल उमूर मुताललिक़ मसाजिद मुसलमानों के मुसलमानों के सिपुर्द होना चाहिए व उमूर ***मुताल्लिक़ शिवाला व मनादिर हिन्दुओं के सुपुर्द होना चाहिए*** *बलकि किसी कानून का मन्शा भी ख़ेलाफ इन उसूल के नहीं है बावजूद इसके हाकिम मातहेत ने* ***इजाज़त बनाने दरवाज़ा जदीद दीवार अहाता मस्जिद जानिब शुमाल रेसपांडेन्ट को दी जो यह अम्र ख़ेलाफ़ उसूल आम व नीज़ ख़ेलाफ़ अमलदरआमद कदीम है*** *क्योंकि ज़माना क़दीम से रेस्पांडेन्ट को कुछ एलाक़ा दीवार मस्जिद से न रहा इन्साफ उस का हुजूर से उम्मीद किया गया है कि हुजूर फ़ैज़ गंजूर उमूर मुताललिक़ मज़हब अहले इसलाम को उमूर मुताललिक़ मज़हब अहले हुनूद से अलादेहा फ़रमावेंगे*

दफा 3 :— बमुलाहेज़ा मिसिल मोक़दमा मोहम्मद असग़र अपीलान्ट बनाम महंत बलदेवदास मोरख़ा 7 नवम्बर 1873 ई0 इजलासी हुजूर के वाजेह होगा कि एक पेशगाह हुजूर के हुकम उठा दिये जाने मूरत यानी चरन पादुका का हो चुका है पस जब कि अख़तियार रख्खी जाने मूरत का चबूतरा पर न दिया गया तो ऐसी किसी सूरत में अख़तियार (अपठनीय) दीवार मस्जिद का रेसपांडेन्ट दिया जा सकता है और इस तौर का अख़तियार रख्खी जाने मूरत का चबूतरा पर न दिया गया तो पस किस सूरत में अख़तियार बनाने दीवार मस्जिद का रेसपांडेन्ट दिया जा सकता है और इस तरह का अख़तियार दिया जाना एक अम्र ख़ेलाफ़ इन्साफ़ अदालत है।

दफा 4 :— यह कि सुबूत तहरीरी जो हाकिम मातेहत ने मुनदरिज हुकुम फ़रमाया है कैफ़ियत उस की यह है कि एक उम्दा सुबूत यह है कि दीवार अहाता बेरुने मस्जिद के दरवाज़े पर नाम अल्लाह का कुन्दा व तहरीर है चूंकि यह सुबूत तहरीरी बेहिस वहरकत है लायक़ मुलाहेज़ा मौक़ा के है पस क्योंकि अदालत मातहेत में पेश हो सकता था अन्दरीन सूरत अपीलांट उम्मीदवार है कि बनज़र इन्साफ़ मुलाहेज़ा मौक़ा फ़रमाया जावे ताकि सुबूत

बवजेह बहक़ अपीलांट ज़ाहिर हो जाये ।

दफा 5 :– जिस हालत में कि अपीलांट की दरख़ास्त यह थी कि उसी ख़रचा अपीलांट पर दरवाज़ा बनवाया जावे जिस पर अपीलांट हिमायत मुस्तएद भी था और तैय्यार होना दरवाज़े का 10–15 रुपया में मुमकिन था उस सूरत में अपीलांट को (अपठनीय) इजाज़त मिलना चाहिये था या खुद सरकार अपने एहतेमाम से तैय्यार करा देती रेस्पांडेन्ट ख़ेलाफ़ मज़हब को किसी तरह इजाज़त नहीं मिलना चाहिए था यह सिर्फ चालाकी रेसपांडेन्ट बनज़र फ़साद आइन्दा के है कि रेसपान्डेंट असूल इजाज़त तामीर दरवाज़ा के है कि ज़्यादह रुपया सर्फ़ करे दरवाज़ा मय मूरतिहाय मुवाफ़िक मज़हब के रखने का हो रहा है। इन्साफ़ का मुक़ाम है कि दीवार दरवाज़ा मुतालिक़ मस्जिद पर मूर्ती का बनना किस क़दर ख़ेलाफ मज़हब अहले इसलाम बल्कि जुल्म बुतपरस्तान ऊपर अहले मसलमान के है लिहाज़ा अपीलांट वउम्मीद इन्सदाद फ़साद आयन्दा के मुस्तदई इन्साफ़ हुजूर का है ।

दफा 6 :– क़दीम से अपीलांट व रेस्पानडेंट से तनाज़ा चला आ रहा है और हुकुम सरकार क़दीम से यह है कि रेस्पान्डेंट कोई अम्र जदीद न करे । बवजेह रु पोश होने बलदेव दास वैरागी के हुक्म मुसदिदरह 7 नवम्बर 1873 ई0 तामील नहीं हुआ ***यानी अभी तक वह मूरत मुताबिक़ हुकम हुजूर नहीं उठाई गई*** *रेस्पान्डेन्ट बग़रज़ क़ब्ज़ा करने के मय दीवार मस्जिद पर उनवाव व अक़साम के उमूर जदीद किया करता है वह वक़्त मुमानेयत से आमादा ब फ़साद होता है* ***चुनांचे अन्दर अहाता मज़कूर के चूलहा बनाता है और रसोई करता है*** *कि यह अम्र पहले कभी न हुआ वहां फ़क़त एक छोटा सा चूलहा वास्ते पूजा के साबिक़ में था उस को भी उस ने वसीअ कर लिया है ।*

दफा 7 :– अपीलांट सितमरसीदा उम्मीद वार इन्साफ़ हुजूर का है कि वाद मुलाहिज़ा मिसिल हुकुम मसदूरा 7 नवम्बर 1873 ई0 के सरिश्ता में मौजूद है मुलाहिज़ा फ़रमाकर इन उमूर जदीद का जो बुनियाद व बायसे फ़साद हैं तदारुक व इन्सेदाद फ़रमाया जावे व हक़ रसी अपीलांट की हो वाजिब था अर्ज़ किया फ़क़त''

"Section 1. Whereas each and every place within the boundary wall of the mosque is that of the Mosque and its wall being the construction of Masjid itself which had been

gifted Maafi. It should be ***entrusted to the Mutawalli of the mosque and not to Hindu defendants****.*

Section 2. That it is a general principle that matters related to Masjid should be handed over to Muslims and matters regarding Shivala and Temples should be handed over to the Hindus. No law intends nor is against this principle. In-spite of this, ***the subordinate officer accorded permission to the defendants for erecting a new door in the wall of the Masjid northwards.*** *This act is in contravention of the general principle and rules and can not be acted upon simply because the defendants had never any concern with the wall of the Masjid. It is, therefore, requested that as per old tradition matters of the Muslims may be left to Muslims and religious matters regarding Hindus should be left to them.*

Section 3. That from a perusal of the file of case Mohammad Asghar Appellant vs Mahant Baldeo Das dated November 7, 1873 in this court, it becomes clear that ***the order for removing the idol that is Charan Paduka has already been passed by this Court.*** *Now since there is no permission to install an idol on the Chabootra, i, how can right over the wall of the Masjid could be given to the defendant, inasmuch as, giving such a permission would be violative of law and justice.*

Section 4. That a written evidence as entered in the order of the officer, is to the effect that on the door of the outer wall of the Masjid the name of " Allah" is engraved, which is material written evidence and deserves to be taken into consideration. This could have been presented in the lower court in support of the appellant as required under the law.

This fact can be ascertained by spot inspection so that evidence in favour of the appellant may come to light.

Section 5. That wherein that appellant had himself requested that he could erect the door on his own expenses and he was ready to do so and that door could have been prepared and installed with cost of Rs.10-15. In that event, the appellant could have been granted permission or the Government itself could have done it. The defendant belonging to other religion could not have been accorded permission to construct the door against religious canons.. The respondent has cleverly done so for creating trouble in future. He wanted to spend more money to place idols along-with the door (sic). It is a matter of justice ***that how idols could be placed on the wall of the Masjid which would be against all the canons of Islam.*** *It is a Sheer high-handedness of the idol worshippers against the Muslims. Therefore the appellant, demands justice from your honour so that likelihood of any possible riot in future could be avoided.*

Section 6. That there has been old controversy between the respondent and the appellant and the Hon'ble Court has ordered that the ***respondent should not do any thing new on that place. But because of Baldeo Dass Baigragi being underground, the order dated November 7, 1873 could not be served upon him. That is to say, that the idol has not yet been removed as per orders.*** *The respondent with the intention of occupying it continues to indulge in several activities on the wall and on being restrained by someone, he becomes aggressive and is bent upon to fight with him.* ***So he has made a Chulha within***

the said compound which has never been done before. In the past, there was mere a small Chulha (kitchen) for Pooja which he has got extended.

Section 7. That the aggrieved appellants pray your honour to administer justice to him and after perusal of the order dated November 7, 1873, which is enclosed in the Sarishta, file and recent and ***new constructions may be removed*** *and the appellant may kindly be given his rights . Deemed proper so prayed." (ETC)*

2353. Exhibit 15 Suit 1 (Register 5 Page 41-43) : It is a copy of the report dated Nil of Deputy Commissioner Faizabad submitted pursuant to the Commissioner, Faizabad's order dated 14th May, 1877 passed in Misc. Appeal No.56, Mohd. Asghar Vs. Khem Dass. This report appears to have been called by the Commissioner on a complaint made against raising of a doorway in the wall of the disputed building. It appears that in the wall dividing mosque by a railing, the justification thereof was to provide a separate room on fair days to visitors to the Janam Asthan. The document being old there appears to be certain mistakes may be on account of legibility. It reads as under:

"A doorway has recently been opened in the wall of the Janum-Ashtan not at all in Baber's mosque, ***but in the wall which infront is divided from the mosque by a railing. This opening was necessary to give a separate route on fair days to visitors to the Janum-Asthan. There was one opening only, so the cruch (sic:rush) was very great and life was endangered.*** *I marked out the spot for the opening myself so there is no need to depute any Europe officer. This petition is merely an attempt to annoy*

the Hindu by making it dependent on the pleasure of the mosque people to open or close the 2nd door in which the Mohammedans can have no interest.

2. No objection was made to the opening of this second door.

3. On the 10th November 1873 Baldeo Das was ordered in writing by the Deputy Commissioner to remove an image place on the janam-Asthan platform. A report was made by someone (probably a police officer) that he had gone to the house of Baldeo dass and found that the latter had gone to Gonda. The order was explained to Gyandas and other priests who said could not carry out the order. The order passed on this (15) was that if the other party (i.e. the complainant) would name person on whom an order of removal could be served-such should be served.

(i) There apparently the matter rested. There is no later on the file."

2354. The documents collectively filed and accepted as **Exhibit A-8 (Suit-1) (Register 6, page 75-149)** are of different dates. Page 89 is a document of 3rd June 1878 executing a decree with respect to evacuation and cancellation of sale deed dated 10th August 1876 and its English translation by Court reads as under:

ڈگری عدالت ابتدای

بموجب درخواست

نمبر مفصلہ ۲۷۲۵ سن ۱۸۷۷ء تعداد مالیت ۵۱۵ تعداد

اسٹامپ ۲۹ روپیہ تاریخ رجوع ۱۱می ۱۸۷۷ء عدالت بندوبست ضلع

فیض آباد

محمد اصغر مدعی

بنام

مسماۃ حمرہ بی بی و سندر تیواری و بہولا تیواری و
کانشی رام

دعوای ۸/۳ واقع موضع بہورن پور پرگنہ حویلی اودہ

آج یہ مقدمہ باجلاس رائے شیو پرساد صاحب اکسٹرا
اسیسٹینٹ کمشنر بہادر ضلع فیض آباد بحاضری وکیل مدعی و وکیل
مدعا علیہ واسطے سماعت و بحث کے پیش ہوا اور جو بحث فریقین نے
بیان کیا اسپر کما حقہ غور ہوا عدالت دیتی ہے اور ڈگری کرتی ہے بحق
محمد اصغر مدعی مقردخل یابی بمنسوخی بے نامہ مورخہ ۱۰ اگست
۱۸۷۶ء بابت حصہ زمینداری موضع بہورن پور پرگنہ حویلی اودہ
برسہ مدعا علیہ ۲سے ۴ تک بنام مدعا علیہم
نمبر ۱ کے ہو خرچہ مدعی بمعہ سود فیصدی ۶ روپیہ بابت آج سے تا
تاریخ وصول زمہ مدعا علیہم کے عاید کیا جاوے لکھا ۳ جون ۱۸۷۶ء
حصہ مدعی
اسٹامپ ۲۷
محنتانہ ۳/روپیہ طلبانہ
وکیل ۲۵ روپیہ
متفرقیات ۱روپیہ
۶۹

'' डिग्री अदालत इब्तदाई बमुअजिव दरख्वास्त न0 फैसला 4725 सन् 1877 ई0

तादाद मालियत 515 रूपया स्टाम्प 29 रूपया तारीख रूजू 01 मई 1877

अदालत बन्दोबस्त जिला फैजाबाद

मुद्दई मो0 असगर बनाम मोसमात हुमैरा बीबी व सुन्दर तिवारी व भोला तिवारी व काशीराम

दावा 8/3 वाके मौजा बहोरनपुर परगना हवेली अवध

आज यह मुकदमा बइजलास राय शिवप्रसाद साहब एक्स्ट्रा असिस्टेन्ट कमिश्नर बहादुर जिला फैजाबाद बहाजिरी वकील मुद्दई व वकील मुद्दालेह वास्ते समाअत व बहस के पेश हुआ और जो बहस फरीकैन ने बयान किया

उस पर कमा हक्कु गौर हुआ अदालत . . .देती है और डिग्री करती है बहक मो0 असगर मुद्दई मुकर दखलयाबी ब मन्सूखी बैनामा

मोरखा 10 अगस्त 1876 ई0 बाबत हिस्सा जमींदारी मौजा बहोरनपुर परगना हवेली अवध नाबस्ता मुददालहत दो से चार तक बनाम मुददालहिम न0–1 के हो यानी मुद्दई मय शूद फीसदी 6 रूपया सालाना बाबत आज बतारीख वसूल मुददालैय के आयद किया जावे लिखा 3 जून 1878

खर्चा मुददईन स्टैम्प –27
मेहनतानान 3 रूपया
तलबाना वकील 25 रूपया
मुतफर्रिख वकील 1 रूपया।"

"Claim petition no. 2775/1877, value 515/-, Stamp value 29/- date of Ruju 12th of May 1877. Adalat Bandobast District Faizabad. Plaintiff Mohammad Asghar Vs. Musammat Humaira Bibi and Sunder Tiwari and Bhola Tiwari and Kanshi Ram defendaants. ***Claim of 3/8th part of Zamindari rights of Mauza Bahoranpur*** *Pargana Haveli Oudh. Today this claim was presented in the Court of Shiv Prasad Saheb Extra Assistant Commissioner District Faizabad. The counsels of the plaintiff and defendants were present to contest the case. Whatever the parties claimed was considered fully. Therefore this Court allows the decree in favour of Mohammad Asghar, the plaintiff who has prayed for the evacuation and cancellation of the sale deed dated August 10, 1876 for part of Zamindari Mauza Bahoranpur Pargana Haveli Oudh executed by the defendants no. 2 to 4 in favour of defendant no.1. The cost of plaintiff with interest at the rate of Rs. 6/- percent per annum from today till the date of deposit will be paid by the defendants to the plaintiff. This 3rd day of June 1876."*

2355. **Exhibit A-8 (Suit 1) (Register 6, page 75)** is claimed to be a copy of the statement of income and expenditure submitted by the earlier Mutwallis in the court of Civil Judge,

Faizabad in Suit no. 29 of 1945. It is said that the aforesaid document gives the details of expenditure of the period of 1299 Fasli, 1306 Fasli and 1307 Fasli. This document and its contents have not been proved. It is said that the same were marked Exhibits by the trial judge himself on 26th August 1950 since they were filed after obtaining copy thereof from the record of the Court of Civil Judge where they were filed in earlier litigation. Sri Jilani learned counsel for Sunni Waqf Board could not tell as to how the contents of the said documents can be said to have been proved or treated to be correct in the absence of any witness having proved the same. It is not the case of the defendants no.1 to 5 (Suit-1) that any legal presumption can be drawn in respect of correctness of the contents thereof under law or that the said document constitutes a public document having been filed before any competent authority in accordance with law.

2356. In **Sri Lakhi Baruah & others Vs. Sri Padma Kanta Kalita & others JT 1996 (3) SC 268**, the Court considered the presumption of old documents under Section 90 of the Evidence Act and held in paras 15 to 18 as under:

> *"Section 90 of the Evidence Act is founded on necessity and convenience because it is extremely difficult and sometimes not possible to lead evidence to prove handwriting, signature or execution of old documents after lapse of thirty years. In order to obviate such difficulties or improbabilities to prove execution of an old document, Section 90 has been incorporated in the Evidence Act, which does away with the strict rule of proof of private documents. Presumption of* ***genuineness may be raised if the documents in question is produced from proper***

custody. It is, however, the discretion of the Court to accept the presumption flowing from Section 90. *There is, however, no manner of doubt that judicial discretion under Section 90 should not be exercised arbitrarily and not being informed by reasons. ... The Privy Council, upon review of the authorities, however, did not accept the decision rendered in Khetter and other decisions of the High Court, where the presumption was attached also to copies, as correct. It was indicated that in view of the clear language of section 90 the production of the particular document would be necessary for applying the statutory presumption under Section 90.* ***If the document produced was a copy admitted under Section 65 as secondary evidence and it was produced from proper custody and was over thirty years old, then the signature authenticating the copy might be presumed to be genuine; but production of the copy was not sufficient to justify the presumption of due execution of the original under Section 90.*** *In this connection, reference may be made to decisions in Seethayya v. Subramanya (56 IA 146: AIR 1929 PC 115) and Basant v. Brijraj (AIR 1935 PC 115). In view of these Privy Council decision, disproving the applicability of presumption under Section 90 to the copy or the certified copy of an old document, in the subsequent decisions of the High Courts, it has been consistently held by different High Courts that production of a copy or a certified copy does not raise the presumption under Section 90. . . . . .But if a foundation is laid for the admission of secondary evidence under Section 65 of the Evidence Act by* ***proof of loss or destruction of the***

> ***original and the copy which is thirty years old is produced from proper custody, then only the signature authenticating the copy may under Section 90 be presumed to be genuine****. . . . .In the facts of this case, the presumption under Section 90 was not available on the certified copy produced by the . . . . .it is the discretion of the Court to refuse to give such presumption in favour of a party, if otherwise, there is occasion to doubt due execution of the document in question."*

2357. Had it been a document filed by the defendants Hindu-parties, even if not proved, it could have been relied against them. But when the plaintiffs have filed said document, it was their obligation to prove it. A document filed in an earlier litigation in a Court of law, and after obtaining a copy thereof from that Court, if it is filed in another Court, it would not be either a public document merely because a certified copy has been issued by the Court, or an old document received from the proper custody. The person who is filing it has to prove the same.

2358. We, therefore, find it difficult to place any reliance thereon.

2359. In any case, we have gone through the said documents also. The expenditure documents with respect to 1306 and 1307 Fasli in the initial part mention the words "Masjid Babri" but in respect of 1299 Fasli (i.e. 1892 AD) it does not mention the words "Masjid Babri". Instead it mention "Jama Masjid" or "Jama Masjid Oudh" or "Masjid Idgah" situated at Ranopali and Idgah. The English translation of the details of the expenditure as contained on **page 93 and 94 (Register 6) of Exhibit A-8 (Suit-1)** in respect of income and expenditure account with

respect to 1299 Fasli reads as under:

"State of income and expenditure Mauza Bhooranpur and Sholapuri Pargana Haveli Oudh. Milkiat and Maafi Mohd. Asghar for 1299 Fasli, the copy of which submitted to Mr. Munshi Mahadeo Prasad Deputy Collector.

	Mauza Bhooranpur	*Mauza Sholapuri*
No. of Bighas	*114-19-0*	*12-7-0*
Lagani Khan	*307-13-3*	*160-0-0*
Realized	*200/-*	*150/-*
Balance	*107/-*	*10/-*

Petty expenditure as per amaldaramad and Malguzari of the Government.

Amount Sewai Jama	*14/12*
Patwari	*9/12*
Salary of Chaukidar	*16/-*
Raghubar Dayal Patwari	*3/12*
Cash 1/- adjustment of lagan	*3/12*
Haq Tehsil Numberdari	*30/-*
Miscellaneous etc	*5/-*
Banwai-self	*9/12*
applications.2	*1/-*

	262/12
*Expenditure for **Jama Masjid** and **Eidgah***	
and other expenses related to them	*217/15*
*Petty expenditure regarding **Jama Masjid Oudh***	*81/11, 93/3*
*Salary of **Mansoor Ali Moazzin**, Annual*	*36/-*
*Salary **Haji Ahmad Mir for pesh Namazi and Juma***	*18/-*
Annually	

Tel Batti 3 peepa @ 2/7 *7/5*

Clay utensils, Matkey, Ghara, Lota etc. -/8/-monthly 6/-

Patti Chatai 100 *6/2*

Farsh Chandani *5/-*

Candle stick for lighting on the roof 10 Paun@-/5/-per pon 3/2/ 29/8/-

White wash of Jama Masjid: *25/-*

Lime 15 monds @ Rs. 1/- *15/-*

Contractor for white washing *9/-*

Qand-e-Siyah *-/8/-*

Moonj Kuchi *-/8/-*

Making of Bamboo ladder *-/9/-*

Utensils Matkey *-/4/- 24/-*

156/11/-

Expenditure in respect of ***Masjid Eidgah*** *situated at* ***Rano Pali***

Eidul Fitra *11/8/-*

Gilauri Pan *3/-1/-*

Itra 2 tola *2/-1/-*

White wash of ***Eidgah*** *4/-1/-*

Zoroof Matkey etc. *-/8/-*

Bhishti (Waterman) *-/8/-*

Charity etc. *1/-1/-*

Cartage for Farsh etc *-/8/-*

Safedi Baqreed at ***Rano Pali*** *4/4/-*

Gilori Pan *1/4/-*

Itra one tola *152.* *1/-1/-*

Zurrof Matkey *-/2/-*

Beggars *1/-1/-*

Cartage *-/8/-*

Judicial expenditure regarding various cases	*24/-*
Regarding case of Bhagwat and Kalyan Das - graves of Haji Qudwa etc	*9/-*
Judicial expenditure for Eidgah	*10/-*
Contribution for Qabristan	*5/-"*

2360. The documents pertaining to grant show that the same have nothing to do with any Idgah or Muslim religious place at Ranopali**,** which is quite at some distance from Mauza Ramkot. The expenses shown in the above documents in respect to 'Jama Masjid' and 'Idgah' as well as on the two village Bhooranpur and Sholapuri, e*x facie* do not appear to have any relevance with the building in dispute.

2361. Moreover, Page 81 Register 6 is a document in the form of an application by one Revati Ram Tewari Zamindar, resident of village Bahoranpur filed at the time of payment of Muavaza (compensation) before the Dy. Commissioner, District Faizabad on 16th April 1866. He claims to maintain his Patta regarding collection of fish; Abadi and building of Patta Kham Tahsil. The Dy. Commissioner, it appears to have ordered for consignment to office on 16th April 1866. In fact all the documents refer to some dispute in respect of the land at Bahoranpur and have no relevance for the site in dispute..

2362. **Exhibit 24 (Suit-1) (Register 5 page 83-85)** is a copy of the plaint dated 22.10.1882 of Suit No. 374/943 of 1882 filed by Mohd. Asghar against Raghubar Das claiming rent for use of Chabutara near the gate of the disputed building for the period 1288-1289 Fasli (1881-1882 AD). The contents of the plaint are as under:

عدالت جناب سب جج صاحب بہادر فیض آباد

نقل عرضی دعوی مشمولہ مثل مقدمہ الف نمبری نمبر ۱۳۷۴ء ۱۸۸۳

۹۴۳ بمقدمہ سید محمد اصغر بنام، رکھوبر داس فیصلہ ۱۸ جون ۱۸۸۳ء
جناب منصف بہادر تحصیل فیض آباد
سید محمد اصغر ولد سید رجب علی قوم سید پیشہ زمینداری و معافیداری عمر ۵۵برسا کن و زمیندار موضع سہنواں پرگنہ حویلی اودہ تحصیل فیض آباد

مدعی

بنام

رگھوبر داس مہنتہ چیلہ تلشی مہنتہ چبوترہ جنم استھان و نر موہی اکھاڑہ واقع اودہ
ڈہری مراؤ ساکن اودہ

مدعا علیہ

مدعی حسب ذیل عرض کرتا ہے
تصریح دعوای دلاپانے ۳۰ روپیہ کرایہ بیٹھ کی چبوترہ و تخت واقع دروازہ مسجد بابری اودہ بابت میلہ کاتکی رام نومی پر بنیاد حقیت بابت ۱۲۸۸ فصلی و بابت ۱۲۸۹ فصلی بحساب تصنیف بروی پٹہ
-۱- یہ کہ صحن و چبوترہ پیش دروازہ مسجد بابری جنم استھان ملکیت مدعی ہے کہ جسپر قدیم الایام سے بروز میلہ کاتکی و رام نومی معہ دیگر ایام میں دوکانات پہول و بتاشہ اہل حرفہ یعنی اہل شہرر کہتے ہیں کہ جسکا ٹھیکہ ہمیشہ سے ۳۵ روپیہہ سے سالانہ پر ہوتا ہے تجویز مدعی ومدعا علیہ منجملہ اسکے نصف حق مدعی و نصف مدعا علیہ ہے باہم تقسیم کر لیتے ہیں-
-۲- یہ کہ ۱۲۸۸ فصلی میں قبل نہان کاتکی و رام نومی مدعا علیہ نے براہ بدنیتی بجاءے ۳۵ روپیہ کے ۳۰ روپیہ پٹہ ٹھیکہ خلاف عملدار بلا تجویز مدعی محض ٹھیکہ بنام فقیری مراؤ ساکن اودہ بابت ہر دو میلہ کے کر کے متصرف ہر دو حصہ کا ہوا و مطابق اسکی بابت ۱۲۸۹ فصلی میں کاروای کیا-

-۱۲۸۸فصلی برای پٹہ ۳۰- روپی		-۱۲۸۹فصلی برای پٹہ ۳۰- روپیہ	
حصہ مدعی	حصہ مدعی علیہ	حصہ مدعی	حصہ مدعی علیہ

۱۵ روپیہ	۱۵ روپیہ -	۱۵ روپیہ	۱۵ روپیہ -

مدعی مستغیث ہے کہ بعد تحقیقات لوازمہ عدالت ڈگری باضافہ خرچہ کے فرماءی جاوے-

بنای دعوی ۱۲۸۸ فصلی

-۷نومبر ۱۸۸۰ء

بابت ۱۲۸۸ فصلی ۶ نومبر ۸۲ء

مدعی مقر ہے کہ جو کچھ عرضی دعوی میں عرض کیا ہے صحیح ہے

العبد

دستخط

محمد اصغر زمیندار

بابت ۱۲۸۹ فصلی ۶نومبر ۸۳ء

عرض

سید محمد اصغر زمیندار و خطیب متولی مسجد

بابری واقع اودھ مورخہ ۲۲ اکتوبر ۸۲ء

'' अदालत जनाब जज साहब बहादुर, फैजाबाद,

1. नकल अरजी दावा मसमूले मिसिल मोकदमा अलिफ नम्बरी नं0 1374/943 ,1883 सं0 93 बमुकदमा सै0 मोहम्मद असगर बनाम रघुबर दास फैसला 18.6.83 जनाब मुनसिफ साहेब बहादुर तहसील फैजाबाद सै0 ***मोहम्मद असगर वल्द सै0 रजव अली कौम सैयद पेशा जिम्मीदारी*** *वो माफीदारी उम्र 55 बरस की जिमींदारी मौजा सहिनवा प्रगना हवेली अवध त0 फैजाबाद . . . मुद्दई*

बनाम

रघुबर दास महन्थ चेला तुलसी महन्थ चबूत्रा जन्म स्थान वो निरमोही अखाड़ा वाके अवध।

वा फरीक मुराद सा0 अवध मुद्दालैह

मुद्दई इस्व जेल अर्ज करता है।

तसरीह दावा दिलापाने 30 रू0 केराया बैठकी चबूत्रा जो तख्त वाके दरवाजा मसजिद बाबरी अवध बाबत मेला कातकी वो रामनवमी वरविनाय हकीयत बावत सं0 1288 फ0 वो बाबत सं0 1289 फ0 बहिसाब ... . बरूये पट्टा

1. यह कि सहन चबूत्रा पेश दरवाजा मसजिद बाबरी जन्म स्थान मिलकियत मुद्दई है कि जिस पर कदीमुल अय्याम से बरोज मेला कातकी जो राम नौमी दी गई अययाम में दुकानात फूल वो बताशा अहले हरफा यानी अहले शहर रखते हैं कि जिस का ठीका हमेशा से 35 रू0 सालाना पर होता है बतजबीब मुद्दई व मुद्दालेह मिनजुमिला उसके निस्फ हक मुद्दई वो निस्फ हक मुद्दालेह है। वाहम तकसीम करते हैं।

2. यह कि सं0 1288 फ0 में कव्ल नहान कातकी जो राम नौमी मुद्दालेह ने वराह बदनियती बजाय 35 रू0 के 30 रू0 पट्टा ठीका खिलाफ अमलदरामद बिला तजबीज मुद्दई महज ठीका बनाम फकीर मुराब सा0 अवध बाबत हर दो मेला के करके मुतसररिफ हर दो हिस्से का हुआ वो मोताविक उसके बाबत सं0 1289 फसली में कार्रवाई किया।

1288 फसली बराये पट्टा 30 रूपया		1289 फसली बराये पट्टा 30 रूपया	
हिस्सा मुद्दई 15 रूपया	हिस्सा मुदआलेह 15 रूपया	हिस्सा मुद्दई 15 रूपया	हिस्सा मुदआलेह 15 रूपया

मुद्दई मुस्तगीस है कि वाद तहकीकात लवाजिम अदालत डिग्री बइजाफा के फरमाई जावें।

बिनाय दावा 1288 फ0 बाबत सं0 1289 फ0

——————————— ———————————

7.11. 82 6.11.82 ई0

मुद्दई मुकिर है कि जो कुछ अरजी दावा में अर्ज किया है सही है अलबद द0 मोहम्मद असगर जिमीदार से0 मो0 असगर जिमीदार के ..

मार्च 22.10.82''

"Janab Sub-Judge Sahab Bahadur Faizabad.

Copy of plaint, included in the file of case no. Alif 943-1883-1884 Syed Mohd. Asghar vs. Raghubar Das decided on June 18, 1883.

Janab Munsif Bahadur, Tehsil Faizabad Syed Mohd. Asghar s/o Syed Rajab Ali caste Syed, occupation-Zamindari and Maafidari, aged about 55 years, Zamindari Muaza Shahnawa pargana Haveli Oudh, Tehsil Faizabad-Plaintiff vs. Raghubar Das Mahant Chela and Nirmohi

Akhara situated at Oudh resident of Oudh (defendant).

The plaintiff begs to pray as under:

Description of the claim for Rs.30/- as ***rent for user of Chabutra and Takht situated near the door of Babri Masjid Oudh and regarding organizing Kartik Mela at the occasion of Ram Navami.***

.... Haqqiat (Right) regarding 1288 Fasli and regarding 1289 Fasli at the rate based on its use as described in the lease.

1- That the courtyard and the Chabutra before the Masjid Janamsthan is the property of the plaintiff whereupon, ***from ancient times, is organized Mela Kartiki and Ram Navami. In other days shops of flowers and Batasha were being stalled****, the contract wherefor was of Rs.35/- per year. The plaintiff and the defendant had agreed to distribute this amount between themselves in the ratio of 50-50.*

2- That in 1288 Fasli, before Kartik Asnan and Ram Navami the defendant with mala fide intentions, as against the contract of Rs. 35/- made two shares of Rs.30/- only without consent of the plaintiff for both the festivals/fairs, whereas, the contract was given in favour of Faqir Murao, resident of Oudh. Action in this regard was taken in 1289 Fasli.

In 1288 Fasli Patta share of the plaintiff and the opposite party:

Rs.30/-=Rs.15+Rs15

1289 according to Patta

Rs30/-

The plaintiff prays that after due inquiries and

observing judicial requirements a decree with costs may kindly be passed.

Claim under 1288 Fasli

8th November 82

The petitioner is the claimant whatever he has written in the application, is correct, Alabda.

Sd/- ***Mohd. Asghar Zamindar****.*

Syed Mohd. Asghar Zamindar, ***Khatib****,* ***Mutwalli*** *Masjid Babri situates in Oudh."*

(E.T.C.)

This suit was dismissed by the trial Court on 18th June, 1883.

2363. **Exhibit 18 (Suit 1) (Page 55-57 Register 5)** is an application dated 2nd November, 1883 of Mohd. Asghar showing himself as Mutawalli and Khatib Masjid Babari situated at Oudh complaining that he is entitled to get the wall of the mosque white-washed but is being obstructed by Raghubar Das though he has right only to the extent of *Chabutara* and *Rasoi* but the wall and the gate etc. is part of the mosque and the complainant is entitled to get it white-washed.

2364. **Exhibit 34 (Suit-1) (Register 5 page 131)** is a copy of the order dated 12.01.1884 passed by Assistant Commissioner, Faizabad in case No. 19435 in respect of Nazool of Ram Janma Bhumi, Pargana Haveli Oudh, Tehsil and District Faizabad. The suit was filed by Mohd. Asghar against Raghubar Das. The order reads as under:

"Mr. Khudadad Beg will call up Khem Das ..... and .....him to do any repair to the wall or gateway to the mosque either of the outer or inner enclosure. ***The outer door will be left open. No lock will be allowed upon it. It***

is absolutely essential to observe the strictest neutrality and maintain the status quo."

2365. **Exhibit 27 (Suit-1) (Register 5 page 95-97)** is a copy of the order dated 22.01.1984 of Assistant Commissioner, Faizabad in case No. 19435 Syed Mohd. Asghar and Raghubar Das directing to consign record of the case. It says:

نقل فرد منفصیلہ احکام مورخہ ۲۲ جنوری ۱۸۸۴ء مقدمہ نمبر ۱۹۴۳۵
واقع جنم استھان اودھ ۲۲ جنوری ۱۸۸۴ء اجلاسی جناب اسیسٹینٹ
کمیشنر صاحب بہادر فیض آباد
سید محمد اصغر
بنام
رگھوبر داس
آج مقدمہ بحاضری فریقین پیش ہوا فریقین کو حکم صاحب ڈپٹی
کمیشنربہادر سے اطلاع دی گی اور رگھوبر داس کو فہماش کی گی کہ
اندرونی و بیرونی احاطہ و دروازہ مسجد کی مرمت وغیرہ نہ کریں
اور محمد اصغر کو سمجھا دیا گیا کہ بیرونی دروازہ قفل نہ لگایا جاوے
یہ مناسب ضروری ہے کہ عمل درامد قدیم بحال رکھا جاے اور کوءی
دستہ اندازی و مداخلت نہ کہ جاو۔
حکم ہوا کہ
کاغذات ہذا داخل دفتر ہو المرقوم ۲۲ جنوری ۸۴ء

''नकल फर्द अहकाम मोरखा 22 जनवरी 1884 ई0 मुकदमा नं0 19435
वाके जन्म स्थान अवध मुनफसला 22 जनवरी 1884 ई0 इजलासी जनाब
असिस्टेन्ट कमिश्नर साहब बहादुर फैजाबाद
सैय्यद मुहम्मद असगर बनाम रघुबर दास
आज मुकदमा बहाजिरी फरीकैन पेश हुआ फरीकैन को हुक्म साहब डिप्टी कमिश्नर से इत्तिला दी गई और रघुबर दास के फहमाइश की गई कि अन्दरूनी व बेरूनी अहाता व दरवाजा मसजिद की मरम्मत वगैरह न करे और मुहम्मद असगर को समझा दिया गया कि बाहरी दरवाजा कुफ़्ल न लगाया जावें यह निहायत जरूरी है कि अमल दरामद कदीम बहाल रखा जावे और कोई दस्त अन्दाजी न मदाखलत न की जावे।

हुक्म हुआ कि

कागजात हाजा दाखिल दफ्तर हो अत्मरकूम

22 जनवरी 84 ई0

"Copy of the order sheet dated January 22, 1884 in case no. 19435-Janamsthan, Judgement dated January 22, 1884, Ijlasi Janab Assistant Commissioner Sahab Bahadur Faizabad.

Syed Mohd. Asghar vs. Raghubar Das.

Today the case was called out in presence of the parties. As per orders of the Deputy Commissioner, parties were informed accordingly. Raghubar Das was restrained from carrying out repairs etc in the internal and outer part of the compound and Mohd. Asghar was advised not to lock the outer door of the mosque. It is necessary that the old existing orders be observed and complied with and there should be no interference in it.

Order.
All the papers be consigned.
Dated January 22, 84.
Sd/- English."

2366. **Exhibit 28 (Suit-1) (Register 5 page 99-101)** is a copy of the application of Raghubar Das dated 27.06.1884 requesting the Assistant Commissioner, Faizabad to make spot inspection of the premises complaining that the muslims despite restraint from whitewashing the wall of the building, are violating the same and whitewashing the wall. It reads as follows:

نقل درخواست رگوبرداس مورخہ ۲۷ جون ۱۸۸۴ء مقدمہ نمبر ۱۹۴۳۵

واقع جنم استھان اودھ اجلاسی جناب اسیسنٹ کمیشنر صاحب بہادر فیض آباد فیصلہ ۱۸۸۴

سید محمد اصغر بنام رگوبر داس

باجلاس صاحب ڈپٹی کمیشنر بہادرمہنتھ رگوبر داس جنم استھان واقع اجودیا-

مدعی

تشریح داعوی درخواست ساءل پربعد سماعت عذرات توجہ فرمای جاوے غیریب پرور سلامت

گذارش ہے کہ اگر حضور کسی روز تکلیف فرما کر موقع کو ملاحظہ فرماں لیں تو پھر کوی شکایت کبھی نہ ہوگی ساءل مطمین ہو جاویگا۔ دوم حضور نے حکم مسلمانوں کو سفیدی کرنے کا نہیں دیا اور جہانسابق میں مسلمانوں نے کبھی سفیدی نہیں کی تھی وہاں پر اس مرتبہ سفیدی کرتے ہیں یہ امربھی ملاحظہ موقع سے صاف ہو جاویگا اور چوں کہ اسی مقدمہ میں تحقیقات معرفت مرزا محمود بیگ صاحب ہیادر ہوے ہے یس اگر حضور موقع ملا حظہ فرماینگے توصداقت بیان ساءل بخوبی ہو جاوے گی۔ فقط

عرضی

فدوی رگھوبر داس قبرستان جنم استھان واقع اجودیا

معروضہ ۲۷ جون ۸۴ء

''نکل درخواست رغبر داس مورخہ 27 جون 1884 مو0 نں0 19435 واکے अवध स्थान अवध इजलासी जनाब असिस्टेन्ट कमिश्नर साहब बहादुर फैजाबाद

फैसला 22 जनवरी 1884

सैय्यद मुहम्मद असगर बनाम रघुबर दास

बइजलास डिप्टी कमिश्नर बहादुर

महन्थ रघुबर दास अस्थान जन्म स्थान वाके अयोध्या जी मुद्दई

तशरीह दावा दरख्वास्त सायल पर वाद समात उजरात तवज्जह फरमाई जावें।

गरीब परवर सलामत,

गुजारिश है कि अगर हुजूर किसी रोज तकलीफ फरमा कर मौके को मुलाहिजा फरमा लें तो फिर कोई शिकायत कभी न होगी सायल मुतमैय्यैना हो जावेगा। दोयम हुजूर ने हुक्म मुसलमानों का सफेदी करने का नहीं दिया और जहां ***साबिक में मुसलमानों ने कभी सफेदी नहीं की थी वहां पर पर इस मरतबा सफेदी करते हैं*** *यह अम्र भी मुलाहिजा मौका से साफ हो जावेंगा और चूंकि इसी मुकदमा में तहकीकात मारफत मिर्जा महमूद बेग साहब बहादुर हुई है यस अगर हुजूर,*

मौका मुलाहिजा फरमा लेगें तो सदाकत बयान सायल बखूबी हो जावेगी। फक्त

अर्जी फिदकी रघुबर दास महन्थ
जन्म स्थान वाकै अयोध्या जी
मार्खे 27 जून 1884 ई0

"Copy of the application of Raghubar Das dated 27.06.1884 no. 19435 at Janamsthan Oudh in the Court of Janab Assistant Commissioner Sahab Bahadur Faizabad. Date of Judgment. .22nd January 1884. Syed Mohd. Asghar vs. Raghubar Das before the Court of Deputy Commissioner Bahadur.

Mahant Raghubar Das, Janamsthan situated at Ayodhyaji – plaintiff.

Interpretation of the claim application of the applicant. After considering the objections may kindly be heard.

Gharib Parwar Salamat.

It is prayed that your honour may be pleased to make the spot inspection on any day, then we shall never have any grievance and the applicant will be satisfied. ***Secondly your honour has not allowed Muslims to carry out white wash. They are doing white wash at places where they never have done so.*** *This fact will become clear from the spot inspection. Inquiries in this very case have been carried out by Mirza Mahmood Beg. Therefore, if your honour makes a spot inspection, the truth of the applicant's averments would also be ascertained and as such, it is prayed, that the spot inspection may be made by your honour so that truth may come to surface.*

Yours faithfully Raghubar Das, Qabristan
Janamsthan at Ayodhya. Dated June 27, 84."

2367. **Exhibit A-22 (Suit-1) (Register 7, page**

237)=Exhibit 13 (Suit-4) (Register 10 Page 61)=Exhibit 26 (Suit-5) (Register 23 Page 659) is a copy of the plaint dated 19.01.1885, Mahant Raghubar Das Vs. Secretary of State (Suit 1885) seeking injunction against the defendants from interfering with the construction over Chabutara size 21/17. Its contents are:

باجلاس منصف جج صاحب بہادر

تحریر عرض داعوی نمبری ۶۱/۴۸۰ ۱۸۸۵ء

مقدمہ نمبر ۴۸۰ سن ۱۸۸۵ء

مہنت رگھور داس بنام سکریٹری اسیسٹینٹ فیصلہ ۱۲ دسمبر ۱۸۸۵ء

باجلاس منصف صاحب بہادر

رگوبر داس جنم استھان واقع اجودھا--- مدعی

بنام

جناب سیکریٹری آف اسٹیٹ ہند باجلاس کونسیل---- مدعا علیہ

مدعی مذکور حسب ذیل عرض کرتا ہے

دعوی واسطے اجازت فرمائے جانے تعمیر مندر یعنی ممانعت فرمای جانے مدعاعلیہ کو کہ مدعی کو تعمیر مندر سے اوپر چبوترہ جنم استھان واقع اجودھیا اتر ۱۷ فیٹ پورب ۲۱ فیٹ دچھن ۱۷ فٹ پچھیم، ۲۱ فیٹ نہ روکیں-

مالیت دعوی کا تعین بموجب نرخ بازار نہیں ہو سکتا ہے- اس لے بموجب مد نمبر ۱۷ فقرہ ۶ضمیمہ دوم ایکٹ سن ۷۰ ء کورٹ فیس لگایا گیا و نقشہ منسلک سے کیفیت موقع کے بخوبی معلوم ہو سکتی ہے-

دفہ ۱:- یہ کہ مقام جنم استھان واقع ایودھیا شہرے فیض آباد ایک نہایت قدیم اور متبرک معابد گاہ اہل ہنود کا ہے اور مدعی اس معابد گاہ کا مہنت ہے-

دفہ ۲ :- یہ کہ چبوترہ جنم استھان پورب پچھیم ۲۱ فیٹ اتر دچھن ۱۷ فیٹ ہے اس پر چرن پادوکا گھڑی ہوی ہے اور ایک چھوٹا سا مندر رکھا ہوا ہے کہ جسکی پرستیش ہوتی ہے-

دفہ ۳ :- یہ کہ چبوترہ مذکور قبضہ مدعی ہے اس پر کوی عمارت نہ ہونے سے ہر موسم میں مدعی اور دیگر فقرا کو نہایت تکلیف ہوتی ہے-

گرمی میں تپش سے و برسات میں پانی سے و سردی میں شدید سردی سے و اس چبوترے پر مندر تعمیر ہونے سے کسی طرح کا کوی حرج کسی کا نہیں ہے بلکہ تعمیر مندر سے مدعی و دیگر فقراء و یاتریوں وغیرہ کو ہر طرح کا آرام میلگا۔

دفہ ۴:- یہ کہ جناب ڈپٹی کمیشنر بہادر فیض آباد نے قریب مارچ یا اپریل سن ۸۳ء میں بوجہ اجرداری چند مسلمانان کے تعمیر ہونے مندر کی ممانعیت کی۔ اس پر سایل نے ایک عرضداشت بحضورلوکل گاورنٹ روانہ کی۔ وہ جب کوی جواب نہ عطا ہوا تو مدعی نے نوٹس محکومہ دفہ ۴۲۴ ضابطہ دیوانی بتاریخ ۱۸ اگست سن ۸۴ء بدفتر صاحب سیکریٹری لوکل گاورمنٹ داخل کی لیکن اس کا بھی کوی جواب نہ ملا۔ پس ظہور بنائے دعوی تاریخ ممانعیت سے بمقام ایودھیا اندرحدود سماعت عدالت کہ پیدا ہوی۔

دفہ ۵:- یہ کہ ایک خیرخواہ رعیایا کو اختیار ہے کہ جس طرح کی عمارت چاہے اپنی مقبوجہ و مملوقہ زمین پر تعمیر کرے و گاورمینٹ عادل اور منصف پر فرض ہے کہ رعیایا کی حفاظت کرے اور ان کے حقوق کے ملنے میں مدد دے و واسطے قاءم رہنے امن و امان کےمناسب بندوبست فرماے لیہذا مدعی مستدی فیصلہ کا کہ ڈگری بنانے مندر اوپر چبوترہ جنم استھان واقع ایودھیا اتر ۱۷ فیٹ پورب ۲۱ فیٹ دچھن ۱۷ فیٹ پچھیم ۲۱ فیٹ کہ فرمای جاوے کہ مدعا علیہ ممانعیت و مزاہمت مدعی نسبت بنانے مندر کے نہ کریں و خرچہ مقدمہ ذمے مدعا علیہ عاید فرمایا جاوے۔

میں رگھور داس مہنت جنم استھان اودھ مدعی تصدیق کرتا ہوں کہ مضمون عرضی دعوی ہر پانچ دفات کا بعلم و یقین میرے سب صحیح و درست ہے۔

فدوی مہنت رگھور داس مدعی

مورخہ ۱۹ سن ۱۸۸۵ء

تفصیل گاغذات

رشید ڈاکخانہ بابت نوٹس

''بइजलास मुनसिफ़ साहब बहादुर

महन्त रघुबर दास महन्त स्थान जन्म स्थान वाक़े अयोध्या . . . . मुद्दई

बनाम

जनाब सेक्रेटरी आफ़ स्टेट हिन्द बइजलास कौंसिल . . .मुद्दालैह

मुद्दई मज़कूर हस्ब ज़ैल अर्ज़ है–

दावा इजाजत फ़रमाई जाने तामीर मन्दिर यानी मुमानियत फ़रमाई जाने मुद्दालैह को कि मुद्दई को तामीर मन्दिर से ऊपर चबूतरा जन्म स्थान वाक़े अयोध्या उत्तर 17 फ़िट पूरब 21 फिट दक्षिण 17 फिट पच्छिम 21 फिट न रोकें मालियत दावे का तायुन बमोजिब निर्ख़ बाज़ार नहीं हो सकता है। इसलिये बमोजिब मद नं0 17 फ़िक़रा 6 ज़मीमा दोएम ऐक्ट सन् 70 ई0 कोर्ट फ़ीस लगाया गया व नक़्शा मुनसलिक से कैफ़ियत मौक़ा के बखूबी मालूम हो सकती है।

दफा–1 यह कि मकाम जन्म स्थान वाकै अयोध्या शहेर फ़ैज़ाबाद एक निहायत क़दीम और मुतबर्रिक मुआबिदगाह अहले हुनूद का है और मुद्दई इस मुआबिद गाह का महन्त है।

दफा–2 यह कि ***चबूतरा जन्म स्थान पूरब पच्छिम 21 फुट उत्तर दक्षिण 17 फ़िट है उस पर चरण पादुका गड़ी हुई है और एक छोटा सा मन्दिर रखा हुआ है कि जिसकी परस्तिश होती है।***

दफा– 3 यह कि ***चबूतरा मज़कूर बक़ब्जा मुद्दई है*** *उस पर कोई इमारत न होने से हर मौसम में मुद्दई और दीगर फुक़रा को निहायत तक़लीफ़ होती है। गर्मी में तपिश से व बरसात में पानी से व सरदी में शिद्दते सरदी से व इस चबूतरे पर मन्दिर तामीर होने से किसी तरह का कोई हर्ज किसी का नहीं है बल्कि तामीर मन्दिर से मुद्दई फुकरा व यात्रियों को हर तरह का आराम मिलेगा।*

दफा–4 यह कि जनाब डिप्टी कमिश्नर बहादुर फ़ैजाबाद ने करीब मार्च या अप्रैल सन् 83 ई0 में बवजह उज़्रदारी चन्द मुसलमानान के तामीर होने मन्दिर की मुमानियत की। उस पर सायल ने एक अर्ज़दाश्त बहुजूर लोकल गर्वन्मेंट रवाना की। व जब कोई जवाब न अता हुआ तो मुद्दई ने नोटिस महेकूमा दफ़ा 424 ज़ाब्ता दीवानी बतारीख 18 अगस्त सन् 84 ई0 बदफ़्तर साहेब सेक्रेटरी लोकल गर्वनमेंट दाख़िल की लेकिन उस का भी कोई जवाब न मिला। पस ज़हूर बिनाए दावा तारीख़ मुमानियत से बमुकाम अयोध्या अन्दर हदूद अदालत के पैदा हुई।

दफा–5 यह कि (अपठनीय) एक ख़ैर ख़्वाह रियाया को इख़्तेयार है कि जिस तरह की इमारत चाहे अपनी मुकबूजा व ममलूका ज़मीन पर तामीर करे व

गवर्नमेन्ट आदिल और मुनसिफ़ पर फ़र्ज है कि रियाया की हिफ़ाज़त करे और उन के हुकूक के मिलने में मदद दे व वास्ते कायम रहने अमन व अमान के मुनासिब बन्दोबस्त फ़रमाये लेहाजा मुद्दई मुस्तदई फैसला है कि डिग्री बनाने मन्दिर ऊपर चबूतरा जन्म स्थान वाक़ै अयोध्या उत्तर 17 फिट पूरब 21 फिट दक्षिण–17 फिट पच्छिम 21 फ़िट के फ़रमाई जावे कि मुद्दालैह मुमानियत व मुज़ाहिमत मुद्दई निस्बत बनाने मन्दिर के न करें व ख़र्चा मुक़दमा ज़िम्मे मुद्दालैह आयद किया जावे।

तफ़सील काग़जात

रसीद डाकखाना बाबत नोटिस

फ़िदवी महन्त रघुबर दास मुद्दई

मोर्रख़ा 19 जनवरी सन् 1885 ई0

मैं रघुबर दास महन्त जन्म स्थान अयोध्या मुद्दई तस्दीक़ करता हूँ कि मज़मून अर्जी दावा हर पॉच दफ़ात का बइल्म व यक़ीन मेरे सब सही व दुरूस्त है।

ह0 महन्त रघुबर दास''

(Hindi Transliteration)

"Ba Ijlas Munsif Sahab Bahadur. Mahant Raghubar Das Mahant Janamsthan situated at Ayodhya-Plaintiff vs. Secretary of state India Ba Ijlas Council. . . . . Defendant.

The abovenamed plaintiff begs to submit as under:

Permission for construction of temple over the Chabutra Janamsthan Ayodhya measuring towards north 17 feet, towards east 21 feet, towards south 17 feet and towards west 21 feet may kindly be granted to the plaintiff and the defendants may be restrained from interfering with such work. Thhe valuation of the claim cannot be assessed on market rate. Therefore as per Section no.17, Sub-section (6)Appendix no. 2 of the Act of. 70, court fees has been paid. From the enclosed map, the situation of the place would become clear.

1- That ***the Janamsthan situated at Ayodhya city***

Faizabad is ***an ancient religious and sacred monument of Hindus*** *and the applicant is the Mahant of this religious place.*

2- That the ***Chabutra Janamsthan measures east-west 21 feet, North-south 17 feet, wherein Charan paduka are stalled and a small Mandir is placed there****, which is worshipped by the Hindus.*

3- That the ***Chabutara is in the possession of the plaintiff*** *and there being no building or shed, the petitioner and other Faqirs have to face all the seasons (in the open). In summer, we face sunheat, in rainy season rains and in winter severe cold. There is no harm to anybody if a temple is constructed there, rather by the construction of temple, the petitioner, Faqirs and other travellers would rest there and will get all comfort.*

4- That on the objections of some Muslims the Deputy Commissioner Faizabad, in March or April 83, restrained construction upon which the plaintiff sent an application to the local Government. When no reply was received, the plaintiff filed a notice under section 424 C.P.C. on August 18, 84 in the office of the Secretary, Local Government but this one also met the same fate. As such the cause of the action arose in Ayodhya within the jurisdiction of this Court, on the date injunction order was granted.

5- That a well wisher citizen has a right to construct a building as he likes, on the land under his possession and ownership. It is the responsibility of a just Government to protect rights of the citizens and help them secure their rights so that peace and order may prevail and things

could be managed. Therefore, the plaintiff prays your honour that a decree may be issued in his favour for constructing a Mandir over the Chabutra Janamsthan situated at Ayodhya, North 17 feet, South 17 feet East 21 feet and West 21 feet. The respondent may be restrained from creating any interference in the construction of Mandir. The cost of the case may be imposed on the defendant.

Details of documents.

Receipt from the post office.

Yours Faithfully Mahant Raghubar Das, Mahant Janamsthan Ayodhya-plaintiff, dated January 19, 1885.

I Raghubar Das Mahant Janamsthan Ayodhya-Petitioner, verify that the foregoing paras 1 to 5 are correct to the best of my knowledge and belief.

Sd/- Raghubar Das."

(E.T.C.)

2368. **Exhibit A-24 (Suit-1) (Register 7, page 271-275)** is a copy of the report dated 09.12.1885 submitted by Gopal Sahai Amin a Commission appointed by the Sub-Judge Faizabad in Suit No. 61/280 of 1885. The report says:

عدالت جناب سب جج صاحب بہادر فیض آباد

نقل رپورٹ امین مدخلہ گوپال سہاے کمیشن مورخہ ۹ دسمبر سن ۱۸۸۵ء مشمولہ مثل مقدمہ ۶۱ ـ ۲۸۰ ، ۸۵ء

بمقدمہ مہنت رکھور داس بنام صاحب سیکریٹری آف اسٹیٹ منفصلہ ۲۴ دسمبر ۱۸۸۵ء

عالی جاہ

بتعلیم حکم عدالت موقع متنازع پر واقع اودہ میں جاکر و موجودگی فریقین نقشہ موقع مرطب کیا گیا کہ ہم دشتہ رپورٹ ہذا پیش کرتا ہوں اور مبلیغ ۱ روپیہ ذر فیس کمیشن عطا ہوی مدخلا مدعی مورخہ ۶ د

سمبر سن ۱۸۸۵ء اور پیماءش کرکے زمین چبوترہ متانزع کے بے تحریر ہوا۔

د ستخط گوپال سہاے کمیشن

नकल रिपोर्ट अमीन मदख़ला गोपाल सहाय कमीशन मुवर्रख़ा 9 दिसम्बर सन 1885 मसमूला मिस्ल मुकदमा 61/ 280 सन् 85 ई0

बमुकदमा महंत रघुबर दास बनाम साहब सेक्रेट्री आफ स्टेट

मुनफसिला 24 दिसम्बर, 1885 ई0

आलीजाह

बतामील हुक्म बअदालत मौका मुआनाजा पर वाकै अवध में जाकर बमौजूदगी फरीकैन नक्शा मौका मुरत्तव किया गया कि हमदस्ता रिपोर्ट हाजा पेश करता हूँ और मुवलिग 1 रूपया जर फीस कमीशन अता हुई मदाखला मुद्दई मुवर्रखा 6 दिसम्बर सन् 1885 और पैमाइस करके जमीन चबूतरा मुतनाजा के तहरीर हुआ।

दस्तखत गोपाल सहाय कमीशन''

"In the Court of Sub-Judge, Faizabad.

Copy of the report of Amin filed in Gopal Sahai Commissioner dated December 9, 1885, included in the file of the case 61, 280, 685, Mahant Raghubar Sahai vs. Secretary of State, decided on December, 24, 1885.

Respected Sir,

In compliance of the orders of the Court ***an inspection of the spot was carried out in the presence of the parties and a map was prepared on the basis*** *of which the report is being submitted and a fee of Rs. 1/- deposited on December 6, 1885 and* ***after due measurement this Chabutra was described as disputed****.*

Sd/- Gopal Sahai, Commissioner"

2369. **Exhibit A-25 (Suit-1) (Register 7, page 277-281)** is a copy of the map submitted by Gopal Sahai Amin's Commission on 06.12.1885 in the Court of Sub-Judge, Faizabad regarding the disputed place as it stood at that time showing

Ram Chabutara, Sita Rasoi and Bhandara in the outer courtyard.

(Exhibits A-24 and A-25 are also filed collectively as **Exhibit 15 (Suit 4) Register 10 Page 75**)

2370. **Exhibit A-23 (Suit-1) (Register 7, page 255-269)= Exhibit14 (Suit-4) (Register 10 Page 65)** is a copy of the written statement dated 22.12.1885 filed by Mohd. Asgar in the suit filed by Raghubar Das against the Secretary of State wherein he was allowed to be impleaded as defendant no. 2. It reads:

عرضی دعوی بحضور صاحب سب جج بہادر

من جانب علیہ

رگھوبر داس مہنت نرموہی اکھاڑا واقع اودہ

مدعی

بنام

سرکار بہادر قیصرے ہند و محمد اصغر خطیب متولی جامع مسجد واقع اودہیا

مدعا علیہ

تصریح دعوی تعمیر مندر اوپر چبوترہ اندر احاطہ مسجد بابری

غریب پرور عادل و سلامت

دفہ ۱:- یہ کہ مقدہم بہت صاف محتاج انصاف ہے و اگر چہ بحث دلایل بہت کچھ تردید دعوی مدعی گذارش ہوسکتی ہیں مگر بتقویت عادل مصافت مختصر گزارش کرتا ہوں کہ

اول یہ کہ جب بابر شاہ مالک الملک بادشاہ وقت نے یہ مسجد تعمیر کیا و احاطہ مسجد کے دروازے کے اوپر سنگی پر لفظ اللہ کندا کرنسب کیا و معافی اسکے مصارف کو تحریر فرمای تو بمقابلہ مالک ملک مکانسن تعمیر گاہ بادشاہ وقف کے اندر ملکیت دوسرے شخص کی کہاں باقی رہی پس تا وقت بادشاہ تعمیر کنندہ مسجد نے اپنی مسجد کے احاطے کے اندر یا اسکے قاعم مقام دوسرے بادشاہ نے کوی جز زمین یہ زمین جس پر چبوترہ ہے مورثان مدعی کو نہ دی ہو مدعی مالک اس زمین کا نہیں ہو سکتا ہے- مدعی نے یہ ثبوت اس بلانیت نسبت چبوترہ کوی دستاویزکہ

نہ بادشاہ موصوف یا کسی اور بادشاہ و حاکم وقت پیش نہیں کے پس جبکہ مدعی نے نسبت اس ٹکڑہ زمین کے ملکیت اسپر حاصل نہیں کی تو غیر کے ملکیت میں قانوناً و انصافاً کوی حق اسکو مندر بنانے کا نہیں ہے-

دفہ ۲:- اگر مدعی اندر احاطہ مسجد کے آمدورفت ہوا کہ برعجم باطل ہے اپنی دلیل ملکیت اپنے یا ان پر اہل ہنود کے سمجھتا ہو تو یہ صحیح نہیں ہو سکتا کیونکہ ظاہر ہے کہ اکثر امام باڑہ و مسجد و مقابر عمارت عمدہ مجاہد اہل اسلام میں با ایام تقریبات مخصوص و دیگر ایام میں ہمیشہجوق تا جوق ہنود جاتے ہیں-اور نذروں نیاز چڑھاتے ہیں اہل اسلام کی ممانعت نہیں ہوتی اسی طرح اہل اسلام مجا ہد ہنود میں جاتے و آمدورفت رکھتے ہیں تو کسی مقام پر آمدورفت رکھنے سے یا نذروں نیاز چڑھانےسے وہ مقام انکی ملکیت نہیں ہو جاتا-

دفہ ۳:- ظاہر ہے کہ وقت تعمیر مسجد سے تا ۱۸۵۶ء اس مقام پر چبوترہ نہیں تھا- ۱۸۵۷ء میں بنا اور جب استغاثہ مسلمانان حکم کھودنے چبوترے کا صادر ہوا پس ظاہر ہے کہ بنا اس چبوترے کی ۱۸۵۷ء سے ہوی ہے-

دفہ ۴:- اب لاءق غور فرمانے یہ امر ہے کہ بعد مدت چبوترہ جدید کن اختیارات سے نشیشت برخاست و آمدو رفت ہنود کے اس چبوترے پر رہی ہے- ظاہر ہے کہ نشیشت برخاست مدعی اور اسکے فرقے کے بشرطہ و شرط رہا بقدراس امر کے کہ کوی امر جدید نہ کرنے پاے قایم رکھے گے- پس ۱۸۵۷ء سےھی اختیارات مالیکان مدعی کو حاصل نہ ہوا بلکہ اگر مدعی یا کسی ہندو نے کوی امر جدید اندر احاطہ مسجد کرنا چا ہا اسکی سرکار سے ممانعت کی گی اور ایک فقیر نے بطریق کوٹی چھپر ڈالا تھا وہ مسمار و دفہ کرا دیا گیا تو یہی مقام انصاف ہے کہ جب ۳۶۸ برس سے عموماً ۱۸۵۷ء سے خصوصاً کوی سند اپنی ملکیت کے یا کسی فیل مالیکانا کے جس سے ملکیت مدعی ظاہر ہو حاصل نہ کی تو کوی حق اسکو اندراحاطہ مسجد و عین فرش مسجد پر مندر بنانے کا دعوی نہیں ہو سکتا ہے پس یہ خیال مدعی کہ چبوترہ ہمارا ہےجب کہ چبوترہ ہمارا ہے تو اس پر مندر بنانے کا بھی اختیار ہمکو ہے محض منصفانیت مذہبی غلط فہمی ہوگی ہے کیوں کہ اس چبوترے پر بیٹھنا یا چڑہوا چڑھانے کا

بھی اختیار مالیکانا بلا کسی تعروض کے نہیں ہے-

دفہ ۵:- نقل احکام متعدد جو باوقات مختلف بمقابلہ ہم مدعا علیہ نسبت ممانعت امرجدید وانہدام مکان عین رسوی سیتا جی کہ بہ انہدام کوٹی جو فقیر نے بنای تھی بلحاظ عملدرآمد قدیم وعدم ملکیت مدعی انتظاماً و بنظر کشت وخون مابین اہل اسلام و ہنود جو پشتر ہوا تھا قانون باختیار جاءز خود صغہ مجازسے جاری کے ہیں- وہ واقع متعلقہ اس مقدمے کے اور یہ ثبوت کامل ہمارے بیانات کے ہیں اور انہی احکام سے خصوصاً حکم ۲۳ فروری سن ۱۸۵۷ء مدعی کو ظہور بنائے دعوی پیدا ہوی و حد سماعت عارض دعوی ہذا ہوی اور ان جملہ احکام واجباً منظوری سے عدالت دیوانی بھی چشم پوشی نہیں فرما سکتی- برابر وہ نافظ و جاری ہے مدعی نے انکو منسوخ نہیں کرایا اور بلا دعوی جاری تنسیخ اس مقدہم میں منسوخ نہیں ہو سکتی اور کوی احکام کے خلاف کوی فیصلہ صادر ہونا خلاف قانون ہے کیونکہ منسوخ ان احکام ناطقہ کے بلا دعوای داری کے لازم آتی ہے اس لے امیدوار ہوں کہ بادملاہزہ کاغذات وعذرات سے بہ اختیار دعوی مدعی حقیر سے فرمای جاوے، واجب تھا عرض کیا-

فدوی میر محمد اصغر متولی مسجد بابری، مدعی علیہ مورخہ ۲۲ دسمبر سن ۱۸۸۵ء

معارفت محمد نظیر خاں و مولوی محمد افضل

وکلا مدعاعلیہ-

''अर्ज़ी दावा बहुजूर जनाब सब जज बहादुर

(अपठनीय) मिनजानिब मुद्दाअलैह

रघुबर दास महन्त निरमोही अक्खाड़ा वाक़ै अवध . . . . . .मुद्ददई

बनाम

सरकार बहादुर क़ैसरे हिन्द व मोहम्मद असग़र ख़तीम व मुतवल्ली जामे मस्जिद वाक़ै अवध . . . .मुद्दाअलैय

तसरीह दावा तामीर मन्दिर ऊपर चबूतरा अन्दर अहाता मस्जिद बाबरी ग़रीब परवर आदिल ज़मा सलामत

दफ़ा 1— यह कि मुकदमा बहुत साफ मोहताज इन्साफ है व अगरचे बहस दलायल बहुत कुछ बतरदीद दावा मुददई गुज़ारिश हो सकती है मगर बतकवियत आदिलुल मसाफ़त मुख्तसर गुज़ारिश करता हूँ (1) अव्वल यह कि जब बाबर शाह मालिके मुल्क व बादशाहे वक्फ़ ने यह

मस्जिद तामीर किया व अहाता मस्जिद के दरवाज़े के ऊपर संगी पर लफ़्ज़ अल्लाह कुन्दा कराके नसब किया व माफ़ी उसके मसारिफ को तहरीर फ़रमायी तो बमुक़ाबिला मालिके मुल्क मकॉ तामीर गाह बादशाह वक़्त के अन्दर मिलकियत दूसरे शख़्स की कहां बाक़ी रही पस तावकक्तेके बादशाह तामीर कुनिन्दा मस्जिद ने अपने मस्जिद के अहाते के अन्दर या उसक क़ायम मुक़ाम दूसरे बादशााह ने कोई जुज ज़मीन यह ज़मीन जिस पर चबूतरा है मूरिसान मुद्दई को न दी हो मुद्दई मालिक उस ज़मीन का नहीं हो सकता है। मुद्दई ने यह सबूत इस मिलकियत निस्बत चबूतरा कोई दस्तावेज कि न बादशाह मौसूफ़ या किसी और बादशाह व हाकिमे वक़्त पेश नहीं किये पस जब कि मुद्दई ने निस्बत इस टुकड़ा ज़मीन के मिलकियत उस पर हासिल नहीं की तो गैर की मिलकियत में कानून व इनसाफ़न कोई हक़ उसको मन्दिर बनाने का नहीं है।

दफ़ा– 2 अगर मुद्दई अन्दर अहाता मस्जिद के आमदरफ़त हुआ कि अज्म व बातिल है अपने दलील मिलकियत अपने या उन पर अहले हुनूद के समझता हो तो यह सही नहीं हो सकता क्योंकि ज़ाहिर है कि अक्सर इमाम बाड़ा व मस्जिद व मुकाबिर इमारात उम्दा मुजाहिदे अहले इस्लाम में बअय्यामे तक़रीबात मख़सूस व दीग़र अय्याम में हमेशा जौंक ता जौंक हुनूद जाते हैं और नज़री नियाज़ चढ़ाते हैं। अहले इसलाम की मुमानियत नहीं होती इसी तरह अहले इसलाम मआविद हुनूद में जाते व आमदरफ़त रखते हैं तो किसी मुक़ाम पर आमदरफ़त रखने से या नज़रों नियचाज़ चढ़ाने से वह मुक़ाम उनकी मिलकियत नहीं हो जाता।

*दफ़ा 3– **ज़ाहिर है कि वक़्त तामीर मस्जिद से ता 1856 ई0 इस मुक़ाम पर चबूतरा नहीं था। 1857 ई0 में बना** और जब इस्तिग़ासा मुसलमानान हुकुम खोदने चबूतरे का सादर हुआ पस ज़ाहिर है कि बिना इस चबूतरे की 1857 ई0 से हुई है।*

दफ़ा 4– अब लायक ग़ौर फ़रमाने यह अमर है कि बाद (अपठनीय) चबूतरा जदीद किन अख़तियारात से नशिस्त बरख़ास्त व आमदरफ़्त हनूद के इस चबूतरे पर रही हैं जाहिर हैं कि नशिस्त बर्खास्त मुद्दई और उसके फ़िरके के बशर्तहा व शुरूतहा बकद्र इस अम्र के है कोई अम्र जदीद न करने पावे कायम रखे गये। पस 1857 ई0 से भी अख़्तियारात मालिकाना मुद्दई को हासिल न हुआ बल्कि अगर मुद्दई या किसी हिन्दू ने कोई अमर जदीद अन्दर अहाता मस्जिद करना चाहा उसकी सरकार से

मुमानियत की गई और एक फ़क़ीर ने बतरीक़ कुटी छप्पर डाला था वह मिसमार व दफ़ा करा दिया गया तो यही मुक़ाम इन्साफ है कि जब 368 वर्ष से उमूमन 1857 ई0 से खुसूसन कोई सनद अपने मिलकियत के या किसी फ़ेल मालिकाना के जिससे मिलकियत मद्दई ज़ाहिर हो हासिल न की तो कोई हक़ उसको अन्दर अहाता मस्जिद व ऐन फ़र्श मस्जिद पर मन्दिर बनाने का दावा नहीं हो सकता है पस यह ख़्याल मुद्दई कि चबूतरा हमारा है, और जब कि चबूतरा हमारा है तो उस पर मन्दिर बनाने का भी अख़तियार हमको है महज़ बनफ़ूसानियत मज़हबी ग़लत फहमी मुद्दई की है क्योंकि उस चबूतरे पर बैठना या चढ़ावा चढ़ाने का भी अख़तियार मालिकाना बिना किसी तारूज के नहीं है।

दफ़ा 5– नुकूल एहकाम मुतादिद जो बअवकात मुख़तलिफ़ बमुक़ाबिला हम मुद्दाअलैह निस्बत मुमानियत अमरे जदीद बइनहिदाम मकान ऐन रसोई सीता जी के बइनहिदाम कुटी जो फ़क़ीर ने बनायी थी बलिहाज़ अमलदरामद क़दीमें व अदम मिलकियत मुद्दई इन्तिज़ामन व बनज़र कुश्त खून माबैन अहले इस्लाम व हुनूद जो पेश्तर हुआ था क़ानून बअख़्तियार जायज खुद सीग़ा मजाज़ से जारी किये हैं। वह वाक़ै मतालिका इस मुक़दमें के और यह सुबूत कामिल हमारे बयानात के हैं और उन्हीं एहकाम से खुसूसन हुकुम 23 फरवरी, सन् 1857 ई0 मुद्दई को ज़हूर बिनाये दावा पैदा हुई व हद समाअत आरिज दावा हाज़ा हुई और उन जुमला एहकाम बाजाब्ता के मन्जूरी से अदालते दीवानी भी चश्मों पोशी नहीं फ़रमा सकती। बराबर वह नाफ़िज व जारी है मुद्दई ने उनको मन्सूख़ नहीं कराया और बिला दावा जारी तनसीख़ इस मुकदमा में मन्सूख़ नहीं हो सकते और उन एहकाम के ख़िलाफ़ कोई फ़ैसला सादिर होना खिलाफ कानून है क्योंकि मन्सूखी उन एहकाम नातिका के बिला दारी तनसीख़ लाजिम आती है इसलिये उम्मीदवार हूँ कि बाद मुलाहिजा काग़ज़ात व उज़रात बएखराज दावा मुद्दई हक़ीर से फ़रमाई जावे, वाजिब था अर्ज़ किया।

फ़िदवी मीर मोहम्मद असग़र मुतवल्ली मस्जिद बाबरी, मुद्दाअलैह मोर्रिख 22 दिसम्बर, रसन् 1885 ई0 मारफ़त मोहम्मद नज़ीर खं व मौलवी मोहम्मद अफ़जल वुकला मुद्दाअलैह''

(Hindi Transliteration)

" Application before the Sub-Judge Bahadur filed by the opposite party.

Raghubar Das Mahant Nirmohi Akhara situated at Oudh-Plaintiff vs. Sarkar Bahadur Qaisere Hind and Mohd. Asghar Khatib and Mutawalli Jama Masjid situated at Oudh. . . . . Defendant.

Suit for the construction of a Mandir over the Chabutra in the compound of the Masjid Babri. Gharib Parwar, Adiley Zamam Salamat.

1- That the case is very clear and needs justice. Though the arguments and objections of the plaintiff could be detailed here but with the fear of the lengthy process, the plaintiff submits in brief as under:

(i) When the Babar Shah Maalike Mulk and the king, constructed this mosque and got engraved Allah on the Sangi of the door of the Ahata Masjid and granted ***Maafi*** *for the expenses, nobody else can claim the right of construction over there. Therefore until the king who has constructed the Masjid, allows to carry out construction within the compound of the Masjid or any successor of the King gives permission with respect to any part of the land of Masjid for construction or has given any part of the land to successors of the plaintiff, he could not become the owner of the land. The plaintiff has not submitted any documentary evidence regarding the ownership of the Chabutra. Neither the said Badshah nor any of the successors, or any other designated officer has given its ownership rights and as such in the eyes of law and justice he has no right to construct a Mandir over the said piece of land.*

2- If the plaintiff thinks, he or the Hindus have any ownership right over it, the same is not correct, because it

is clear that ***sometimes in Imambaras, Masjids and tombs and in other monuments, Muslims organize different congregations on different occasions. During other days Hindus also offer Nazr-o-Niaz. The Muslims do not stop their entry into the building. Similarly Muslims go into the religious buildings of Hindus also. Therefore, going of a person into and out of any building for offering Nazr-o-Niyaz does not make him owner or confers proprietory right of that place****.*

3- It is also clear that from the time of the construction of the Masjid ***till 1856, there was no Chabutra at this place. This was constructed in 1857 and on application of the Muslims the order of digging out the Chabutra was passed. Therefore, it is clear that the Chabutra was constructed in 1857****.*

4- ***Now it deserves a tension as to how a new Chabutra has been constructed for the meeting of Hindus.*** *Their entry was subject to condition that nothing new would be done. As such since 1857 the petitioner has no ownership rights, instead if the plaintiff or any other Hindu tried to carry out any new activity, the Government restrained them. One Faqir made a thatched hut (chhappar) as Kuti which was demolished and he was ousted from that place. This requires justice inasmuch as for 368 years generally and from 1857, in particular, the plaintiff could not produce any document to show his ownership. He can never have any right to construct any temple on the floor of the Masjid. The claim of the plaintiff that the Chabutra is theirs and thereby acquired right to construct any temple, it is a mere misunderstanding*

because the plaintiff has no ownership right or liberty to use the Chabutra or offer gift (Charhawa) over the Chabutra.

5- Copies of various orders passed at different times restraining the plaintiff from carrying out construction activities and ***orders for demolition of the house and Rasoi of Sita Ji and the Kuti which the Faqir has made, as per record are not the property of plaintiff. It would cause violence between Muslims and Hindus, which had taken place earlier. Orders have been issued under the authority of the Government.*** *They are all related to this suit and are proof of our claim. The same orders, particularly the* ***order dated February 23, 1857 gave rise to cause of action as such limitation for hearing has expired.*** *Therefore the Civil Court could not overlook these facts. Therefore, the orders are in force. The petitioner did not get them cancelled. They could not be set aside without proper judicial verdict. Any such decision in contravention of the aforesaid order would be illegal and unlawful, as the same are self speaking and have not yet been set aside. Therefore, it is requested that after perusal of the documents and objections the claim of the obedient applicant objector may kindly be considered sympathetically. Deemed necessary so requested.*

Yours faithfully Mir Mohd. Asghar, Mutawalli Masjid Babri, respondent. Dated December 22, 1885 through Mohd. Nazir Khan and Maulvi Mohd. Afzal, counsel for the respondents.

2371. There are three judgments i.e. of the trial Court, first appellate and second appellate Court in Suit 1885:

(a) **Exhibit A-26 (Suit-1) (Register 7, page 283-317)=Exhibit16 (Suit-4) Register 10 Page 79)** is a copy of the judgment dated 24.12.1885 of Sub-Judge Faizabad in Suit No. 61/280 of 1885, Mahant Raghubar Das Vs. Secretary of State and another.

(b) **Exhibit A-27 (Suit-1) (Register 7, page 319-323)=Exhibit 17 (Suit-4) Register 10 Page 87)** is a copy of the judgment dated 18/26 March 1886 of the District Judge, Faizabad in Civil Appeal No. 27 of 1885, Mahant Raghubar Das Vs. Secretary of State for India of another.

(c) **Exhibit A-28 (Suit-1) (Register 7, page 325-329)=Exhibit 18 (Suit-4) Register 10 Page 93)** is a copy of the decree dated 18/26 March 1886 in Civil Appeal No. 27/1887, Mahant Raghubar Das Vs. Secretary of State and another. In the said decree the order passed in appeal is as under:

> *"This appeal bring on for hearing on the 18th day of March 1886 before Collector, F.E.A. Chamier, District Judge in the presence of B. Kuccumul vakil for the appellant and P. Bishambhar Nath, Government Pleader .....(sic).....vakil for the respondents it is ordered that the appeal be dismissed with* ***the remarks of the Sub-Judge quoted in the judgement of this Court declaring the right of property to rest in plaintiffs be cancelled and the cost of this appeal amounting to Rs. 72/5/- as noted below*** *are to be paid by plaintiff accepting 16/- Mahomad Asghar's pleader's fees. The cost of the original suit are to be paid by the plaintiff with above exception .....given under the hand and*

seal of the Court this 18/26 day of March 1886."

We have already dealt with these three documents in detail while discussing the issues relating to res judicata, estoppel etc.

2372. Exhibit 49 (Suit-4) (Register Vol. 11, page 271 to 329) is a copy of the nakal khasra Abadi, Kot Ram Chandra, pergana Haveli Awadh, Tahasil and District Faizabad of 1931 A.D. of nazul register. At page 311, the Hindi transliteration of the aforesaid Exhibit, original whereof is in Urdu, the entry of Nazul plot 583 is as under:

(Name of building) (1) : Masjid Ahad-e-Shahi
Number Aarazi (2/1) : 583
Raqba Aarazi (Area of Plot) (2/2): 305/9 B. 15 Biswansi 4 Kach.
Number Sabiq (Old) (3/1): Abadi 444
Raqba Sabiq (Area old) 3/2): 7 B. 11 Biswansi 14 Kach.
Name Malik Aarazi (Owner) (4) : Masjid Waqf Ahde Shahi
Name Matahaddar (Subordinate), if any (5):
Name Kabiz Haal (Presently occupied by) (6) : Masjid
Kism (Nature) (7) : -
(9) Raqba (Area) : 9 B. 15 Biswansi 4 Kachh.
(1) Baadaye Lagan (2) Bila Lagan (Without Rent)
Kandhal (10) Bajariye Missil Numbari 427 No. 6/47
Dastandazi (11) Raiganj, Munfasla 26 February San 41
(12) Indraz Raghunath Das Janambhumi Ke
Raqba (13) Mahant Mukarrar Kiye Gaye, Ke Bajaye
Lagan (14) Mahant Ram Sharan Das."
Khet numbari (15) No. of plot
Kaifiyat (Details) (16) Masjid Pokhta Waqf Ahde Shahi andar Sahan Masjid Ek Chabutara Jo

Janambhumi Ke naam Se Mashhoor Hai, Darakhtan Goolar Ek Imli Ek Mulsiri Ek, Pipal Ek, Bel Ek..Masjid Mausma Shah Babur Shar Marhoom.

14.6.41

(Note : Though the original document is horizontal, but for the purpose of convenience, it has been typed vertically.)

On page 331, Nazul khasra map's copy has also been filed, which is part of the Exhibit 49.

2373. **Exhibit A-49 (Suit-1) (Register Vol. 8, page 477)** is a copy of order dated 12th May 1934 showing that Muslims were permitted to start the work of cleaning and repairs of the disputed building from 14th May 1934 onwards. It reads as under:

"The Mohammadans have been permitted to start the work of cleaning of the Babri mosque from Monday 14th May. I have also asked them to get estimates needed for the repair of the mosque. For the purpose their contracting I would be allowed access to the mosque when necessary.

Once the mosque is cleaned up, it will be possible to use it for religious services. *This can be allowed but processions & demonstrations should not be allowed.*

The guard should be returned on it.

S.P. to be informed."

2374. Exhibit A-51 (Suit-1) (Register Vol. 8, page 483) is an application dated 25.2.1935 submitted by the contractor concerned complaining about non-payment of his claim despite repair work having been performed. It says:

غریب پردرسلامت جناب عالی

گذارش ہے کہ تابیدار کو بابری مسجد کا ٹھیکہ دیا گیا تھا اسکا کام عرصہ ہوا تیار کر دیا اسمیں کچھ سو دو سو روپیہ کا کام باقی رہ گیا

ہے بغیر روپیہ کے تابیدار کوبہت سخت تکلیف ہے یہ جو سو دو سو روپیہ کا کام باقی ہے اسکو مکمل کرنے سے مجبور ہے اور کوی دوسرا کاروبار بھی بغیر روپیہ کے نہیں چلتا جس سے کہ اپنی ونیز بچوں کی تکلیف دور کریں- اسکےعلاوہ جسوقت کام کرنے کے لۓ حکم دیا گیا تھا اسوقت ساتھ ہی یہ حکم ہوا تھا جیسے جیسے روپیہ وصول ہوگا ویسے ہی روپیہ تمکو دیا جاوےگا معلوم ہوا کہ وصولیابی عرصہ سے ہورہی ہے اور کافی روپیہ وصول ہوچکا عرصہ ہوا زبانی حضور سے تکلیف بیان کیا تھا اس درمیان تابیدار کی طبعت اچھی نہیں تھی اسوجہ سے حضور سے دوبارہ اپنی مصیبت بیان نہ کر سکا- دویم مکانات جوکی بوجہ بلوہ کے جل گۓتھے جسکو تعمیر کرنے کے لۓ تابیدار کو حکم دیا گیا تھا جسمیں سے ۱۳ مکان کی کھپریل وغیرہ قبل بارش کے درست کر دیا- کچھ دروازہ وغیرہ کا کام باقی رہ گیا ہے جسمیں کہ کچھ درختان اور جھاڑوغیرہ بحکم جناب ڈپٹی کمشنر صاحب فیض آباد ذریعہ نزول ناءب تحصیلدار صاحب بہادر فیض آباد کے تابعدارکو عطا ہوا تھا اور یہ کہا گیا تھا کہ جب تمکو روپیہ ملے گا اسوقت تمہارے بل سے اسکی قیمت لیا جاوئیگا علاوہ جو مکان نامکمل ابھی پڑے ہیں اسکے مطابق بھی سامان اکٹھا کر رکھا ہے مگر بدرجہ مجبوری روپیہ نہ ہونے کے وجہ سے بیٹھہ رہا- لہذا ذریعہ درخواست ہاذا گذاران کر امیدوار ہوں کہ تابعدار کی اس مصیبت پر حضور خیال کر کے روپیہ دینے کا حکم صادر فرماویں گے-

واجب جانکر عرض کیا آندہ مالک حضور

تفصیل جو مکانات بنائے گے ہیں مسمات(۱) مقصوداً (۲)حبیب اللہ (۳) حاجی نور محمد (۴) خیرات حسین محلہ مگل پورا (۵) شہادت علی (۶) رحمت علی محلہ بیگم پورا (۷) عابد علی (۸) امین اللہ (۹) افضال اللہ (۱۰) محمد کریم محلہ سوٹ ہٹی (۱۱) مولا بخش (۱۲) محمد بخش محلہ قاضیانہ (۱۳) ظہور علی -

عرضی فدوی تہور خاں ٹھکیدار ساکن لال باغ فیض آباد

- ۲۵فروری سن ۳۵ء

''गरीब परवर सलामत, जनाब आली,

गुजारिश है कि ताबेदार को बाबरी मस्जिद का ठेका दिया गया था

इसका काम अरसा हुआ तैयार कर दिया इसमें कुल सौ दो सौ रुपये का काम बाकी रह गया है और रुपये के ताबेदार को बहुत ही सख्त तकलीफ है कि यह जो सौ दो सौ रुपये का काम बाकी है इसको मुकम्मल करने से मजबूर है और कोई दूसरा कारोबार भी बगैर रुपये के नहीं चलता जिससे कभी अपनी व नीज बच्चों की तकलीफ दूर करें इसके अलावा जिस वक्त काम करने के लिये हुक्म दिया गया था उस वक्त साथ ही यह हुक्म हुआ था कि जैसे जैसे रुपया वसूल होगा वैसे ही रुपया हमको दिया जावेगा मालूम हुआ कि वसूलयाबी अरसे से हो रही है और काफी रुपया वसूल हो चुका अरसा हुआ जबानी हुजूर से तकलीफ बयान किया था इस दरमियान ताबेदार की तबियत अच्छी नहीं थी इस वजह से हुजूर से दोबारा अपनी मुशीबत बयान नहीं कर सका। दोयम मकानात जो कि बवजह बलवे के जल गये थे जिसको तामीर करने के लिये ताबेदार को हुक्म दिया गया था जिसमें से 13 मकान की खपरैल वगैरह कव्ल वारिस के दुरुस्त कर दिया कुछ दरवाजे वगैरह का काम बाकी रह गया है जिसमें कुछ दरख्तान और झाड़ वगैरह बहुकुम जनाब डिप्टी कमिश्नर साहब बहादुर फैजाबाद के जरिये नजूल नायब तहसीलदार साहब बहादुर फैजाबाद के ताबेदार को अता हुआ था और यह कहा गया था कि जब तुमको रुपया मिलेगा उस वक्त तुम्हारे बिल से उसका कीमत दिया जावेगा अलावा जो मकान नाममुकम्मल अभी पढ़े हैं उसके मुतालिक भी सामान इकट्ठा कर रखा है मगर ब वजह मजबूरी रुपयान होने की वजह से बैइ रहा लिहाजा जरिये दरख्वास्त हाजा गुमरान कर उम्मीदवार हूँ कि ताबेदार की इस मुशीबत पर हुजूर खयाल कर के रुपया देने का हुक्म सादिर फरमायेगें वाजिब जान कर अर्ज किया आहन्दा मालिक हुजूर।

तफसील जो मकानात बनाये गये हैं मुसम्मात मकसूदन, हबीबुल्ला (2) 3. हाजी नूर मुहम्मद 4. खेरात हुसेन मुहल्ला मुगलपुरा 5. सहादत अली 6. रहमत अली मुहल्ला बेगम पुरा 7. आबिद अली 8. अमीन उल्ला 9. अफजाल उल्ला 10. मुहम्मद करीम मुहल्ला सौटहटी 11. मौला बक्स 12. मुहम्मद बख्श मुहल्ला कजियाना 13. जहूर मियां।

अर्जी फिदवी तहव्वर खां ठेकेदार साकिन लालबाग फैजाबाद दस्तखत

तहव्वर खॉ

25.2.35''

Most Respected Sir,

I beg to say that ***I was granted*** *contract* ***of Babri Masjid****. The work has already been completed about a year before, barring certain small piece of work for a value of Rs. 100/- or 200/-. The applicant is in dire need of money and only little work to the extent of Rs. 200/- is remaining, which I cannot carry out. The applicant has no other business. Kindly provide relief to me and my family. Besides, at the time of contract, it was agreed upon that part payments will be made according to Vasoolyabi. I have come to know that the enough revenue has been collected. I have already told orally to you that I was in trouble and needed money. During this time the applicant was not feeling well, so, he could not convey his grievance again.* ***Secondly, the applicant was required to construct the houses which were burnt during the riot,*** *out of which 13 houses of Khaprail have been repaired before the rains commenced. A small piece of work in relation to doors etc is remaining. Further under the orders of the Deputy Commissioner Faizabad through Tehsildar (Nuzul) Faizabad, certain trees and shrubs were allotted to the applicant with the assurance that whenever the applicant gets money the price of the aforesaid would be deducted from the bill. The applicant has already collected material for repairs of the remaining houses. But due to paucity of of required money the applicant remained idle. So, I would request you to kindly consider my grief sympathetically and provide money to me and for this purpose. kindly issue necessary orders. Deemed necessary, so prayed.*

Malik Hujoor.

Details of the lhouses constructed : (1) Mst. Maqsudan, (2)

Habibullah, (3) Haji Noor Mohammad (4) Khairat Hussain, Mohalla Mughalpura, (5) Sahadat Ali 6. Rahmat Ali, Mohalla Begumpura (7) Abid Ali (8) Aminullah (9) Afzalullah (10) Mohd. Karim Mohalla Sothati (11) Maula Bux (12) Mohd. Bux Mohalla Kaziana (13) Zahoor Miyan.

Applicant Tahavvar Khan Contractor, r/o Lal Bagh Faizabad

25.2.35."

2375. **Exhibit A-50 (Suit-1) (Register Vol. 8, page 479)** is a letter of Tahawar Khan Thekedar regarding repair work in the disputed structure and says:

نقل درخواست تہور خاں ٹھیکہدارمورخہ ۱۶ اپریل ۱۹۳۵ء مشمولہ
مثل بابری مسجد اجودھیا، فیض آباد
بحضور جناب حاکم تحصیل صاحب بہادر فیض آباد دام اقبالہ
غریب پردرسلامت
گزارش ہے بابری مسجد کے بل دینے میں دیری ابھی سے ہوئ کہ کلسہ دوم کا بنارس میں تیار ہو رہا ہے ابھی تک آیا نہیں مگر اب بل بحکم حضور فوراً داخل کر رہا ہوں پتھرسنگ مرمر بھی جسمیں اللہ لکھا جاویگا مکمل نہیں کیا یہ دونوں کام جو کہ اندر ایک ہفتہ میں ہو جاوئیگا مکانات کے بل کچھ اس ہفتہ کے اندر داخل کر دونگا جو کچھ کام باقی تھا وہ ہو رہے واجباً غرض ہے-
فدوی تہور خاں ٹھیکہدارے ساکن لال باغ، فیض آباد
تہور خاں ۱۶-۴-۳۵

''नकल दरख्वास्त तहव्वर खॉ ठेकेदार मोरखा 16 अप्रैल, सन् 1935 ई0 मशमूला मिसल बाबरी मस्जिद अयोध्या, फैजाबाद

बहूजूर जनाब हाकिम तहसील साहब बहादुर फैजाबाद दामेएकबालहू

गरीब परवर सलामत

जनाबे आली गुजारिश है कि बाबरी मस्जिद के बिल देने में देर इस वजह से हुई है कि कलसा डोम का बनारस में तैयार हो रहा है। अभी तक आया नहीं मगर अब बिल बहुकुम हूजूर फौरन दाखिल कर रहा हूँ। पत्थर संगमरमर भी जिसमें अल्ला लिखा जायेगा मुकम्मल नहीं किया यह दोनों

काम जो कि अन्दर एक हफ्ते में हो जायेगा मकानात के बिल कुद इस हफ्ते के अन्दर दाखिल कर दूंगा। जो कुद काम बाकी था हो रहा है। वाजिवन अर्ज है।

अर्जी फिदवरी तहव्वर खां ठेकेदार साकिन लालबाग, फैजाबाद

ह0 तहव्वर खां

16.4.35''

"Copy of the application of Tahawar Khan Thekedar dated 16.4.1935 included in the file of Babri Masjid, Ayodhya, Faizabad.

To the Tehsildar Saheb Bahadur, Faizabad

Gharib Parwar Salamat.

I beg to say that delay in submitting the bill for Babri Masjid occurred ***because Kalsa (pitcher) of the Dome is being prepared in Banaras and has not yet been received.*** *But under your orders I am submitting the same now.* ***The piece of marble stone on which "Allah" will be engraved, has not yet been got ready****. I hope both the said jobs would be done within a week. The bills in respect of houses will be submitted within this week. The remaining work is in progress. Yours sincerely, Tahauwar Khan Thekedar resident of Faizabad 16-04-35." (ETC)*

2376. **Exhibit A-53 (Suit-1) (Register Vol. 8, page 493)** is a copy of the application of Tahavvar Khan, Contractor, dated 2nd January 1936 for early payment of his dues in respect of repairs of Babri mosque filed before the Tehsildar and reads as under:

حضور جناب کے محسن صاحب صدر فیض آباد

غریب پرور سلامت

جناب عالی گزارش ہے کہ مکامات جوکی اجودھیا بلوہ میں جل گءے تھے مکمل کے ہوےکافی عرصہ ہوا اور تابیدار کو ابھی تک روپیہ نہیں ملا اور دریافت سے معلوم ہوا کہ اسٹمٹ مکامات غایب ہوگیا

اسوجہ سے جناب امیر صاحب پی- ڈبلو-ڈی- بابری مسجد کا بل چیک کر کے دوبارہ مثل کو واپس کر دیا مکامات کا بل بغیر اسٹیمٹ کے رہ گیا- عالیجاہ اس اسٹیمٹ کو جناب نایب تحصیل دارنزول ریٹ پی- ڈبلو-ڈی- سے چیک کراکے دوبارہ تابیدار سے اسٹیمٹ لیاگیاجسکی اردو کاپی میرے پاس موجود ہے اگر حکم ہو تابیدار اسکوکاپی پیش کر سکتا ہےمہربانی کر کے میرے مکانوں کا بل جناب انجینیر صاحب کے پاس روانہ کر دیا جاے تاکہ بل چیک ہو جاوے تابیدار کو مل جاوے کیونکہ روپیہ کی سخت ضورت ہے-

واجباً عرض ہے-

عرضی

فدوی تہور خان ٹھیکیدار ساکن لال باغ فیض آباد

۲-۱-۳۶-

''गरीब परवर सलामत जनाबे आली गुजारिश है कि मकानात अयोध्या जो कि बलवे में जल गये थे। जिसको ताबेदार को मुकम्मल किये हुये बहुत अरसा हुआ और ताबेदार को रुपया अभी तक नहीं मिला और दरयाफ्त से मालूम हुआ कि स्टीमेट मकानात का गायब हो गया इस वजह से जनाब इन्जीनियर पी0डब्लू0डी0 बाबरी मस्जिद का बिल चेक करके मिस्ल को वापस कर दिया। मकानात का बिल बगैर स्टीमेट के रह गया आली जाहा इस स्टीमेट को जनाब नायब तहसीलदार साहेब नजूल रेट पी0डब्लू0डी0 से चेक कराके दोबारा ताबेदार से स्टीमेट लिया गया। जिसकी उर्दू कापी मेरे पास मौजूद है अगर हुकुम हो ताबेदार इसको या इसकी कापी पेश कर सकता है मेहरबानी करके मेरा मकानों का बिल जनाब इंजीनियर साहेब के पास रवाना कर दिया जावे ताकि बिल चेक हो जाये ताबेदार को रुपया मिल जाए क्योंकि रुपये की सख्त जरूरत है बाजिबन अर्ज है।

अर्जी

फिदवी तहव्वर खां ठेकेदार साकिन लालबाग फैजाबाद।

2.1.36 *ह0 तहव्वर खां।*

"Garib Parvar Salamat,

Janabe Ali, Respectfully it is submitted that certain houses in Ayodhya were burnt in the riots, which were constructed by the contractor long back but the contractor could not

get the money so far. The query in this behalf revealed that estimate concerning those houses had been lost somewhere and due to which the Engineer of PWD after perusing the bill returned the file. The payment of bill could not be made in absence of estimate. Respected Tehsildar Saheb, Estimate of Nazul rate was obtained from the contractor again, Urdu copy whereof is available with the applicant. If ordered, the applicant can produce the same or copy of the said, My bills in respect of houses may very kindly be sent to Engineer Saheb so that the bills may be checked and contractor may get money because he is in dire need of money.

Applicant Tahavvar Khan, Contractor, R/o Lal Bagh

2.1.36."

2377. **Exhibit A-46 (Suit-1) (Register Vol. 8, page 469)** is a copy of report of Mubarak Ali, Bill Clerk dated 27th January 1936 which reads as under:

"The bill of the contractor regarding the construction of the mosque is herewith put up as ordered. As regards the bill for the burnt houses, the estimates of which have been lost, has recently been sent to the Nazul Naib Tahsildar under the orders of D.C. for checking the work done by the contractor on the spot."

2378. **Exhibit A-52 (Suit-1) (Register Vol. 8, page 489)** is another copy of the complaint made by Tahavvar Khan, contractor on 30th April 1936 to the Deputy Commissioner, Faizabad, complaining about certain claims disallowed by the PWD authorities and reads as under:

غریب پرور سلامت

گزارش ہے کہ سایل کا بل بابت مرمت مکانات واقع اجودھیا مبلغ ۳۶۰۴

روپیہ ۹ آنا کا تھا جسمیں سےسایل کو صرف 3287 روپیہ ۱ آنا ۶ پای دیاگیا ہے کمی کی جہیہ معلوم ہوتی ہےجانب نزول نایب تحصیلدار صاحب فیض آباد نے دوران خاطر کام مرمت یہ تجویزکر دیا کہ دو،تین دوروازے کی ڈیڑہ انچ ،دروازوں کی قیمت مالیتی ۲۳ روپیہ ۱۲ آنا، ۱۶ روپیہ ۱۱ آنہ ۳ پای کے مبلغ ۱۶، ۱۱ روپیہ کر دی جاے اور کھڑکیوں کی قیمت بجاے مبلغ ۷ روپیہ کےمبلغ ۴ روپیہ کر دی جاے - عالی جاہ بوقت جانچ اسٹیمٹنٹ ۳ دروازوں کی مو ٹای ڈیڑہ انچ اور کہڑکیوں کی قیمت کم کرکے مجھ کو پی ڈبلو ڈی نے ۲۳ روپیہ ۱۲ آنہ ۱۶ روپیہ ۱۱ آنہ ۳ پاءی ۷ روپیہ منظور کی تھی اور اسی کے مطابق سایل نے دروازے اور کھڑکیاں سالوں پہلے لگا یا تھا اور جانچ کے وقت آفیسر انچارج جانچ کنندہ کو وہ نی حالت میں ہی ملی- غالباً اس وجہ سے یہ کمی تجویز کی گی ہے- حالانکہ نےدروازہ اور کھڑکیاں تجویز شدہ رقم میں ہر گز تیار نہیں ہو سکتی ہیں- بجو بات بالا ساءل امیدوار ہے کہ ۳ ڈور دروازہ سوا انچ اور کھڑکیوں کے ریٹ کی جانچ پی ڈبلو ڈی سے دوبارہ کرالی جاے اور ساءل کا بقیہ روپیہ مرہمت فرمایا جاے- سایل کا بل بابت مسجد بابری ۷۲۲۹ روپیہ کا تھا جسمیں سے ساءل کو ۶۸۲۵ روپیہ ۱۲ آنہ دیا گیا ہے یعنی ۴۰۳ روپیہ ۴ آنا کم برامد کیا گیا - حالانکہ اسٹیمیٹ جو منظور ہوا تھا وہ ۷۲۲۹ روپیہ کا تھا اور سایل نے اسٹیمیٹ سے کم بل دیا تھا لہذا ساءل کو سمجھایا جاے کہ کون کون سی رقم ساءل کی نہیں برامد کی گی جس میں حضور سے سایل اس کے متعلق عرض کر سکے -

فدوی تہور خاں ٹھیکیدار مورخہ ۳۰ اپریل ۳۶ء

''गरीब परपर सलामत,

गुजारिश है कि सायल का बिल बाबत मरम्मत मकानात वाके अयोध्या मुबलिग 3604 रुपया 9 आना का था जिसमें से सायल को सिर्फ 3287 रुपया 1 आना 6 पाई दिया गया है। कमी की वजह यह मालूम होती है कि जनाब नजूल नायब तहसीलदार साहब फैजाबाद ने दौरान खातिर काम मरम्मत यह तजबीज कर दिया कि दो तीन दरवाजे की मोटाई डेढ़ इंच दरवाजों की कीमत मालियती 23 रुपया 12 आना, 16 रुपया 11 आना 3 पाई के मुबलिग 16 रुपया, 11 रुपया कर दी जाय और खिड़कियों की कीमत बजाय मुबलिग 7 रुपये के मुबलिग 4 रुपये कर दी जाय आलीजहा

बरवक्त जांच स्टेटमेंट 3 दरवाजों की मोटाई डेढ़ इंच और खिड़कियों की कीमत कम कर के मुझको पी0डब्लू0डी0 ने 23 रुपया 12 आना, 16 रुपया 11 आना 3 पाई, 7 रुपया मन्जूर की थी और इसी के मुताल्लिक सायल ने दरवाजा व खिड़किां सालो पहले लगाया था और जांच केवल आफिसर इंचार्ज कुन्निदा को वह नई हालत में नही मिली गालबन इस वजह से यह कमी तजवीज की गई है हालांकि नये दरवाजा व खिड़कियां तजबीज शुदा रकम में हरगिज तैयार नहीं हो सकतीं। बवजूहात बाला सायल उम्मीदवार है कि 3 डोर दरवाजे सवा इंच व खिड़कियों के रेट की जांच पी0डब्लू0 डी0 से दोबारा करा ली जाय और सायल को बकिया रुपया मरहमत फरमाया जावे सायल का बिल बावत मसजिद बाबरी 7229 रु0 का था जिसमें से सायल को 6825 रु0 12 आ0 दिया गया है। यानी 403 रु0 4 आ0 कम बरामद किया गया हांला कि स्टीमेट जो मन्जूर हुआ था वह 7329 रु0 का था और सायल ने स्टीमेट से कम बिल दिया गया लिहाजा सायल को समझाया जावे कि कौन कौन सी रकमें सायल की नहीं बरामद की गई जिसमें हुजूर से सायल इसके मुताल्लिक अर्ज कर सके।

फिदवी तहव्वर खां ठेकेदार

ता0 30 अप्रैल सन् 36''

" Gharib Parwar Salamat. I beg to state that my bill for the repair work of the houses was to the tune of Rs. 3604/- out of which the applicant has been paid 3287/1/6 only the reason for the officer under payment seems to be that the officer Nazul and Naib Tahsildar Faizabad at the time of inspection during repairs, proposed that the thickness of the two doors of 1-1/2 inch, valued at Rs 23/12 and Rs 16/11/3 be reduced to Rs 16/- and Rs 11/- respectively, the price of the windows was reduced to Rs. 4/ instead of Rs 7/. Sir, at the time of inspection of the after reducing the thickness of the three doors to 1-1/2 inches and that of windows the P.W.D. after revision of the price, approved Rs 23/12/-, Rs 16/11/3 and Rs 7/- respectively, and accordingly fixed the doors and windows years back. At the

time of inspection of the officer incharge, those were found not in new condition, that is why deduction was proposed although the new doors and windows could certainly not be prepared at the proposed price. Therefore it is requested that inspection and revaluation of 3 doors- 1-1/4 inches and rates of the windows may be made by the P.W.D. and the applicant may kindly be paid his remaining amount. Applicant's bill in respect of Masjid Babri was of Rs. 7229/- out of which he has been paid Rs, 6825/12/- i.e. short by Rs 403/41- though the estimate was approved for Rs. 7329/- and the applicant has been paid lesser amount. Therefore the applicant may kindly be furnished details as to which amount has been deducted so that the applicant may move your honour. Applicant: Tahauwar Khan the thekedar dated April 30, 1936."

2379. **Exhibit A-7 (Suit 1) (Register 6, page 63-73)=Exhibit 24 (Suit-4) Register 10 Page 137)** is claimed to be an agreement between Syed Mohd. Zaki and Abdul Gaffar on 25th July 1936 with respect to payment of arrears of salary of Abdul Gaffar who is said to have worked as Pesh Imam in the waqf mosque Babri and contains further details about payment schedule etc. This document has been filed to show that the building in dispute was not only in possession of Muslims after 1934 but Pesh Imam and Mutwallis were there which shows that Namaz was also offered in the disputed building after 1934. However, entire document nowhere shows or even make a suggestion that Namaz was being offered in the disputed building for the period said document refers or otherwise. It is solely confined to the dispute of payment of salary to Sri Abdul Gaffar. Moreover, this document ex facie does not satisfy the

requirement of a public document under Section 74 of Evidence Act, 1872 and nothing has been placed on record to show that it was filed after obtaining a copy thereof from a public authority in whose possession it ought to be. Evidently, it is a private document under Section 75 of Evidence Act and its contents have not been proved in accordance with law i.e. by any appropriate witness.

2380. The said document was filed in an earlier litigation i.e. O.S.No.29 of 1945 filed by U.P. Shia Central Waqf Board against U.P. Sunni Central Waqf Board where it was marked as Exhibit A-20 but that fact by itself would not result in treating the said document proved in accordance with law and in any case the contents thereof having not been proved, cannot be taken to be correct. The above document, Exhibit A-7, does not qualify such degree, presumption in respect whereto under Section 80 of the Evidence Act could be drawn for the purposes mentioned therein. Certified copy of the said documents obtained from the Civil Court would only mean that such a document was filed thereat but the presumption as available to the certified copies of public document would not apply to the above documents, Exhibit A-7. Moreover, nothing spell out therefrom which may help plaintiffs (Suit-4) or the defendants no.1 to 5 and 10 (Suit-1) to prove their claim about the possession and offering of Namaz in the disputed premises.

2381. **Exhibit A-4 (Suit-1) (Register 6, page 35-44)=Exhibit 21 (Suit-4) (Register 10, page 119-124)** is claimed to be the report dated 16th September 1938 written by the District Waqf Commissioner, Faizabad addressed to the Chief Commissioner of Waqf, U.P. and it reads as under:

"Chief Commissioner of Waqfs, U.P.

These papers are submitted to you in the matter of Babari or Janam Asthan mosque at Ajudhya, which was built by Emperor Babar in 935 A.H.

A short history of the State grant made for the maintenance of this mosque is given below.

It appears that in 935 A.H. Emperor Babar built this mosque and ***appointed one Syed Abdul Baqi as the Mutawalli and Khatib of the mosque*** *(vide cl.2 of written statement filed by* ***Syed Mohd. Zaki*** *to whom a notice was issued under the Waqf Act). An annual grant of Rs. 60/- was allowed by the Emperor for maintenance of the mosque and of the family of the first Mutawalli Abdul Baqi. This grant was continued till of the fall of the Moghal kingdom at Delhi and the ascendancy of the Nawab of Oudh.*

According to Cl.3 of the written statement of Mohd. Zaki, Nawab Sa'adat Ali Khan, King of Oudh increased the annual grant to Rs. 302/3/6. No original papers about this grant by the King of Oudh are available.

After the mutiny, the British Government also continued the above grant in cash upto 1864 and in the latter year, in lieu of the cash grant the British Govt ordered the grant of some revenue free land in villages Bhuranpur and Sholeypur. A copy of this order of the British Govt has been filed by the objector Syed Muhammad Zaki (Vide flag A). This order says that "the Chief Commissioner under the authority of the Governor General in Council is pleased to maintain the Grant for so long as the object for which the grant has been made is kept up on the following conditions." These conditions

require Rajab Ali and Mohd. Asghar to whom the Sannad was given, to perform duties of land holder in the matter of police, military or political service etc. The object mentioned above is elucidated in the Urdu translation as follows:

اوسی نانکارکو جب تک کہ مسجد جس کے واسطے یہ
نانکار دی گی تھی برقرار رہے حسب شراءط مفصلہ ذیل قاءم فرماتے
ہیں۔

"Thus the original object of the State grant of Emperor Babar and Nawab Saadat Ali Khan is continued in this Sunnad by the British Govt. also, i.e., maintenance of the mosque. The Nankar is to be enjoyed by the grantees for so long as the object of the grant i.e the Mosque, is in existence.

***Syed. Mohd. Zaki, the objector, who is known as the Mutawalli of the Babari Mosque**, and also calls himself as such raises an objection to the land in Sholeypur and Bhuranpur being regarded as a waqf, because he says the grant has been made for his subsistence only (نانکار). I do not agree with this view of his. The written filed by Mohammad Zaki himself is sufficient to show that the grant has been continued ever since 935 A.H. only because he and his ancestors were required to look after the mosque and keep it in proper condition out of the income allowed to them and also to provide for the maintenance of himself and his ancestors out of a part of the same grant.*

Clearly them the grant of land to Mohammad Zaki must be regarded as a Waqf, the purpose of which is the maintenance of the religious building known as the Babari Mosque.

The learned counsel for Mohammad Zaki has also argued.

1) That the particular grant of land in Sholeypur and Bhureypur has been made by the British Government. A Non-Muslim body and hence the grant cannot be regarded as Muslim Waqf.

(2) that the grant is a conditional one, being subject to resumption on non fulfilment by the grantee of any of the police Military or duties enjoined in the Sunnad, and that on account of these conditions the grant cannot be classed as a Muslim Waqf.

I do not agree with eitherview. Firstly the British Government only continued a grant which had been made by the Muslim Government originally and in these circumstances, I cannot but regard the grant as a Waqf.

2) As for the second point the conditions have been imposed upon the grantee, and not upon the way in which the grant is to be utilized, which latter purpose is recognised as maintenance of the mosque. It is clear that if the conditions are broken the enjoyment of the grant by the Mutwalli himself for his sustenance is to be withdrawn apparently implying that any other Mutwalli will then be appointed to administer the grant for the original purpose of maintaining the mosque. I am strengthened in this view because I find the mention of the object of the grant i.e. maintenance of the mosque at the very outset of the Sunnad and the desirability thereof seems to be clear from the whole Sunnad.

I also find that after the Ajodhya riot of 1934, ***Syed Mohammad Zaki*** *presented an application (Ex. A) to D.*

C., in which he clearly described himself as Mutwalli or trustee of the mosque and of the trust attached thereto.

I also find that this same Mohammad Zaki submitted accounts in 1925 in Tahsildar's court in which he stated that the income from the grant managed by him was utilized for maintenance of the mosque, pay of Imam Muezzin and the provisions of Iftari etc., during Ramzan after deduction of Rs 20/- per month for sustenance of the Mutwalli himself. The pay of Mutwalli in column 7 has not been stated by Mohd. Zaki. In view of the statement filed in Tahsildar's Court, this may be regarded as Rs. 20/- per month, although there is no reason to believe that the present Mutwali spends a much greater portions of the income on his own personal needs.

The present Mutwalli is of course a Shia. ***There is no information as to the sect to which Abdul Baqi himself belonged****, but the founder Emperor Babar- was admittedly a Sunni, the Imam and Muezzin at the mosque are Sunni and* ***only Sunnis say their prayer in it. I think therefor that this should regarded a Sunni trust.***

I must say in the end that from the reports that I have heard about the present Mutwalli, he is an opium addict (vide his statement Flagged-) and most unsuited to the proper performance of the duties expected of a Mutwali of an ancient and historical mosque, which is not kept even in proper repairs. It is desirable that, if possible, a committee of management should be appointed to supervise the proper maintenance and repairs of the mosque and discharge of his duties by the Mutwalli.

Sd/-
Distt. Waqf Commissioner

Fyzabad.
16.9.38."

2382. **Exhibit A-5 (Suit-1) (Register 6, page 45-48)** is copy of another report dated 8th February 1941 submitted by A. Majeed District Waqf Commissioner, Faizabad. It appears that earlier report of the District Waqf Commissioner was returned by the authorities vide letter dated January 19, 1939 informing that the post of Chief Commissioner Waqf was terminated and it is the District Waqf Commissioner who was empowered under section 4 of 1936 Act to decide Waqf cases and in this context he was to pass a fresh order. The District Waqf Commissioner instead of passing any order says that he entirely agrees with the findings of his predecessor and then submitted report which reads as under:

> *"The report was submitted to you in the matter of Babari and Janam Asthan Mosque at Ajudhya, which was built by Emperor Babar in 935 A.H. by Mr. Mohammad Owais, My predecessor, which was returned with letter no. 509/XV-W-39 dated January 1939 with the intimation that the post of Chief Commissioner of Waqf was terminated District Waqf Commissioner are empowered under sec.4 of United Provinces Acts (Act XIII of 1936) to decide waqf cases finally. I made further enquiries and examined the Pesh Newaz who filed certain papers. I entirely agree with the finding of my predecessor and I submit my report.*
>
> *A short history of the State grant made for the maintenance of this mosque is given below.*
>
> *It appears that in 935 A.H. Emperor Babar built this mosque and appointed one Syed Abdul Baqi as the Mutawalli and Khatib of the mosque (vide cl.2 of written statement filed by Syed Mohd. Zaki to whom a notice was*

issued under the Waqf Act). An annual grant of Rs. 60/- was allowed by the Emperor for maintenance of the mosque and of the family of the first Mutawalli Abdul Baqi. This grant was continued till of the fall of the Moghal kingdom at Delhi and the ascendancy of the Nawab of Oudh.

According to Cl.3 of the written statement of Mohd. Zaki, ***Nawab Sa'adat Ali Khan, King of Oudh increased the annual grant to Rs. 302/3/6. No original papers about this grant by the King of Oudh are available.***

After the mutiny, the British Government also continued the above grant in cash upto 1864 and in the latter year, in lieu of the cash grant the British Govt ordered the grant of some revenue free land in villages Bhuraipur and Sholeypur. A copy of this order of the British Govt has been filed by the objector Syed Muhammad Zaki (Vide flag A). This order says that "the Chief Commissioner under the authority of the Governor General in Council is pleased to maintain the Grant for so long as the object for which the grant has been made is kept up on the following conditions." These conditions require Rajab Ali and Mohd. Asghar to whom the Sannad was given, to perform duties of land holder in the matter of police, military or political service etc. The object mentioned above is elucidated in the Urdu translation as follows:

'اوسی نانکارکو جب تک کہ مسجد جس کے واسطے یہ نانکار دی گی تھی
برقرار رہے حسب شراءط مفصلہ ذیل قاءم فرماتے ہیں۔'

"*Thus the original object of the State grant of Emperor Babar and Nawab Saadat Ali Khan is continued in this*

Sunnad by the British Govt. also, i.e., maintenance of the mosque. The Nankar is to be enjoyed by the grantees for so long as the object of the grant i.e the Mosque, is in existence.

Syed. Mohd. Zaki, the objector, who is known as the Mutawalli of the Babari Mosque, and also calls himself as such raises an objection to the land in Sholeypur and Bhuranpur being regarded as a waqf, because he says the grant has been made for his subsistence only (نانکار*). I do not agree with this view of his. The written statement filed by Mohammad Zaki himself is sufficient to show that the grant has been continued ever since 935 A.H. only because he and his ancestors were required to look after the mosque and keep it in proper condition out of the income allowed to them and also to provide for the maintenance of himself and his ancestors out of a part of the same grant.*

Clearly them the grant of land to Mohammad Zaki must be regarded as a Waqf, the purpose of which is the maintenance of the religious building known as the Babari Mosque.

The learned counsel for Mohammad Zaki has also argued.

1) That the particular grant of land in Sholeypur and Bhurey pur has been made by the British Government. A Non-Muslim body and hence the grant cannot be regarded as Muslim Waqf.

(2) that the grant is a conditional one, being subject to resumption on non fulfilment by the grantee of any of the police Military or duties enjoined in the Sunnad, and that on account of these conditions the grant cannot be classed

as a Muslim Waqf.

I do not agree with either view. Firstly the British Government only continued a grant which had been made by the Muslim Government originally and in these circumstances, I cannot but regard the grant as a Waqf.

2) As for the second point the conditions have been imposed upon the grantee, and not upon the way in which the grant is to be utilized, which latter purpose is recognised as maintenance of the mosque. It is clear that if the conditions are broken the enjoyment of the grant by the Mutwalli himself for his sustenance is to be withdrawn apparently implying that any other mutwalli will then be appointed to administer the grant for the original purpose of maintaining the mosque. I am strengthened in this view because I find the mention of the object of the grant i.e. maintenance of the mosque at the very outset of the Sunnad and the desirability thereof seems to be clear from the whole Sunnad.

I also find that after the Ajodhya riot of 1934, Syed Mohammad Zaki presented an application (Flag Ex. A) to Deputy Commissioner, in which he clearly described himself as Mutwalli or trustee of the mosque and of the trust attached thereto.

I also find that this same Mohammad Zaki submitted the accounts in 1925 in Tahsildar's court in which he stated that the income from the grant managed by him was utilized for maintenance of the mosque, pay of Imam Muezzin and the provisions of Iftari etc., during Ramzan after deduction of Rs 20/- per month for sustenance of the Mutwalli himself. The pay of Mutwalli in column 7 has not

been stated by Mohd. Zaki. In view of the statement filed in Tahsildar's Court, this may be regarded as Rs. 20/- per month, although there is no reason to believe that the present Mutwali spends a much greater portions of the income on his own personal needs.

The present Mutwalli is of course a Shia. There is no information as to the sect to which Abdul Baqi himself belonged, but the founder Emperor Babar- was admittedly a Sunni, the Imam and Muezzin at the ***mosque are Sunni and only Sunnis say their prayer in it****.* ***Abdul Ghaffar the present Pesh niwaz was examined by me.*** *He swear that the ancestors of Mohammad Zaki were Sunnis who latter on was converted to Shia.* ***He further said that he did not receive his pay during the last 11 years.*** *In 1936 the Mutwalli executed a pronote promising to pay the arrear of pay by instalment* ***but upto this time nothing actually was done.*** *I think therefore that this* ***should be regarded as a Sunni Trust.***

I must say in the end that from the reports that I have heard about the present Mutwalli, he is an opium addict (vide his statement Flagged-) and must unsuited to the proper performance of the duties expected of a Mutwali of an ancient and historical mosque, which is not kept even in proper repairs. It is desirable that, if possible, a committee of management should be appointed to supervise the proper maintenance and repairs of the mosque and discharge of his duties by the Mutwalli.

Sd/-A. Majeed
Distt. Waqf Commissioner
Fyzabad.
Feb. 8, 1941"

2383. The said documents show that the (Waqf Commissioner) proceeded to treat the disputed building a mosque pursuant to some statement received from Syed Mohd. Zaki to whom he had issued notice under U.P.Act 1936 and thereafter took into consideration the genuineness of the grant of Rs. 302/3/6 though admitted that the original documents of the said grant alleged to be issued by the King of Oudh were not available.

2384. Sri P.N. Mishra as well as Sri M.M. Pandey learned counsel appearing for some of the Hindu parties drew our attention to the factum mentioned by the District Waqf Commissioner in his report that the object of the grant was to maintain the mosque and for the said purpose he has reproduced certain words in Urdu which is incorrect. They are right. We also do not find as to wherefrom the alleged original object in Urdu was found mentioned by aforesaid District Waqf Commissioner. It also appears from the aforesaid report that Syed Mohd. Zaki did not agree to the fact that the grant of land in village Sholapur and Bahoranpur was in connection with the Waqf, i.e. mosque but his stand was that the said grant was given to Sri Rajjab Ali and Sri Mohd. Asghar. The officer concerned however showed his disagreement on the ground that the original grant having been allowed since the period of Emperor Babur i.e., 935 A.H., i.e. 1528 AD the claim of Mohd. Zaki that the grant was personal was not correct. Further to treat the successors of Mutwalli the name of the first one is mentioned as Abdul Baqi but we are not shown by any of the counsels as to whether any such person existed in 1528 AD and had any relationship with the building in dispute or Emperor Babur. Another factum mentioned in the report is that one

Abdul Gaffar, according to the officer concerned, was the then Pesh Nawaz who was examined by him and he told that Mohd. Zaki was earlier Sunni and later on converted to Shia and for this reason also, since Emperor Babur was Sunni, the officer concerned recorded his opinion that it should be treated as Sunni Trust. He also found that the then Mutwalli was an opium addict and recommended for the constitution of a committee of management for maintenance of the building.

2385. **Exhibit A-6 (Suit-1) (Register 6, page 49-61)** is said to be an application/petition dated 1.10.1945 filed under section 15 of the Police Act (Act No.5 of 1861). There are eleven petitioners: 1. Mohd. Zaki, 2. Imtyaz Ali, Advocate, 3. Haji Agha Mirza Saudagar, 4. Sheikh Abdul Gaffar, 5. Meer Farjand Ali, 6. Meer Masum Ali, 7. Maulvi Syed Waziruddin, 8. Muhammad Yusuf, 9. Iqramullah, 10. Rahim Baksh, 11. Syed Rahmat Hussain, Advocate.

2386. The said application was filed for claiming damages of Rs. 15000/- on account of loss caused to the building in dispute on 27th March 1934 and removal of movable property kept in the said building and their residential houses. It gives the list of movable property which was lost in the said agitation worth Rs. 269/- and reads as under:

> *''सैय्यद मोहम्मद ज़की मुतवल्ली बाबरी मस्जिद ने बहल्फ़ बयान किया कि मै बाबरी मस्जिद का मुतवल्ली हूँ। इस दरख़्वास्त पर मेरे दस्तख़त है। मेरा ख़ानदान मुतवल्ली रहा है। **मैं कुल इन्तिज़ाम बाबरी मस्जिद करता हूं।** अलावा नुकसान इमारत मस्जिद के बकिया हस्ब ज़ैल सामान भी एहले हुनूद ने ज़ाया कर दिया और जला दिया*
>
> | | | | | |
> |---|---|---|---|---|
> | *चटाई* | *फ़र्श कपड़ा* | *सन्दूक चोबी* | *सन्दली* | *परदा कपड़ा* |
> | *तीन अदद* | *छः अदद* | *एक अदद* | *दो अदद* | *छः अदद* |
> | *30/—* | *40/—* | *15/—* | *15/—* | *30/—* |
>
> *मटका मिट्टी बधना मिट्टी हांडी (अपठनीय) चहाड़ (अपठनीय) घ*

ाड़ा मिट्टी

पांच अदद पांच सै अदद चार अदद एक अदद (अपठनीय)

1/4 7/13/– Rs.24/- Rs. 50/- Rs. 1/8/-

(अपठनीय) पत्थर कसौटी तारीख़ी सीढ़ी गगरा लोहा

तीन अदद 3x1½ Sqr ft. दो अदद दो अदद

Rs.25/- एक अदद Rs.4/- Rs.2/8/-=कुल माल की कीमत Rs.269 होती है। मैंने मुफ़स्सल फ़ेहरिस्त सामान नुक़सान शुदा की पुलिस में दाख़िल कर दी है। यह क़ीमत अलावा माविज़ा नुक़सान इमारत मिलना चाहिये।श्श

सुनकर तसदीक़ किया

(द0 उर्दू) सैय्यद मोहम्मद ज़की मुतवल्ली बक़लम खुद

(Sd/- English) R.R. Sinister Day"

"I syed Mohammad Zaki Mutawalli Babri Masjid described on oath that he is Mutawalli of Babri Masjid and has signed this application. The Mutawallis are selected from his family, under he traditions. He looks afterall the arrangements of the Masjid that besides the harm caused to the building the Hindus destroyed and set on fire the following things.

Chatai 3 nos, 30/- Cloth for furse 6 nos 40/- wooden box 15/-. Parda Kapra (cloth) sandali 30/-, matka hardin 5 nos. 1/4-. Clay Badhni 7/13. Handi—Sic—7/13. Handi 4 nos 24/- Chahar-sic- 1 nos 50/- Clay pitchers 1/8. Illigible 3 nos. 25 Rs. Stone Kasuti historical 3x1, 1/2 Sqfeet. 1 nos. lader 2 nos.4/- Gagra iron 2 nos. 2 Rs 8 Anns. Total values comes to Rs 269.

I have submitted to the police a detailed list of the articles. This value should also be given, along-with the compensation for the loss incurred on the building of the Masjid.

Listened and verified

Sd/- (urdu) syed Mohammad Zaki Baqulam Khud.

Sd/- English R.R. Senister Day."

(E.T.C.)

2387. The above document is not a public document and when it was filed, could not have been said to be 30 years old document. Even otherwise, it does not satisfy the requirement of Section 90 of the Evidence Act. This document, therefore, cannot be held proved. It is therefore difficult to place reliance on the contents of this document. In any case, it only shows that Syed Mohd. Zaki claimed himself to be Mutwalli, Babari Masjid and that he was managing the said mosque. It further says that besides damage to the building of the mosque, the other items kept in the said building have also been set on fire and therefore, he sought compensation of Rs.269/- on that account.

2389. **Exhibit A-11 (Suit-1) (Register 6, page 163-165)** appears to be a copy of some register but it is an extremely torn document and the contents on page 163 are almost illegible. Sri Jilani however placed reliance on entry contained in columns 13 and 14 thereof. Column 13 refers to order of the Chief Commissioner and reads as under:

> *"So long the Masjid is kept up and the Muhammadans conduct themselves properly I recommend the continuance of the grant (signature illegible, officiating Chief Commissioner)"*

2390. Column 14 is headed '*Final order of Government*' and thereunder it is mentioned as under:

> *"Released so long as the object for which the grant has been made is kept up vide Govt. order number 2321 dated 29th January 60"*

(Obviously it must be 1860)

(The same document has also been filed as **Exhibit 2 (Suit-4) Register 10 Page 31)**

2391. **Exhibit A-10 (Suit-1) (Register 6, page 153-155)** is a document which has been heavily referred by both the sides. Its heading is as under:

"Nakal register tahkikat maafi mashmula misil tahkikat maafi number mukdama 53 register misil band mukdama Rajab Ali (Apathniya)

Mauza Shahnawa Pargna Haveli Oudh Munfasla 14 March 1860 Ei."

2392. **Exhibit A-21 (Suit-1) (Register 7, page 233-235)** is a copy of the Khasra pertaining to 1277 Fasli (1884 AD) showing entry of Plot No. 163 as Araji Juma Masjid.

2393. The above documents show that in order to justify the amount received by Mir Rajjab Ali and Mohd. Afjal and their successors in the form of the grant, they made some expenses on the maintenance of disputed structure and that was shown in the records also, which was inspected and found correct by the Government officials namely Tehsildar etc. The interesting thing discern from all these documents is that none of them throws any light on the fact whether the Muslim public visited the disputed premises for offering namaz during all this period. From the stand taken by Mohd. Zaki before the Waqf Commissioner, it is evident that the grant of the two villages was treated as personal grant and in one or the other documents, besides the word 'Mutwalli'/'khatib', it also mentions "Zamindar" qua the two villages grant whereof was allowed. Moreover in respect to Hindu fairs at Ayodhya i.e. Ram Navmi fair, they shared income of rental when some of the part of the land was

allowed to be used by outsiders for keeping shops, with the Priest of Nirmohi Akhara, who were managing and possessing Ram Chabutara and other Hindu religious structures and places existing in the outer courtyard.

2394. Sri Jilani suggested when the building was maintained by a Muslim person, the said management was for the purpose of convenience to Muslim public for holding namaz. We find difficult to agree with this bald oral proposition for the reason that a presumption cannot substitute a fact. When a fact is seriously disputed, there has to be an evidence to prove that fact. Assumption cannot be stretched too far i.e. to that extent which is not even apparent or justified from the documents produced by the party concerned upon whom onus to prove lie.

2395. In support of the contention that the namaz was continuously offered in the building in dispute, a number of witnesses have been produced on behalf of the plaintiffs (Suit-4). They deposed to have offered namaz in the building in dispute (inner courtyard) before December, 1949 and upto 16th December, 1949 or 22nd December, 1949. That evidence will be considered a bit later. Here what we find is that realizing the problem, which the plaintiffs were having in the matter, instead of filing a suit for possession, they have sought a declaration about the status of the premises in dispute. Ex facie the provision of Limitation Act, which would be attracted, is not Article 142. The pleadings as well as other documents leave no doubt that the plaintiffs (Suit-4) have not made out any case of adverse possession; admitting the ownership of the property in dispute of the defendants and showing open, hostile, continuous and peaceful possession. However, we shall consider the

question of adverse possession in detail separately.

2396. So far as Article 144 is concerned, we are clearly of the view that the same has no application. It contemplates plea of adverse possession by the defendant and not plaintiff. Learned counsel for the plaintiffs (Suit-4) could not place anything to persuade us to take a different view and therefore, in our view, Article 144 is not applicable to Suit-4. However, this aspect we propose to discuss in detail while discussing issues pertaining to adverse possession/ possession.

2397. This leads us to consider the scope and extent of Article 120 L.A. 1908 and whether it will be applicable in this case.

2398. In **Janki Kunwar Vs. Ajit Singh (1888) ILR 15 Cal 58** Articles 91 and 94 Schedule II, Limitation Act (Act No.XV of 1877) came to be considered. The Court found that though the suit purported to have been filed claiming possession of immoveable property in dispute and thereby claiming limitation for the same being 12 years but it was in fact not so since without getting the deed of sale set aside, the possession of immoveable property could not have been recovered and therefore necessarily a suit for setting aside the sale deed executed on 29th July, 1872 while the suit was filed on 16th February, 1884 hence barred by limitation under Article 91 of the said Act. The court held that if all the facts were known to the parties and yet he chose not to litigate upon the matter within the period of limitation prescribed in the statute, the suit would have to fail, hit by limitation prescribed in the statute.

2399. Similar view was expressed in **Jafar Ali Khan (supra)** where the Court said that without seeking a declaration, relief of recovery of possession cannot be stressed upon. In such

a case the provision of limitation pertaining to recovery of possession would not apply. The Court relied on its earlier decision in **Jagadamba Chowdhurani Vs. Dakhina Mohan (1886) 13 Cal 308** while observing that in such a case, prima facie, title remains with the defendant, and until that title is defeated or displaced, the possession of the defendant cannot be disturbed. The Court in para 7 held :

> *".....It may be taken to be established now that where in a suit for recovery of possession there is an obstacle in the way of granting relief in the shape of gift or settlement, the plaintiff cannot get any relief until such instrument is set aside; and as it has been said, if it is too late for setting aside the document, the suit for possession should also fail."*

2400. In **Pierce Leslie (supra)** in para 7 the Court held:

> *"Even if the suit is treated as one for recovery of possession of the properties it would be governed by Article 120 and not by Article 144. The old company could not ask for recovery of the properties until they obtained a re-conveyance from the new company. The cause of action for this relief arose in 1939 when the properties were conveyed to the new company. A suit for this relief was barred under Article 120 on the expiry of six years. After the expiry of this period the old company could not file a suit for recovery of possession."*

2401. In **Raja Ramaswami (supra)** suit was filed for possession of the property in dispute and in the alternative prayed for a decree for Rs.1500, the consideration paid by her to the defendant for sale with interest thereon. In defence the plea of limitation was taken stating that the sale deed was executed

on 6th February, 1905 though the suit was filed on 1st December, 1924. In para 19, the Court held :

> *"As regards the first point, it has been well-settled by several decisions of their Lordships of the Privy Council that it is not the form of the relief claimed which determines the real character of the suit for the purpose of ascertaining under which article of the Limitation Act the suit falls. Though the relief claimed in the suit is possession of immovable property, yet if the property sued for is held by the contesting defendant under a sale or other transfer which is not void, but only voidable, and he cannot obtain possession without the transfer being set aside, the suit much be regarded as one brought to set aside the transfer though no relief in those terms is prayed for, but the prayer is only for possession of the property."*

2402. The suit in question has been instituted on 18.12.1961. Cause of action arose, as per the own pleadings of the plaintiffs (Suit-4) in para 23 of the plaint, on 23.12.1949 and 29.12.1949. Admittedly the suit is much beyond the period of limitation if it it is to be governed by Article 120 of L.A. 1908. In that case, whether the prayer (Namaj) was held till 16.12.1949 or 22/23.12.1949 in the disputed building by Muslims would be of no consequence. The question of prayer or the prayer continued till December, 1949 may be relevant only if the applicability of Article 120 of L.A. 1908 is ruled out. In a suit for declaration of title Article 142 and 144 as such are not applicable and in the absence of any other provision, prescribing a different limitation, it is Article 120 which is attracted Limitation of six years is provided in Article 120.

2403. The plaint shows as also admitted by the plaintiffs

that their possession was obstructed and interfered in the night of 22/23.12.1949 when idols of Lord Ramlala were placed under central dome in the inner courtyard of the disputed building, and, apprehending public tranquillity and disturbance of peace, the City Magistrate attached that the part of the disputed area namely, the inner courtyard and placed it in the possession of a Receiver. Therefore, on 29.12.1949 and thereafter the property covered by the inner courtyard including the disputed building was not in possession of any of the defendants (Hindu Parties) who could have restored the same to the plaintiffs (Suit-4). The order dated 29.12.1949 was passed by the City Magistrate in exercise of his power under Section 145 Cr.P.C.. Neither the validity of the said order could have been challenged by filing a civil suit under Section 9 CPC, 1908, nor the same actually has been challenged in Suit-4 nor it would mean that the property which was attached by the Magistrate under Section 145 Cr.P.C. is in the hands of any individual defendant.

2404. In **Partab Bahadur Singh, Taluqdar (supra)** the Court held where an order under Section 145 CR.P.C. was made by the Magistrate for attachment of the disputed property and Tahsildar was appointed receiver, the possession of receiver in the eyes of law was the possession of the true owner and, therefore, in such a suit Article 120 L.A. 1908 shall be attracted and a suit brought within six years of the last invasion is in time. On page 395 of the judgment the Court said:

> *"For the present it would be enough to say that in our opinion the attachment made in 1932 in pursuance of the order passed in the proceedings under S. 145, Criminal P.C., clearly gave rise to an independent cause of action for the plaintiff instituting the present suit for a declaration*

and the said suit having been brought within six years of the attachment is not barred by Art. 120, Limitation Act, if it is found that he had a subsisting title on the date of attachment. Next it was contended that the suit was governed by Art. 142 Sch. 1, Limitation Act, and that the plaintiff's suit had rightly been dismissed because he had failed to prove his possession within limitation. The Subordinate Judge also has laid great emphasis on it and his decision appears to be mainly based on this ground. In our opinion this position is altogether untenable. It is common ground between the parties that in S. 145 Criminal P.C., proceedings the Magistrate passed an order for attachment of the property. The Tahsildar who was appointed receiver took possession of the property on 23rd February, 1932. The property was admittedly in possession of the Tahsildar as receiver at the time when the present suit was instituted. The possession of the receiver was in the eye of law the possession the true owner. In the circumstances the plaintiff could undoubtedly maintain a suit for a mere declaration of his title and it was not necessary for him to institute a suit for possession. The suit is neither in substance nor in form a suit for possession of immoveable property. Art. 142 has therefore no application."

2405. In **Raja Rajgan Maharaja Jagatjit Singh (supra)** the ratio laid down in **Partab Bahadur Singh, Taluqdar (supra)** was upheld. The Privy Council affirmed that in a suit for declaration of plaintiff's title to the land in possession of the receiver under attachment in proceeding under Section 145 Cr.P.C. by virtue of Magistrate's order, Article 142 and 144 L.A.

1908 are inapplicable and the suit is governed by Article 120 thereof. On page 49 the Privy Council observed:

> *"With regard to the statutory period of limitation, Art. 47 of the Act does not apply, as there has been no order for possession by the Magistrate under S. 145, Criminal P.C. as the suit is one for a declaration of title, it seems clear that Arts. 142 and 144 do not apply, and their Lordships agree with the Chief Court that the suit is governed by Art. 120."*

2406. In **Ponnu Nadar and others Vs. Kumaru Reddiar and others, AIR 1935 Madras 967** the Court held that the real cause of action was the date of the order of the Magistrate and limitation started from the date of order. Article 120 of the Limitation Act, 1908 was applicable and not Section 23 of the said Act. The relevant portions of the said judgment read as follows:

> *"What in fact appears to have given rise to the Joint Magistrate's order was a police report of an apprehended breach of the peace between the rival fractions and all that the opposite party did was to adopt an attitude which gave rise to that apprehension. So far as that attitude itself is concerned, it is impossible to find in it a continuing wrong, nor do we find it easier to hold that when the Joint Magistrate passed the order with a view to prevent a breach of the peace there was a "continuing wrong" caused by the defendants' party. There is nothing to show that it was passed at their instance and even if it were, responsibility for passing it must be taken by the Court and not laid upon the party. Again, once an order was passed, the matter was taken out of the hands of the defendant*

party, and it lay with the Nadars themselves to establish their right by suit.

From this point of view too we are not disposed to hold that even if there was a continuing wrong the defendant party was responsible for its continuance. Where the applicability of S. 23, Lim. Act, is doubtful the proper course must be, we think, to enforce against the plaintiffs the ordinary principles of limitation, and in the present case to apply Art. 47 would be applied to the case of an order under S. 145, Criminal P.C., time being taken to run from the date of the order. Adopting this view, the persons affected by the order of 1900 had a period of six years within which to establish their right, and we are not greatly impressed by the argument that, if the right itself may be indestructible, the remedy ought not to have been permanently lost by their failure to take action within that time. We must hold in agreement with 26 Mad. 410(1) that the suit is barred under Art. 120, Limitation Act."

2407. In **Annamalai Chettiar (supra),** Privy Council held that in case of an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted for the purpose of limitation Article 120 of the Limitation Act, 1908 is applied. Relevant para of the judgment from page 12 reads as under:

"In their Lordships view the case falls under Art. 120, under which the time begins to run when the right to sue accrues. In a recent decision of their Lordships' Board, delivered by Sri Binod Mitter, it is stated, in reference to Art. 120."

2408. In **Mst. Rukhma Bai Vs. Lal Laxminarayan (supra)** the Supreme Court held where there are successive invasion or denial of right, the right to sue under Article 120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invites or jeopardizes the said right. Para 33 of the judgment says:

> *"33. The legal position may be briefly stated thus: The right to sue under Art. 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said, right."*

2409. In **C. Mohammad Yunus (supra)** the Hon'ble Supreme Court has held that a suit for declaration of a right and an injunction restraining the defendants from interfering with the exercise of that right is governed by Article 120. Under the said Article there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe the right. Relevant extract of para 7 of the judgment reads as under:

> *"7. . . . The period of six years prescribed by Art. 120 has to be computed from the date when the right to sue accrues*

and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right. If the trustees were willing to give a share and on the record of the case it must be assumed that they being trustees appointed under a scheme would be willing to allow the plaintiffs their legitimate rights including a share in the income if under the law they were entitled thereto, mere denial by the defendants of the rights of the plaintiffs and defendant No. 2 will not set the period of limitation running against them."

2410. In **Garib Das (supra)** the Apex Court held that in a suit for recovery of possession after cancellation of sale deed in favour of the defendants on the ground that a previous valid waqf had been created, Article 142 was not applicable, the suit was to be filed within a period of six years that is to say Article 120 was applicable. Para 13 of the judgement reads as follows:

"13. The fourth point has no substance inasmuch as Article 142 of the Limitation Act was not applicable to the facts of the case. The suit was filed in 1955 within six years after the death of Tasaduk Hussain who died only a few months after the execution of the documents relied on by the appellants."

2411. In **Dwijendra Narain Roy Vs. Joges Chandra De, AIR 1924 Cal 600** (page 609) the Court said:

"The substance of the matter is that time runs when the cause of action accrues, and a cause of action accrues when there is in existence a person who can sue and another who can be used . . . . . The cause of action arises when and only when the aggrieved party has the right to

apply to the proper tribunals for relief. The statute (of limitation) does not attach to the claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result."

2412. This has been approved by the Apex Court in **P. Lakshmi Reddy (supra).**

2413. It is no doubt true that in the suit the plaintiffs have sought necessarily relief of declaration that the premises in dispute is a mosque. The premises in dispute has been demarcated by them as 'ABCD' in the map appended to the plaint. Relief -2 is worded in a manner showing that the same has not been asked from the Court but has been left to the discretion of the Court if it finds expedient then it may grant.

2414. The settled proposition about the property *custodia legis* is "the possession on behalf of the true owner". If the plaintiffs are true owner, possession on their behalf is already with the Receiver but realizing the fact that without settling dispute regarding status and nature of the disputed site and building, claim of the plaintiffs for possession from the Receiver would not succeed, they have sought the above declaration, which therefore constitute the actual and real relief in the suit and thus attract Article 120.

2415. For relief sought in the nature of declaration, Section 42 of the Specific Relief Act provides:

"Any person entitled to any legal character, or to any right as to any property may institute a suit against any person

denying or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief." . . . . "Provided, that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so."

2416. Certain provisions have been made in L.A. 1908 for certain suits, declaratory in nature for example Articles 92, 93, 118, 119, 125 and 129 but a suit for declaration of plaintiff's title or right to property is governed by Article 120 L.A. 1908 which provides a period of six years from the date of accrual of cause of action or right to sue.

2417. In **Satya Niranjan Vs. Ramlal, 1925 P.C. 42** it was observed that the claims declaratory in their nature falling under Section 42 of the Specific Relief Act are governed by Article 120 of L.A. 1908.

2418. In **Draupadi Devi (supra)** the Court said:

"73. We may notice here that under the Code of Civil Procedure, Order VII Rule 1(e) requires a plaint to state "the facts constituting the cause of action and when it arose". The plaintiff was bound to plead in the plaint when the cause of action arose. If he did not, then irrespective of what the defendants may plead in the written statement, the court would be bound by the mandate of Section 3 of the Limitation Act, 1908 to dismiss the suit, if it found that on the plaintiff's own pleading his suit is barred by limitation. In the instant case, the plaint does not plead clearly as to when the cause of action arose. In the absence of such pleadings, the defendants pleaded nothing on the issue.

However, when the facts were ascertained by evidence, it was clear that the decision of the Government of India not to recognise the suit property as private property of the Maharaja was taken some time in the year 1951, whether in March or May. Dewan Jarmanidass, the plaintiff and the Maharaja were very much aware of this decision. Yet, the suit was filed only on 11.5.1960.

74. The Division Bench was, therefore, right in applying Article 120 of the Limitation Act, 1908 under which the period of limitation for a suit for which no specific period is provided in the Schedule was six years from the date when the right to sue accrues. The suit was, therefore, clearly barred by limitation and by virtue of Section 3 of the Limitation Act, 1908, the court was mandated to dismiss it.

75. As rightly pointed out by the Division Bench, the learned Single Judge ought to have permitted the plea to be raised on the basis of the facts which came to light. The Division Bench has correctly appreciated the plea of limitation, in the facts and circumstances of the case, and rightly came to the conclusion that the suit of the plaintiff was liable to be dismissed on the ground of limitation. We agree with the conclusion of the Division Bench on this issue."

2419. In **Mt. Bolo Vs. Mt. Koklan (supra)** right to sue for the purpose of Article 120 Limitation Act was considered and it was held:

"There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that

right by the defendant against whom the suit is instituted." (Page 272)

2420. In **M.V.S. Manikyala Vs. Narashimahwami AIR 1966 SC 470**, the words "right to sue" under Article 120, LA 1908 was considered by the Apex Court and it was held that right to sue occurs for the purpose of the said Article. There is an accrual of the right asserted in the suit and unequivocal threat by the respondents to infringe it. Every threat by a party to such a right, however, ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right. [See: **Mst. Rukhmabai Vs. Lala Laxminarayan (supra)]**. It has been held in a catena of decisions that in a suit for declaration of title to immovable property, it is Article 120 LA 1908 and Article 113 LA 1963 which would be applicable.

2421. In **Mohabharat Shaha Vs. Abdul Hamid Khan (1904) 1 CLJ 73**, it was held when a plaintiff being in possession sues for a declaration of his title to immovable property, the residuary provision would apply, i.e., Article 120.

2422. In **Aftab Ali Vs. Akbor Ali (1929) 121 IC 209 (All)**, the Court said that Article 120 undoubtedly applies to all declaratory suits except where separate provision is made. In such a case of declaration, it is no doubt has been held by this Court in **Must. Salamat Begam Vs. S.K. Ikram Husain (1933) 145 IC 728** and **Prarjapati Vs. Jot Singh (supra)** that where owner is in possession, he acquires a cause of action on each occasion on which his rights are denied.

2423. There appears to be a consensus of opinion that

Article 120 applies to all suits of a declaratory nature where no consequential relief is sought or is necessary.

2424. From the pleadings and prayer 1 (Suit-4) of the plaint it appears that the status of the disputed premises claimed to be mosque by plaintiffs was threatened and disturbed by the defendants, i.e., the Hindu parties, by placing idols in the disputed building allegedly in the night of 22/23.12.1949 and this gave a cause of action to the plaintiffs to seek a declaration from the Court that the disputed premises is a mosque. For the said purpose the question of possession, dispossession and restoration of possession of the building in dispute is neither necessarily consequential nor in the absence of such relief the suit could have been dismissed under proviso to Section 42 of Specific Relief Act, 1877.

2425. The inter relationship qua Article 120 of Limitation Act, Section 42 of Specific Relief Act as also 146 Cr.P.C. came to be considered before the Division Bench of Calcutta High Court in **Panna Lal Biswas (supra)**. The plaintiff-appellant Panna Lal Biswas was dispossessed sometimes in April 1904 by the defendant. Property in dispute was attached by the Magistrate under Section 146 Cr.P.C. on 10.6.1904. Ultimately a suit was filed for recovery of possession on 2.5.1906. The Court below dismissed the suit on the ground of bar of limitation observing that attachment shall not confer a fresh start for limitation from the date of attachment. The Court considered whether in such a case the suit is one for possession or for a mere declaration. It observed that in **Goswami Ranchor Lalji Vs. Sri Girdhariji (1897) 20 All. 120** it was held that the suit is not for possession and, therefore, would be governed by 12 years rule of limitation. However, there is another decision of

Madras High Court in **Rajah of Venkatagiri Vs. Isakapalli Subbiah (supra)** wherein it was held that the suit was not for declaration and governed by Article 120, there was no continuing wrong.

2426. A Similar view was taken by Calcutta High Court in **Brojendra Kishore (supra)** but therein it further observed that it is a continuing wrong within the meaning of Section 23 of the Limitation Act and, therefore, the suit would not be barred by limitation.

2427. In **Panna Lal (supra)** the Court agreed that the view that the suit cannot be treated to be that of possession because possession is not with the defendants but with the Magistrate who is not, and cannot be a party to the Suit. It also agreed that Article 120 of the Limitation Act would apply.

2428. Then comes a question of continuing wrong. The Calcutta High Court observed that in **Brojendra Kishore (supra)** there was no dispossession prior to the attachment by the Magistrate and the cause of action might be said to have accrued from day to day commencing from the date of the attachment, but here in **Panna Lal's case**, dispossession took place in April 1904 and attachment was made in 10the June 1094. The cause of action, therefore, arose in April 1904 and rule of six years' limitation would apply. The Court, thereafter, proceeded to consider whether attachment would confer a fresh starting point, whether the suit is barred under Article 120 or 142. It agreed with the view that the possession of Magistrate is that of a stake holder and during continuance of attachment, the property was in legal custody i.e. custodia legis which must be held to be for the benefit of the true owner. In order to bring the case within the concept of continuing wrong, Calcutta High

Court in **Panna Lal** relied on **Agency Company Vs. Short (supra)** where it was held if a person enters upon the land of another and holds possession for a time and when without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment is in the same position in all respect as he was before the intrusion took place.

2429. In **Panna Lal's case**, the possession was taken by the Magistrate and by that time the plaintiff was out of possession only for about two months. He had a subsisting title at that time and since Magistrate's possession was constructive possession of the true owner, the case would be covered within the principle of the **Secretary of State Vs. Krishnamoni Gupta (1902) 29 Cal. 518.** The Privy Council held "dispossession by the vis major of floods had the same effect as voluntary abandonment". If the possession of Magistrate was in law the possession of the true owner, the defendant's possession was determiend upon the Magistrate's taking possession under the attachment. In other words, the plaintiff must be taken to have been restored to possession constructively on the date of the attachment. He, therefore, got a fresh starting point, and that being so, the case would fall within the principle of **Brojendra Kishore (supra)** and thus can be treated as on of continuing wrong under Section 23 of the Limitation Act. The Court also referred an earlier decision of Calcutta High Court in **Deo Narain Chowdhury Vs. C.R.H. Webb (1990) 28 Cal. 86** where it was held that limitation having already commenced to run from date of actual dispossession, the plaintiff could not have a fresh start of limitation from the date of subsequent attachment by the Criminal Court. The above case was distinguished by observing that the effect of attachment upon the question of

possession, so far as the true owner is concerned, was not considered in the earlier case.

2430. We find no simile with the present case inasmuch as, the plaintiffs are not claiming to be the owner but being the beneficiaries of the waqf, they have sought a declaration about the status of the property in suit. The question of providing a fresh cause of action on day-to-day basis would not arise to the plaintiffs. So far as the declaration is concerned, we are satisfied that it would be governed by Article 120.

2431. We are in agreement with the argument of the learned counsels for the defendants that a suit, if is barred by limitation, it is the statutory obligation on the part of the Court to dismiss it on the said ground by virtue of Section 3 of the Act and in such matters there is no question of any sympathy, hardship etc.

2432. In the matter of limitation sympathy, hardship, discretion etc. have no place. In **Maqbul Ahmad Vs. Onkar Pratap Narain Singh (supra),** Lord Tomlin observed, *"there is no judicial discretion to relieve the appellants from the operation of the Limitation Act in a case of hardship or any authority in the Court to dispense with its provision."* This has been followed in **The Firm of Eng Gim Moh (supra)** by a Full Bench of Rangoon High Court. In the above judgement the Court also disapprove the contention that continued attachment would confer a continuous cause of action.

2433. In **Siraj-ul-Haq Khan (supra)** the Court said:

> *"But, in our opinion, there would be no justification for extending the application of S. 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the*

previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship; but there can be no doubt that in construing provisions of limitation, equitable considerations are immaterial and irrelevant, and in applying them effect must be given to the strict grammatical meaning of the words used by them: Nagendra Nath Dey Vs. Suresh Chandra Dey, 34 Bom I.R. 1065: (AIR 1932 PC 165).” (para 19)

2434. Mere addition of the relief of possession would not attract a larger period of limitation provided by another provision namely, Article 142 or 144 of L.A. 1908 when on the basis of the pleadings itself it would be clear that a mere suit for declaration was necessary and the prayer for restoration of possession is superfluous for the reason that the defendants who dispossessed the plaintiff are not continuing in possession of the property in dispute on the date when suit was filed. The property in dispute came to be under attachment of the Court, i.e., custodia legis.

2435. It may also be mentioned that the relief no.3 has been added in 1995 after the decision of the Apex Court in Dr. M. Ismail Faruqui's case. In our view, if the suit as framed, was already barred by limitation at the time when it was filed, the subsequent addition of prayer therein would not bring it within the period of limitation on the principle that the amendment shall relate back to the date of filing of the suit. This is what has been held in **Vishwambhar & Ors. Vs. Laxminarain & Anr. 2001 (6) SCC 163.** Mere allowing an amendment would not deprive the defendants from raising the plea of limitation as held by the Apex Court in **Ragu Thilak D.John Vs. S. Rayappan & Ors. 2001 (2) SCC 472**.

2436. Mere by adding the statutory authority who pass the order for attachment as one of the defendants would not change the nature of the suit for the relief.

2437. Before concluding on this aspect, we may also refer to the submissions of Sri Siddiqui as contained in paras 3.4, 3.7, 3.8, 3.9 and 3.10 of his written submissions, which pertain to the applicability of Article 120 L.A. 1908. He has not referred to any provision other than Limitation Act where there is any extension of the period of limitation. The suggestion was made during the course of the argument that placement of idols inside the premises in dispute results in obstructing the right of worship of Muslims in general and this is a continuing cause of action. Hence Section 23 would be applicable and suit cannot be held barred by limitation. The submission needs consideration.

2438. It is true that in the paragraph, dealing with cause of action in the plaint, it is alleged by the plaintiffs (Suit-4) that the cause of action arose on 22/23 December, 1949 when some Hindus defiled and desecrated the mosque by placing the idol inside the building under the central dome and thereby interfered and obstructed the right of worship of the plaintiffs. If a suit is filed seeking a relief against obstruction to right of worship, probably it may attract the principle of continuing wrong, as provided in Section 23 of L.A. 1908 in view of law laid down by the Privy Council in **Hukum Chand & Ors. Vs. Maharaj Bahadur Singh & Others AIR 1933 Privy Council 193**. However, from the relief sought in the plaint, we find that the plaintiffs have not filed the suit seeking injunction for enforcement of right of worship but they have sought a declaration about the nature of the building in dispute and also for delivery of the possession in the capacity of possessory title

holder. Where a declaratory relief is sought, Section 23 L.A. 1908 is inapplicable. Section 23 reads as under:

> *"23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."*

2439. One has to make a distinction between a continuing wrong and continuance of the effect of wrong. In the case in hand, the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23rd December, 1949 and the wrong is complete thereon since thereafter they are totally dispossessed from the property in dispute on the ground that they have no title. Hence, we find it difficult to treat the alleged wrong to be a continuing wrong. In **Maulvi Mohammad Fahimal Haq Vs. Jagat Ballav Ghosh AIR 1923 Patna 475** it was held that the principle of Section 23 would have no application to a declaratory suit. In **Mohd. Ata Husain Khan Vs. Husain Ali Khan, AIR 1944 Oudh 139** this Court took the view that Section 23 has no application to a suit for declaration of title. It has been held by the Apex Court recently, if the wrongful act causes an injury, which is complete, there is no continuance wrong even though the damages resulting from the act may continue. In **Raja Ram Maize Products Vs. Industrial Court of M.P. 2001 (4) SCC 492 (Para 10)** the workers demanded that they should be allowed to resume work but it was disallowed. The Court held that the cause of action is complete and it cannot be said to be a continuing wrong.

2440. In **Radhakrishna Das Vs. Radha Ramana Swami (supra)** the concept of continuing wrong has also been

explained by Orissa High Court and the Coury says:

> *"Where the wrongful act produces a state of affairs, every moment's continuance of which is a new tort, a fresh action for the continuance lies in which recovery can be had for damages caused by the continuance of the tort to the date of the writ. And it may be added where the wrong consists in the omission of a legal duty, if the duty is to continue to do something, the omission constitutes a continuing wrong during the time it lasts, ... Where the wrong consists in an act or omission it must not be fleeting or evanescent like a slander uttered, but such as to produce a change in the condition of things which is a continual source of injury. There is a real distinction between continuance of a legal injury and continuance of the injurious effects of a legal injury. Thus, in the case of a bodily injury there is no continuing wrong as the injury ceases though the injurious effect may persist. In other words there must not be a single wrongful act from which injurious consequences follow, but a state of affairs every moment's continuance of which is a new tort. The commonest examples of continuing wrongs are found in interference with water supply and obstructions to rights of way and of light and air. Where adverse possession is claimed on the strength of the erection of a wall there is no continuing wrong within Section 23. The effect may continue but this does not extend the time of limitation ... Where, therefore, trespass amounts to a complete ouster the wrong is not a continuing one and successive actions will not lie on the principle of interest reipublica ut sit finis litium. ... Where a man suffers in respect of one and the same right, whether of the person,*

property, or reputation, as the case may be, then if the act is not a continuing act but one over the consequences of which, when done, the doer has no further control, the cause of action is one and after recovery in an action for damage first accruing, no further action can be brought. In a case of trespass, the cause of action accrues when the trespass is committed. When the properties of the deity and the idol itself were taken possession of, the act which causes an encroachment of the plaintiff's right was at once complete and there is no continuance of damage or wrong within the meaning of the statute. The effect of the damage may continue but this does not extend the time of limitation. ... When the wrong amounts to dispossession of the plaintiff then even although it may be a continuing wrong the plaintiff cannot recover possession after 12 years because under Section 28, Limitation Act, he himself has got no right left which he can enforce. The real question is not whether the wrong is continuing or not, but whether the wrong amounts to a complete ouster of the plaintiff that is to his dispossession."

2441. In our view, the Orissa High Court has been right in observing that if a suit is filed for enforcing right on the property as such, the provisions of the Limitation Act would immediately be attracted, but if the suit is filed by a worshipper for enforcing his right of worship not based on any right to property of the idol or to an office, the only scrutiny which is to be made by the Court is whether there is any obstruction or prevention to the plaintiff for exercising his right of worship and nothing more than that. The question of title or ownership of the property would not be considered in such a case and there in

such a matter, the plea of limitation may not come into way.

2442. We hereat would also consider the authorities cited by Sri Siddiqui in his written arguments. **(Lala) Shiam Lal Vs. Mohamad Ali Asghar Husain AIR 1935 All 174** was a case where a suit for declaration of title was filed which was decreed by both the Courts below. The question raised as to whether Article 120 will apply when initially there was a denial of title and right to sue accrued or if there is any fresh denial at a later point of time which may give a cause of action to maintain suit and the limitation would run therefrom. The Court considered an earlier decision in **Akbar Khan v. Turban (1909) 31 All. 9** and said that it is now well established that a mere entry of names does not debar the person against whom the entry is made for all times to come from suing for a declaration and any new invasion of rights which amounts to fresh denial of title confers on the owner in possession a fresh right to sue. The Court said that once right to sue accrue and period of limitation was allowed to lapse, there is no question of renewal of period of limitation applicable to declaratory suits otherwise it shall frustrate the very statue itself. An argument was raised therein that ignoring the earlier cause of action, which accrued in 1895, the right to sue to the plaintiff accrued on 23rd December, 1929, when he got the sale deed executed from Mt. Kaniz Bano and anything which took place prior thereto should not be taken into consideration for the purpose of limitation. This Court held, "I am not prepared to accede to this submission on behalf of the respondent because this would lead to the anomaly that a person who himself might have allowed limitation to run against him confers a right to sue unfettered by the plea of limitation by transferring the property to another. Indeed this would amount

to saying that no rule of limitation applies to a declaratory suit where the defendants are interested in denying the plaintiff's right within the meaning of Section 42, Specific Relief Act. As observed by their Lordships of the Privy Council in Balo Vs. Koklan 1930 PC 270, the right to sue accrues when there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. The fresh act must be on the part of the defendants which can be said to amount to a fresh invasion of plaintiff's right or a fresh attempt to cast a cloud on the plaintiff's title and not merely a denial of the plaintiff's title when the plaintiff's attempt to assert his title because this denial would be merely a continuation of the denial made long ago."

2443. This judgment, instead of helping the plaintiff's goes against them. In the case in hand, threat to plaintiff's title, if for the moment we can say so, assuming what the plaintiffs say correct, was infringed or threatened at number of times, and the period was allowed to lapse repeatedly which was more than the statutory period of limitation.

A. As admitted by the plaintiffs, a dividing wall (iron grilled) was constructed separating the disputed structure from the non-Islamic structure, i.e., Ram Chabutra existing on the south-east side so that Muslims may worship in inner courtyard and Hindu may continue their worship in the outer courtyard in 1856-57. This was never assailed by the Muslims claiming an infringement of their right on the property in dispute.

B. When, according to them, the structures like Sita Rasoi, Chhappar (Bhandar) were created between 1955 to 1973, as

is evident from the complaint of Mohd. Asgar, in this regard, and despite the orders passed by the authorities on the executive side the same were not removed.

C. In the year, 1934 Hindus tried to damage the building in dispute causing serious damage to the domes and enclosure walls. The building came in the custody of the authorities. Though request was made to permit Muslim to offer namaj therein, but there is no record to show as to whether it was actually allowed and if so when.

D. When the idols were placed under the central dome in the night of 22nd/23rd December, 1949, and regular daily Puja commenced according to Hindu Shastric Laws ousting Muslims from entering the property in dispute. Assuming that the latest cause of action in respect to the premises in the inner courtyard occurred on 22nd /23rd December, 1949, threatening the very authority and title of the said mosque, the suit ought to be filed in six years.

2444. **Kali Prasad Misir (supra)** is a judgment of a Division Bench of this Court wherein it was observed that the cause of action for the purpose of limitation actually arose when danger of actual dispossession faced by him in respect to plot no. 655 and this was altogether independent of any cause of action which may have been furnished to the plaintiff by the settlement entries made in the year 1887. For the said purpose this Court relied on an earlier decision in **Rahmat-ullah Vs. Shamsuddin 1913 (11) ALJ 877** and **Allah Jilai v. Umrao Husain (1914) I.L.R., 36 All., 492.** We do not find how this judgment helps the plaintiffs, inasmuch as, after 22/23 December, 1949, no such further incident gaving rise to the plaintiffs to fresh cause of action has happened till the suit was

filed. So far as the attachment proceedings by the Magistrate are concerned, they neither dispossessed the plaintiffs from the property in dispute nor otherwise caused any threat to the assumed title or ownership of plaintiffs or to the status of the disputed structure. The demolition of the building in 1992 and entrustment of the property in dispute with a statutory Receiver under Act 1993 would not give any benefit to the plaintiffs in the matter of limitation, inasmuch as, Relief no. 3 has been inserted by the plaintiffs (suit 3) by way of amendment in 1995 only. If the suit filed in 1961 was already barred by limitation, any subsequent amendment and addition of relief would not give a fresh lease of limitation to the plaintiffs. Limitation once starts running shall not stop and shall meet its natural consequence.

2445. **Mata Palat (supra)** is a Division Bench judgment in respect to a question as to whether leave to withdraw an application for execution of decree to make fresh application is permissible with regard to proceedings after decree. This Court held that Section 375A of C.P.C. 1882 did not apply to an application subsequent to the decree. The reliance placed on the above judgment is wholly misconceived and it has no relevance with the issue in question.

2446. Next is **Prajapati Vs. Jot Singh (supra).** It was a reference made by the local Government whether a decree of the Commissioner is correct or not. From the judgment it appears that no question of law was framed while making reference but the Court found that since the decree of the Commissioner proceeds merely on the point of limitation hence the reference was entertained and answered. This Court approving the judgment in **Kali Prasad (Supra)** held that a fresh cause of

action has arisen to plaintiff to bring a suit, even though a prior cause of action had arisen to him beyond the period of six years of limitation laid down by Art. 120. No issue pertaining to limitation was considered therein and we find no relevance of the said judgment to the present dispute.

2447. **Jagat Mohan Nath Sah Deo (surpa)** is a decision pertaining to rights of tenent to sub-soil and we find nothing therein which may have any relevance to the case in hand.

2448. **Suryanarayana (supra)** is a single Judge decision holding that entry in the record of rights affords a fresh cause of action to the plaintiffs for filing a declaratory suit. If a suit is brought within six years from such date, it is not barred by limitation under Article 120 of the Limitation Act. The learned Single Judge followed an earlier decision in **Anantharazu Vs. narayanarazu 1913 (36) Mad. 383.** However, we find that the view taken in the above case is not consistent with the view of Allahabad High Court which was taken as long back in 1909 in **Akbar Khan (Supra)** followed in **(Lala) Shiam Lal (Supra)** and thereafter consistently. Even otherwise, it is not the case of the plaintiffs (Suit-4) that the cause of action record afresh after 22nd December, 1949 and in any case before six years before filing of suit in December, 1961. Therefore, also the above decision of Madras High Court does not help the plaintiffs.

2449. **Muktakeshi Patrani & Ors. Vs. Midnapur Zamindari Co. Ltd. AIR 1935 Patna 33** is a Division Bench judgment stating that for a suit for a declaration and injunction, the period of limitation is six years from the date of the invasion of the plaintiff's right. As long as the title of plaintiff is not lost by adverse possession of the defendant, each invasion gives him a fresh cause of action. Again the position is same since there is

no averment in the plaint as to how a fresh cause of action accrued to the plaintiffs and that too within six years from the date of filing of the suit, no credence can be lend to the plaintiffs with the support of the said judgment.

2450. **Shankarrao Sitaramji Satpute & Ors. Vs. Annapurnabai AIR 1961 Bombay 266** again is a Division Bench decision which also does not help the plaintiffs. This is evident from para 32 of the judgment which says:

> *"This disposes of the main point in the case. The next question to be considered is that of limitation. Now, according to Mr. Bobde, the learned Judge, was wrong in holding that the provisions of Sec. 28 of the Limitation Act extinguished the Plaintiff's right only with respect to two fields and not the remaining. It seems to us that the learned Judge of the Court below was wrong even in respect of those two fields also and that the Plaintiff's claim with regard to them should have been decreed, that is to say, both these fields should have been included int he list of property available for partition. In so far as the nine fields are concerned, it is not disputed that prior to the commencement of the proceedings under Sec. 145 of the Code of Criminal Procedure, they were being cultivated by Parasram who was a lessee from Gopalrao. When Gopalrao gave the lease, he was the sole surviving member in the family and as such he was in a position to grant the lease. In setion 145 proceedings, the learned Magistrate confirmed the possession of Parasram with respect to these fields. Now Parasram is not a party to the suit and the Plaintiff is not claiming any possession from him. The possession of Parasram would enure to the benefit of the*

members of the family who had interest in that property. There was no order by the Sub-Divisional Magistrate that only the Defendants Nos. 1 to 4 would be deemed to be in possession of the property or that Punjabrao was in possession of the property on their behalf. In these circumstances, the learned Judge of the Court below was right in holding that the Plaintiff's suit in respect of those fields was not barred."

2451. Nata Padhan & Ors. Vs. Banchha Baral & Ors. AIR 1968 Orissa 36 does not have any implication on any of the issue and help the plaintiffs in any manner. The learned Single Judge Orissa High Court found that during the pendency of suit before the Revenue Court, proceedings under Section 145 Cr.P.C. was initiated and hence held that if the possession was given by the Magistrate pursuant to the final order passed under Section 145 Cr.P.C. that will have no impact since it is always open to the Civil Court to take a different view with respect to title and ownership and it is the order of the Civil Court which is ultimately prevail. It also held that no fresh suit is necessary to be filed to seek possession challenging the order of the Magistrate. We need not make any comment on these proposition for the reason that they have no relevance with the facts and dispute involved in the present case and therefore, this judgment also has no application.

2452. We are clearly of the view that suit in question is barred by limitation under Article 120 of the L.A. 1908.

2453. **Issue no.3 (Suit-4)** therefore, is liable to be answered in negative. However, before answering it finally, we also intend to test it on the anvil of Article 142 in the light of the oral evidence produced by the plaintiffs (Suit-4) as to whether

even that can help the plaintiffs or not.

2454. In order to attract Article 142 what is necessary is that the plaintiffs were in possession of the property in dispute but dispossessed or discontinued the possession within 12 years within the date of filing of the suit by the defendants. The point in essence whether the suit has been filed within 12 years from the date, the plaintiffs is so dispossessed or discontinued of possession of the property in dispute.

2455. The submission of Sri Iyer, Senior Advocate, Sri P.N. Mishra and Sri M.M. Pandey, Advocates is that since 1934 no namaz has been offered in the inner courtyard or inside the alleged mosque and, therefore, the suit is hopelessly barred by limitation. In the alternative it is submitted that the last prayer was offered by the plaintiffs in the disputed premisses on 16.12.1949. The suit having been filed on 18.12.1961, it is beyond the period of 12 years and, therefore, is barred by limitation. They submitted that initially the plaintiffs, some of whom are also defendants in Suit-3 have pleaded that the last prayer was offered in the alleged mosque on 16.12.1949 but subsequently they took a contrary stand in the plaint (Suit-4) filed much after the date of filing their written statement in Suit-1 and Suit-3 and also in Suit-5. The admission of the plaintiffs in the written statement with respect to the date of offering Namaz is binding. The subsequent change in the stand needs to be ignored. In these circumstances, they submit that even if Article 142 would apply, Suit-4 is barred by limitation.

2456. Per contra Sri Jilani and Sri Siddiqui, Advocates submitted that 16.12.1949 was mentioned as the last Friday prayer but so far as the daily prayer is concerned it was continued and last offered on 22.12.1949. Several witnesses

examined by plaintiff (Suit-4) have deposed in its favour.

2457. The burden to prove initially lie upon the plaintiff to bring in the suit within the period of limitation.

2458. In **Shyam Sunder Prasad (Supra)** the Court also considered the question of burden of proof and observed:

> *"4. The question, therefore, is on whom the burden of proof lies in a suit based on title and for possession. In view of Article 142 of the old Act, the burden, undoubtedly, is on the plaintiff-appellant to prove that he has title to and has been in possession and he was dispossessed and discontinued his possession within 12 years from the date of the filing of the suit. . . . . The defendant did not come to the court to establish his adverse possession by prescription. The burden of proof, therefore, does not rest on him. It is, therefore, for the plaintiff/appellant to prove that not only he had title to the plaint schedule property but also he had possession within 12 years and he was dispossessed or discontinued his possession within the period of limitation prescribed under Article 142. The burden, therefore, is always on him to prove that he had possession within 12 years from the date of the filing of the suit and he has title to the property."*

2459. Let us examine first, how the right/interest in the disputed premises has been claimed by the plaintiff to be exercised and up to what time, in order to bring their suit within limitation vis a vis Articles 142.

2460. **PW-1, Mohd. Hashim** son of Karim Baksh is himself plaintiff no. 7 in Suit-4. He deposed in his examination-in-chief on 24.07.1996:

> *''पहली बार 1938 में बाबरी मस्जिद में नमाज पढ़ने गये थे।. . . . .*

बाबरी मस्जिद में पाचों समय की नमाज होती थी। कभी–कभी पॉचों वक्त की नमाजें पढ़ी है और जुम्मे की व तरावी नमाज पढ़ी है। . . . . मैंने अन्तिम नमाज 22 दिसम्बर 1949 की पढ़ी।'' (पेज 1)

"For the first time I went to offer namaz at the Babari mosque in 1938. . . . . Namaz used to be offered five times at the Babari mosque. I have sometimes offered namaz five times and have also offered Jumma and Taravi namaz.. . . . . I offered the last namaz on 22nd December, 1949." (E.T.C)

2461. He also said that at that time Maulvi Abdul Gaffar was Imam and one Ismail was Moazzim of the said mosque. His age is 75 years in July, 1996, meaning thereby his year of birth comes to 1921. The dispute arises in December, 1949 and after more than 45 years the witness at the age of 75 could categorically recollect that he offered Namaj for the first time in 1938 but when asked about the month or the season, he could not tell and in fact gave interesting reply that had it be known to him that this would be necessary for deposing statement in the dispute he would have noted it down and kept in memory. On page 19, PW1 said:

''हमें यह नहीं मालूम कि किस मौसम में या किस माह में हम पहली बार बाबरी मस्जिद में नमाज पढ़ने गये। 1938 में जब पहली बार हम नमाज पढ़ने गये तो हम अकेले गये। हमारा घर मस्जिद के करीब था।''(पेज 19)

"I do not know in which season or in which month I went to offer namaz at the Babari mosque for the first time. In 1938, I was alone when I had gone to offer namaz for the first time. Our house is near the mosque." (E.T.C)

2462. Then on page 21 he says that he used to visit disputed building for Namaj hundreds of times in a year but does not remember name of anyone who offered Namaj in the

said building alongwith him though he admits that some persons of his locality used to come. He could also recollect that in 1938 when he offered Namaj for the first time in the disputed building, about 15-20 persons were there. In order to test the veracity of the statement pertaining to alleged visit to the mosque for hundreds of times, he was cross-examined about the topography of the building and site. On page 23-24 he said:

> *''विवादित मस्जिद के दो भाग हैं एक अन्दरूनी एक बाहरी। बाहर की दीवार पर दो फाटक हैं एक पूरब की तरफ एक उत्तर की तरफ थे। अन्दरी भाग में लोहे के जंगले लगे हैं* ***उस जंगले की दिवार में तीन दरवाजे हैं। उसमें एक दरवाजा उत्तर की तरफ था।*** *वह विवादित स्थल के बाहरी तरफ जो दरवाजा है उसी के सामने अन्दर वाले बंगले में ही दरवाजा था। यह अन्दरूनी भाग वाला दरवाजा लोहे की सरिया का बना हुआ था। उत्तरी भाग में जो बाहरी दीवार पर दरवाजा था वह लकड़ी का था। पूरब की तरफ कोई फाटक नहीं था। अपने होश से पूरब की तरफ दरवाजा न होने की बात देख रहा हूँ। पूरब वाले दरवाजे की ऊँचान हमसे तीन फुट ऊँचा थी। स्वयं कहा उस पर दोनों तरफ अल्लाह लिखा है।..... पूरब के बाहरी दरवाजे से दक्षिण की तरफ जो चबूतरा है वह 17 x 21 फिट है। इसकी ऊँचाई एक मीटर है। इसके ऊपर छपपर पड़ा है।.....इस चबूतरे पर हिन्दू देवताओं की मूर्ति आने वालो को दिखायी नहीं देती।'' (पेज 23–24)*

> *"The disputed mosque has two portions – interior and exterior. The outside wall has two gates of which one was towards the east and the other towards the north. The inside portion has iron-made windows and* ***the wall with those windows has three gates***. ***Of them one gate lay towards the north.*** *Facing the outside gate of the disputed site, the inside bungalow itself had a wall. This inside gate was made of iron rods. The gate at the outer wall located in the northern portion, was made of wood. There was no gate towards the east. With all my understanding, I am*

looking at there being no gate towards the east. The eastern gate was 3 feet higher than me. (Himself stated) The word 'Allah' is written on both of its sides. . . . . Towards the south of the outside gate in the east lies a chabutra measuring 17x24 feet. Its height is 1 metre. It has a thatched roofing. . . . . Idols of Hindu deities on this chabutra are not visible to visitors." (E.T.C.)

2463. His statement that there are three doors in the internal dividing wall made of iron angles etc. and that no gate was there on the eastern site, falsifies his knowledge about the topography of the disputed building. On page 33 he says that he offered Isha Namaj on 22.12.1949 in the night at 8.30 pm. Thereafter on page 54 he clarified that Friday Namaj was offered on 16.12.1949 but thereafter five times prayer continued till the night of 22.12.1949.

2464. On page 64 he said:

*"22 दिसम्बर 1949 से पहले जायदाद मुतदाविया में इस्माइल की है ड्यूटी हर वक्त वहां रहती थी लेकिन उसकी रिहाइश वहां नहीं थी। **इस जायदाद में रिहाइश किसी की नहीं थी।** इस्माइल के अलावा इस जायदाद की देखभाल और कोई नहीं करता था सिर्फ इस्माइल को ही मुतवल्ली ने नियुक्त किया हुआ था।" (पेज 64)*

*"Prior to 22nd December, 1949, Ismail was always on duty at the disputed property but he had no residential facility there. **Nobody had any residential facility at this property.** Except for Ismail, nobody else took care of this property. Mutvalli had appointed only Ismail for this purpose." (E.T.C.)*

2465. He also confirmed that there was no place for sleeping in the disputed building on page 70:

*"इस जायदाद में यानी **विवादित जायदाद में सोने की कोई जगह नहीं थी** कोई मुसाफिर यहॉ बसेरा नहीं करता था।" (पेज 70)*

"This property, that is, the ***disputed property, had no place for sleeping*** *and no tourist stayed there."(E.T.C.)*

2466. On page 174 PW 1 says about placement of lock by Zahur Ahmad in the month of November, i.e., 22.11.1949 at the instance of police who had apprehension of danger. The witness is so simple that in a long cross-examination when he find some difficulty, on page 177, on 27.08.1996, he says:

''हमारे वकील साहब को मालूम होगा कि उस मुकदमें का पता हमें कब लगा। मुझे याद नहीं कि इस बाबत 21 अगस्त, 1996 को मैने अपना बयान वकील साहब के बताने पर या अपनी निजी सूझबूझ या जानकारी से दिया।'' (पेज 177)

"Our counsel must be in the know of the time when we had come to know of this case. I do not recall whether I gave statement in this regard on 21st August, 1996 on being tutored by the counsel or on my own understanding or knowledge." (E.T.C.)

2467. Then ultimately on page 186 (the cross-examination recorded on 29.08.1996) he admits about his weak memory and said:

''यह ठीक है कि ***उम्र की वजह से मेरी याददाश्त कमजोर हो गई*** *है, यह बातें वकील साहब को याद होंगी।'' (पेज 186)*

"It is true that ***my memory has weakened due to age.*** *These points must be in the memory of the learned counsel." (E.T.C.)*

2468. One thing he consistently said that he offered Namaj for the first time in the disputed building in 1938 and this he reiterated on page 190 also. There is a serious dispute about the age of PW-1. He admits to have filed a writ petition before this Court in 1986 where in the affidavit he mentioned his age as 55 years. If that is taken to be correct, his year of birth comes to 1931. He claims to have studied up to Class-5 and on page 66

says that he passed class 1 at the age of 8-9 and regularly passed subsequent classes within five years. Thereafter he studied Arabic from Imam Saheb. He admits that in 1949 he was studying. These facts are self speaking and, therefore, we find it difficult to believe the statement of PW 1 that he offered Namaj for the first time in the disputed building in 1938 and continuously thereafter or that he offered last prayer in the said building on 22.12.1949 in the evening.

2469. **PW-2 Hazi Mahboob Ahmad** son of Hazi Feku commenced his statement on 27.09.1996. He has disclosed his age as 58 years, meaning thereby his year of birth comes to 1938 but he has admitted to have passed High School and B.A. and on page 3 of the statement he admits that his year of birth in his High School certificate is mentioned as 1944 and he passed High School in 1961. He has also stated on page 3 that at the time of passing High School his age was 21 years since he took two years in the passing of High School but if that is also taken to be correct his year of birth would come to 1940 and not 1936. On page 11 he says:

> *''मैंने आठ साल की उम्र में होश संभाल लिया था। जब मैंने होश संभाला तो उस वक्त तक मुतदाविया इमारत कुर्क नहीं हुई थी।'' (पेज 11)*
>
> *"At the age of 8 years I came of age. When I came of age, the disputed building was not attached." (E.T.C.)*

2470. His father Hazi Feku was defendant no. 3 in Suit-1 and defendant no. 6 in Suit-3. Since he has died, in Suit-1 there is no substitution but in Suit-3, PW 2 has been impleaded as defendant no. 6/1. On the one hand he has said in his examination-in-chief to have offered Namaj for hundreds of times in the disputed building, i.e., Friday Namaj as well as five times Namaj and and last one was on 22.12.1949. In view of his

admitted age mentioned in the High School certificate, i.e., 1944 it is unbelievable that in 1949 when he was just about 5 years of age had been offering Namaj and that too he had earlier offered for hundreds of times. On page 19 he says:

> *''जब मैंने होश संभाला तो मैं देखता था कि विवादित जायदाद की तरफ लोग आते जाते थे, लेकिन मैं उस रास्ते से ज्यादा नहीं जाता था, इसलिए मैं नहीं कह सकता कि आमतौर पर आने–जाने वालों पर कोई रूकावट थी या नहीं।. . . .जब हमने होश संभाला तो उसके बाद हम विवादित जायदाद की तरफ कभी गये ही नहीं, क्योंकि वहॉ पर बुत रख दिया गया था और मुसलमान डर की वजह से वहॉ जाते ही नहीं थे।'' (पेज 19)*
>
> *"When I came of age, I used to see that people frequented the disputed property but I did not go by that way most of the time, hence, I can not say whether or not there was any bar on to-and-fro movements of visitors. . . After coming of age I certainly never went to the disputed property, because idol had been installed there and the Muslims did not go there out of fear." (E.T.C.)*

2471. If he is correct in saying that he used to visit the disputed building for hundred times there was no occasion for him to say that he did not travel the way towards disputed property for most of the time and after coming to the age of understanding he did not go since idols were placed therein. The statement of PW 2, is unrealistic and lack trustworthiness.

2472. **PW3, Farooq Ahmad** has said that he used to offer Namaj in the disputed building, i.e., Babri Masjid. He offered Friday prayer. Last prayer was offered in this building by him in December, 1949. He went after offering Isha Namaj. This was the end of December, 1949. This statement was given by PW 3 on 07.10.1996 disclosing his age as 90 years, meaning thereby he claims his year of birth as 1906. However, he was confronted with an application filed on his behalf in Suit-4 in the year 1990,

i.e., Application No. 42-O of 1990 wherein mentioned his age in the affidavit as 65 years. He admitted to have put in his thumb impression on the said affidavit and says:

> *''वकील साहब ने गवाह का ध्यान पेपर नं0 101–सी जो कि दरख्वास्त 42–ओ 90 परदावा ओ0 एस0 नं0 4/89 की ओर दिलाया दस्तावेज देखकर गवान ने कहा मैंने हलफनामा देख लिया है इस पर मेरा निषान अंगूठा है। लेकिन दस्तखत मेरे नहीं है क्योंकि कि यह दस्तखत हिन्दी में है जब कि मैं उर्दू में दस्तखत करता हूँ।* ***इसमें मेरी उम्र 65 साल लिखी है*** *लेकिन यह उम्र मैंने नहीं बतलाई* ***यह उम्र मैंने वैसे ही अंदाजे से लिखवा दी थी।*** *'' (पेज 19)*
>
> *"The learned counsel drew the attention of witness towards paper no. 101-C, which is Application 42-O/90 in OS no. 4/89. After looking at the document, the witness stated that I have seen the affidavit and it bears my thumb impression. However, the signature is not mine because the signature is in Hindi and I sign in Urdu.* ***My age is mentioned as 65 years in it****, but this age was not given by me.* ***I had got this age mentioned casually by guess work****." (E.T.C.)*

2473. On page 70 he was confronted with another application which he filed on 18.03.1986 mentioning his age in the affidavit as 60 years. On page 70 he said:

> *''* ***मैंने अपने हलफनामें में अपनी उम्र का अन्दाजा देकर 60 लिखवाई*** *थी। इस वक्त मेरी उम्र अन्दाजन 90 साल है। मेरी उम्र 90 साल के करीब होने वाली बात सही है, हलफनामें में उम्र अन्दाजे से वकील साहब ने लिखवा दी होगी। हमारी दरख्वास्तें 1986 वाली वहॉ से खारिज हो गई थीं। . . . . .* ***मुझे ख्याल नहीं क्योंकि पुरानी बात हो चुकी है कि 1949 वाली मेरी वह दरख्वास्त मन्जूर हुई या नहीं।''*** *(पेज 70)*
>
> *"****I had got my age mentioned as 60 years in the affidavit by guess work.*** *At that time I was aged about 90 years. The fact about my age being around 90 years, is*

correct. The age in affidavit must have been mentioned by the advocate out of guess." (E.T.C.)

2474. He admits to have filed a suit against his cousins and brothers, i.e., Suit No. 138 of 1993 and therein he mentioned his age as 67 years in 1993. When confronted, he did not deny but says that he does not remember. On page 91 he says:

''यह भी ठीक है कि जमीन–जायदाद की बाबत मैंने अपने भाई–भतीजों पर और उन लोगों ने मुझ पर कई मुकदमें किये हुए है। . . . . .उसका मुकदमा नं0 138/93 है। मुझे ख्याल नहीं है कि मैंने उस मुकदमा में अपनी उम्र 67 साल लिखाई हो। . . . . . मुझे याद नहीं कि उस दरख्वास्त में मैंने अपनी उम्र 70 साल लिखाई हो।'' (पेज 91)

"It is also true that I have filed cases against my brother-nephews regarding land-property and they have also filed many cases against me. . . . . .It is case no. 138/93. I do not remember that I have mentioned my age as 67 years in it. ..... I do not remember that I had mentioned my age as 70 years in that application." (E.T.C)

2475. He does not understand the dates and admits it on page 71.

''मुझे तारीखों की मालूम नहीं।'' (Page 76)

"I have no knowledge of the dates." (E.T.C)

2476. Then ultimately he also admits of his weak memory on page 101:

''यह बात सही है कि ***उम्र की वजह से मेरी यादष्त कमजोर हो चुकी है*** *।'' (पेज 111)*

"It is true that my ***memory has grown weak on account of age.*** *" (E.T.C.)*

2477. What we actually notice is that mainly he was produced to depose statement about putting lock in the disputed building in the night of 22.12.1949 and in reference thereto in a casual way he has said about offering of Namaj also. His

statement about placement of lock is also self contradictory as shown below:

''मै ताला लेकर उनके साथ गया था और ताला लगाकर जब वापस आया तो वह मुझे मेरे वालिद के हवाले करके गये थे।. . . . . ताला बंद करने के लिए मुझे दरोगा साहब ने हिदायत दी थी।

प्रष्नः– यह हादसा जब हुआ दरोगा जी ने ताला बन्द करने को कहा तो क्या उसके पहले विवादित जायदाद में ताला नहीं बन्द होना था?

उत्तरः– नहीं बन्द होता था।'' (पेज 12)

"I had gone with him with a lock and on return after putting the lock, he went back after giving me in the custody of my father. . . . . .. The inspector had instructed me to put the lock.

Question:- When the inspector asked to put the lock, does it mean that prior to it the disputed property was not locked?

Answer:- It was not locked." (E.T.C)

'जंगले वाली दीवार में एक दरवाजा उत्तर की तरफ था और एक पूरब की तरफ/पूरब की तरफ 2 थे, मैंने ताला बीच में लगाया था।''

(पेज 21)

"The grill wall had gates in north and east. There were two towards east and I had put lock in between them.

(E.T.C.)

*''**यह बात गलती से कह गया था** कि मैंने एक ताला बीच में लगाया था, दरअसल मैंने दो अलग–अलग ताले लगाये थे।''*

इन मुकदमात में मैंने ऐसी कोई दरख्वास्त नहीं गुजारी कि मेरे मर्जी दावा या अवाब –दावों को तरमीम करके यह लिखा जाये कि 1949 में ताले मैंने लगाये थे।'' (Page 72)

*"**I had incorrectly stated** that I had put lock in between. Actually I had put two different locks on the two gates."*

"I moved no such application in these cases to effect

that my plaint or written statement be amended and it be mentioned that I had put the locks in 1949." (E.T.C)

"मेरे अब्बा हजूर ने तालों का जिक्र हाईकोर्ट में भी नहीं किया होगा। " (Page 79)

"My father must have not mentioned about the locks before the High Court as well." (E.T.C.)

"जो ताले मेरे अब्बा हजूर ने दिये थे उनमें से एक लाल था और एक हरा था। वह नये ताले थे घर के अंदर रखे हुए थे। उस वक्त कहॉ से खरीद का दिये होगें। . . . . . .उस वक्त रात के 10–11 बजे का वक्त था। . . . . ***मैंने पहले कुछ भूल से कह दिया होगा*** *कि रामदेव दरोगा हमारे यहॉ रात को 12.00 बजे आये थे।* ***मेरे अब्बा हजूर करीब की दुकान से लाये थे, हो सकता है कि वह शाम को ही ताले ले आये हों।*** *" (Page 85)*

"The locks given by my father, were red and green in color. They were new locks and had been kept inside the house. He could not have purchased it at that time . . . .. . It was around 10-11 PM by that time . . . . . . ***I may have stated erroneously*** *that inspector Ramdev had come over to my place at 12 in the mid night.* ***My father had brought it from a nearby shop. It could be that he had brought the locks in the evening****." (E.T.C)*

"खाना खाकर सो गये। मेरे वालिद साहब ने मुझे सोते हुए को जगाया था। उससे पहले राम देव दरोगा मेरे वालिद के पास पहुंच चुके थे।" (Page 86)

"(We) went to sleep after having dinner. My father woke me up. Inspector Ramdev had already reached my father."(E.T.C)

" ***उस दिन से पहले इस मस्जिद में ताला नहीं लगता था।*** *उस वक्त जब मैंने ताला लगाया मोअज्जिम मस्जिद के अंदर ही था। वह सहन दरवाजा में था। अंदर वाले हिस्से में नहीं था। वह बाहर वाले सहन में था।* ***जब मै ताला लगाने गया तो मोअज्जिम छप्पर के***

नीचे सोने लग रहा था। हमने उसको नहीं जगाया। हम ताला लगाकर वापस अपने घर आ गये मोअज्जिम इत्मीनान से सोता रहा।'' (Page 87)

*"**Locks were not put at the mosque prior to that day.** When I put the locks, the Muazzim was inside the mosque. He was in the courtyard gate and not in the inner part. He was in the outer courtyard. **When I went to put the locks, the Muazzim was sleeping under the thatched roof. I did not wake him up. I returned home after putting the lock and the Muazzim kept sleeping peacefully.**"(E.T.C)*

''मुझे वह तारीख याद नहीं लेकिन जुम्मे रात का दिन था जब दरोगा जी ने हमारे वालिद को ताला लगाने के लिए कहा था। हम दरोगा जी के साथ चले गये और ताला लगा दिया। वापसी पर आकर चाबी अपने वालिद को दे दी थी। यही ताले अदालत के हुकुम से 1986 में खोले गये। बीच में मुतवातिर ताला लगा रहा।'' (Page 100)

"I do not remember the date, but it was Jumme Raat, when the inspector had asked my father to put the locks. I had gone with the inspector and put the locks. After return home, I gave the keys to my father. These very locks were opened in 1986 by order of court. In meantime, it remained continuously locked." (E.T.C)

2478. On page 87 PW 3 says that when he visited the disputed building to place lock in the night of 22.12.1949 Moazzim was inside the mosque and was sleeping under thatched roof *(Chappar)* in the outer courtyard but this stand contradicted the statement of PW 1 where he said that there was no place for sleeping or studying in the disputed building. With respect to thatched roof in the outer courtyard, PW 1 on page 31/32 said:

''पूर्वी फाटक से अन्दर आने पर बाहरी दीवाल के अन्दर उत्तर

*तरफ एक लम्बा सा छपपर था वह भण्डार पर था या नहीं यह नहीं बता सकता। यह लम्बा सा छप्पर नीम के पेड़ के नीचे था लोग उस छप्पर में रहते थे पर मुझे नहीं मालूम कौन लोग रहते थे। **इस छप्पर के नीचे हिन्दू लोग रहते थे मुसलमान लोग नहीं रहते थे।** . . कुर्क शुदा स्थान के पश्चिम की तरफ जो परिक्रमा बनी थी वह परिक्रमा के लिए नहीं दीवाल की मरम्मत के लिए बनी थी। . . . . कुर्क शुदा जायदाद की बाहरी दीवाल के अन्दर दो छप्पर थे एक चबूतरा पर था और दूसरा पूर्वी दीवाल से सटकर नीम के पेड़ के नीचे था।'' (पेज 31–32)*

*"On coming inside through the eastern gate there was a spacious shed towards the north inside the outside wall. I cannot tell whether it was a store house or not. This long shed was beneath the neem tree. People lived in the shed but I do not know who they were. **Those who lived under this shed were Hindus, not Muslims**.. . . . . The Parikrama (circumambulation), which was built towards the west of the attached place, was for the repair of the wall, not for parikrama. . . . . Inside the exterior wall of the attached property were two sheds and a chabutra (rectangular terrace). Another chabutra was adjacent to the eastern wall and was beneath the neem tree." (E.T.C.)*

2479. PW1 on page 174 has said that on 22.11.1949 Zahur Ahmad had put a lock.

''नवम्बर के महीने में 22 नवम्बर 1949 को ताला जहूर अहमद ने लगाया था , उसने ताला पुलिस के कहने पर लगाया था ,पुलिस को खतरे का एहसास था '' (पेज 174)

"On the 22nd of November, 1949 Jahoor Ahmad had put a lock. He had put the lock at the behest of the police. The police had the apprehension of danger." (E.T.C.)

2480. This contradiction could not be explained by learned counsel for the plaintiffs and, therefore, we find difficult to believe the statement of PW 3 also about offering of Namaj in

the disputed building.

2481. **PW 4, Mohd. Yaseen** has confined his statement about offering of Namaj on Friday and says that last time he offered Namaj in the disputed building about 47 years ago and since in the night of 22/23.12.1949 idols were placed therein, Namaj could not be offered on 23.12.1949. On page 1 he says:

*''मैं जुम्मे की नमाज उसमें बराबर पढ़ता था। **जुम्में के अलावा मैंने उसमें और कोई नमाज नहीं पढ़ी।** आखिरी बार मैंने उसमें जुम्मे की नमाज आज से तकरीबन 47 साल पहले पढ़ी थी। 22/23 दिसम्बर 1949 की रात को उसमें मूर्ति रख दी गयी थी। इसलिए नमाज पढ़ना रूक गया।'' (पेज 1)*

*"I consistently offered Jumma namaz (Fridays' congregational prayers) thereat. **Except for Jumma namaz, I did not offer any other prayer thereat.** I, for the last time, offered Jumma namaz thereat nearly 47 years back. The idol was placed therein on the intervening night of 22nd/23rd December, 1949. This was the reason why the offering of the namaz came to an end." (E.T.C.)*

2482. PW 4 has deposed his age as 66 years on 29.10.1996 when his examination commenced which takes his year of birth to 1930. On page 51 he says that prior to the incident of 1949 the Babari mosque was never locked. However on page 20, 21, 23 and 59 regarding Namaj he says:

''इस मस्जिद में जब मैं नमाज पढ़ने जाता था तो कम से कम 4–5 सौ आदमी तो हुआ ही करते थे।'' (Page 20)

"When I used to go to offer namaz at this mosque, there were at least 4-5 hundred people over there."(E.T.C)

''जिस रोज इस मस्जिद में नमाज पढ़ना बन्द हो गया उससे पिछले जुम्मे को भी हाषिम मियॉ मुझे इस मस्जिद में नमाज पर मिले थे और हमने एक–दूसरे की खैरियत पूछीं थी।'' (Page 21)

"In the Jumma preceding the day on which offering of namaz was stopped at this mosque, Hashim had met me at this mosque at time of namaz_and we both had inquired about each other's welfare."(E.T.C)

"मैं इस मस्जिद में आजादी मिलने के पॉच साल पहले जाने लगा था।" (Page 23)

"I started going to this mosque from 5 years before independence." (E.T.C)

*"**मैंने नमाज पढ़ना 1938 में पढ़ना शुरू किया था** लेकिन बराबर नहीं पढ़ता था। 1938 में नमाज मस्जिद में पढ़ता था।"(Page 59)*

*"**I started offering namaz in 1938** but I was not regular. In 1938, I used to offer namaz in mosque."(E.T.C)*

2483. When in the cross-examination several questions were asked about the internal topography etc. he said on page 59:

*"**मेरी याददाष्त अब कुछ कमजोर हो गयी है।**"*

(Page 59)

*"**My memory is now feeble**" (E.T.C.)*

2484. When his statement was found contradictory to the statement of PW 1 who is plaintiff no. 7 in Suit-4 he justified himself by stating that PW 1 must have given wrong statement as is evident from the following:

*"**अगर हाषिम मियां ने कोई ऐसा बयान दिया हो** कि उस छप्पर के नीचे पुजारी लोग बैठते थे **तो उनका कहना गलत है।***

***अगर हाजी महबूब ने ऐसा कुछ कहा है** कि इस जगह को एक तरफ से पिछले 15–20 दिनों से बैरागियों ने घेरा हुआ था **तो उनका कहना गलत है।**" (पेज 48)*

*"**If Mr. Hashim has given any such statement** that*

priests used to sit under said thatched roof, ***then his statement is wrong****.*

If Hazi Mahboob has stated *that the recluses had surrounded this place from one side for last 15-20 days,* ***then his statement is wrong****." (E.T.C)*

"1949 के हादसे तक जकी साहब मुतवल्ली थे उनके बाद ही जव्वाद साहब मुतवल्ली बने थे। . . .फारूख साहब का अगर ऐसा कुछ कहना है कि इस हादसे के वक्त मस्जिद का इंतजाम जहूर साहब करते थे तो इस बात की सही या गलत होने की जिम्मेदारी उनकी है। मैं तो सिर्फ यह जानता हूं कि मस्जिद का अंतजाम जकी साहब करते थे।"(Page 50)

"Mr. Zaki was the Mutwalli till the incident of 1949. Mr. Javvad became Mutwalli after him. . . . . If Mr. Farooq has made any such statement that Mr. Zahoor used to manage the mosque at time of the incident, then the responsibility for its correctness or incorrectness lies with him. I know only this much that the mosque was managed by Mr. Zaki."(E.T.C)

"अगर हाषिम मियां ने कोई ऐसा बयान दिया हो कि उन्होंने सिलाई का काम सिर्फ 1966 से 1976 तक किया है तो यह उनकी गलत बयानी है।" (Page 51)

"If Mr. Hashim has given a statement that he had carried out tailoring work only between 1966 to 1976, then it is his wrong statement."(E.T.C)

2485. This is really surprising that after almost 47 years from the date of dispute the PW 4 though could recollect that he offered Friday prayer regularly in the disputed building and that too he started at the age of 8 but when the internal topography sought to be enquired in cross-examination by placing before him the photographs of the disputed building, he finds it

difficult in identifying the same and try to justify by taking recourse to his weak memory. The extent of his memory may be seen from what he has said on page 59:

''जब हिन्दुस्तान आजाद हुआ तब की मुझे होष है। उस वक्त मैं 11–12 साल का था (फिर कहा कि मैं 17 साल था)'' (पेज 59)

"I have remembrance of the time of independence of India. I was aged 11-12 years at that time (then stated that I was 17 years old)." (E.T.C)

2486. The veracity of statement can also be examined from what he has said on page 6:

''मैंने जो मकान मस्जिद के साथ लगता हुआ बनाया है इसकी जमीन रियासत अयोध्या से ली थी। जब मैंने यह जमीन ली उस वक्त मेरी उम्र 40–45 साल के करीब थी। मैंने यह जमीन माल गुजारी पर ली थी। मैंने इस बात के बाबत विकास प्राधिकरण के पास भी इन्दराज दर्ज करा दिया था, वहां से नक्शा पास होता है। मैंने यह मकान 1966 में बनवाया था उसके 2 साल बाद इस पर नगरमहापालिका का टैक्स लग गया था। मुझे अब याद नहीं कि जमीन लेने के कितने दिन बाद मैंने मकान बनवाया था, गालिबन 10–12 साल तो हो ही गये होंगें जमीन लेने और मकान बनवाने के बीच में।'' (पेज 6)

"The house built by me adjacent to the mosque, exists over the land obtained from Ayodhya Estate. When I got this land, I was aged about 40-45 years. I had taken this land on rent. I had also got an entry in this respect entered in the records of the Development Authority, from where map is approved. I had built this house in 1966. Municipal tax came to be imposed in connection with the same, two years later. As of now I do not remember after how many years of obtaining this land, I had built the house. There might have been an intervening period of nearly 10-12 years between the obtaining of land and the

construction of house." (E.T.C)

2487. His year of birth comes to 1930. If he acquired land when he was 40-45 years old, the question of construction of house on the said land in 1966 does not arise particularly when he says that there was a gap of 10 to 12 years between acquiring of land and construction of house.

2488. **PW 5, Abdul Rahman** son of Saiuddin has deposed to have pronounced Holy Quran in the disputed building in 1945 and 1946. During the period he stayed at Ayodhya for pronouncing Holy Quran in Ramzan Taravi, he used to offer Namaj in the disputed building. He is not a local resident of Ayodhya but of Ibrahimpur, Pargana Mangalasi, District Faizabad. He has given his age 71 years on 05.11.1996 when his examination commenced. It means that his year of birth is 1925. In 1945-46, therefore, he must be of 20-21 years. He does not remember the age of his father at the time of death as well as his own age at the time of death of his mother. He admits of his marriage at the age of about 22 years but neither could tell the date when he was conferred with the certificate and Dastarbandi nor even the age or date of birth of his children.

*"मेरे 11 बच्चे हैं 7 लड़के 4 लड़कियॉ। **मैं उनकी पैदाईश के सन या साल सही न बता सकूँगा।**" (Page 36)*

*"I have 11 children, including 7 sons and 4 daughters. **I am not in a position to correctly tell the years of their birth.**"(E.T.C.)*

"अपने होश संभालने के 5–6 साल बाद हमने पढ़ाई शुरू की थी। उस वक्त मेरे वालिद साहब जिन्दा थे। मैं यह सही नहीं बता पाऊॅगा कि मेरे होश संभालने के कितने दिनों बाद उनका इन्तकाल हुआ था। अन्दाजन यह 10–15 साल का वक्फा हो सकता है।

"मैंने लखनऊ में भी पढ़ाई की है। मैं जबानी नहीं बता पाऊॅगा कि

कौन से सन या साल में लखनऊ में पढ़ाई की थी। . . .लखनऊ में मैंने अपनी तालीम मदरसा आलिया फुरकानिया, चौक में हासिल की थी। . . लखनऊ के मदरसा में भी दाखिले का कोई फार्म नहीं भरा गया था, बल्कि मेरे मामू ने जाकर मेरा नाम लिखवा दिया था।'' (पेज 54–55)

"5-6 years after I started understanding things, I started my education. My father was at that time alive. I cannot correctly tell how long after my having come of age, he died. I guess it to be 10-15 years.

I have had my schooling in Lucknow also. I cannot orally tell in which year I studied in Lucknow. . . . . I got schooling at Madarsa Aaliya Phurkania at Chowk in Lucknow. . . . . .No form had been filled up for admission to the Lucknow school also; rather, my maternal uncle had gone there to get me admitted." (E.T.C.)

2489. Further about his visit at Ayodhya on page 27 and 31-32 he has said:

''जब मैं पहली बार अयोध्या कुरान शरीफ सुनाने गया तो अंग्रेजों की हुकूमत थी। इन दो दफे के इलावा यानि कि जब मैं इन 12–12 दिनों के लिए कुरान शरीफ सुनाने अयोध्या गया था मैं कभी बाबरी मस्जिद में नहीं गया। (खुद कहा कि मैं एक बार बहराइच गया था तो रास्ते में एक वक्त की नमाज मैंने बाबरी मस्जिद में भी पढ़ी थी।)उस समय सरयू दरिया में स्टीमर चलता था। बारिश के दिन थे। ये वाक्या 1947 में आजादी मिलने से पहले का था। मैं जब कुरान शरीफ वहॉ सुनाकर आया तो उसके दो–चार महीने बाद ही यह मौका आया था। . . . . ***शाम हो गयी थी मैंने नमाज या तो मगरिब की पढ़ी थी या असिर की पढ़ी थी।*** *अब तक जो मुझे याद है यह नमाज मगरिब की नहीं थी।* ***जिस वक्त मैंने नमाज पढ़ी उस वक्त वहॉ पर केवल मोअज्जिम थे जो अजान दिया करते थे।*** *. . . .* ***हम स्टीमर में बैठकर रात को गए थे।*** *यह कहना गलत है कि शाम के बाद स्टीमर सेवाएं बन्द हो जाती हों।'' (पेज 27)*

"When, for the first time, I went to Ayodhya to recite

*the holy Quran, it was English Rule. I never visited the Babri mosque except on these two occasions, that is, when I visited Ayodhya to recite the holy Quran for these spells of 12 days each. (Stated on his own) Once, on my way to Bahraich I had offered namaz one time at the Babri mosque. At that time, steamer was in use in the stream of the river Saryu. Those were rainy days. This episode preceded 1947 when independence was achieved. I had this chance only 2-4 months after I had returned from there after having recited the holy Quran. . . . . **It was evening time; I had offered namaz, whether 'Magrib' or 'Asir'.** As far as I remember, it was not 'Magrib' namaz. **The moment I offered namaz, only muazzim was present there, who used to give 'Azan' calls.** . . . . . **I had gone to Bahraich in a steamer during the night time.** It is wrong to say that steamer services used to be in operational after evenings." (E.T.C.)*

"जब मैं अयोध्या पहली बार कुरान शरीफ सुनाने गया तो रमजान के महीने की पहली तारीख थी। (खुद कहा कि 29 शाबान को हम वहां पहुॅच जाते थे अगर चांद वहॉ नजर आ जाता तो वहां पढ़ा देते थे उसी रात को) मुझे सही याद नहीं कि मैं किस खास रोज (फिर कहा कि मुझे याद है कि मैं शाबान की 29 तारीख को अयोध्या पहुॅच गया था।) जब मैं अयोध्या पहुॅचा और वहां से वापस हुआ तो इस वक्फे में कितने जुम्मे पड़े मैं सही नहीं बता सकता लेकिन एक जुम्मा तो यकीनन आया था। यही तरीका अयोध्या आने–जाने का दूसरे साल भी रहा था। . . . .हो सकता है कि हमने वहां एक भी जुम्मा न किया हो और अपने घर चले आए हों लेकिन एक जुम्मा तो किया था। . . . . हमें याद नहीं है कि इस नमाज में मो0 हाशिम हाजी फेंकू, हाजी फायक या कयामत अली साहब थे या नहीं लेकिन हाजी फेंकू जरूर थे।" (पेज 31–32)

"When I for the first time went to recite the holy Quran at Ayodhya, it was the first day of the Ramzan

month. (Stated on his own that we had reached there on 29th. When the moon was sighted there, we used to recite it that very night.) I do not correctly remember the particular day. (Further stated) I remember that I went to Ayodhya on 29th of the lunar month. I cannot tell how many Fridays intervened between the day I reached Ayodhya and the day I returned from there. But one Friday had certainly intervened. This was the very way in which we visited the Ayodhya the next year also. We may not have performed even a single Jumma and may have come back home; but one Jumma was certainly performed. . . . . We do not remember whether Mohammad Hashim, Hazi Pheku, Hazi Fayak or Qayamat Ali were present at this namaz or not, but Hazi Pheku certainly attended it." (E.T.C.)

2490. He claims to be related with Hazi Feku and said that he was invited for reading of Holy Quran at Ayodhya by Hazi Feku (i.e., father of PW 2) (at page 21-22).

2491. **PW 6, Mohd. Unus Siddiqi** son of Late Hafij Ahmad, a Pleader enrolled at Lucknow on 09.07.1955. He did his High School in 1948 and Intermediate in 1950 from Faizabad and thereafter he went to Lucknow for Graduation and to Aligarh for Post-Graduation and Law degree. He was earlier counsel of the plaintiffs in the suit but has stopped appearing since 1965. He claims to have offered Namaz in the disputed building for the first time at the age of 12-13 years in Shab-e-barat and thereafter every year during Shaberat except once when he offered Namaz in day time, i.e., on the Friday before placement of idols therein. His statement commenced on 29.11.1996 when he was 63 years of age meaning thereby his year of birth comes to 1933. In his cross-examination he admits

that he is connected with this case since 1961. In his cross-examination on page 8 he admits his date of birth mentioned in the High School certificate as 27.08.1932. He visited the disputed building as Survey Commission in 1991 though the nature of this commission is not clear. Some part of his statement may be noticed as under:

''मैं अयोध्या के कुछ मोहल्लों को जानता हूं सभी को नहीं।

1957 और 1965 के बीच मुझे इस जायदाद के बाबत मालूम हुआ था कि यह कब और किसने बनवाई थी। *मैं नहीं बता पाऊॅगा कि बुनियादी तौर पर इस जायदाद का कितना रकबा था।'' (पेज 9)*

''I know some of the localities of Ayodhya, but not all of them.

Between 1957 and 1965 I came to know as to when this property was erected and by whom. *I am not in the position to tell how much area this property basically had.'' (E.T.C.)*

''जब रात को मैं वहां जाता था तो अक्सर लोग छप्पर में सोते हुए दिखाई देते थे।'' (पेज 11)

''When I went there during nights, people were often seen sleeping in sheds. '' (E.T.C.)

''हमारे मोहल्ले के कुछ लोग भी हमारे साथ थे। ***हमारा मोहल्ला फैजाबाद में है न कि अयोध्या में।*** *हमारे साथ अयोध्या का कोई आदमी नहीं था। हम लोग कई साईकिलों पर आये थे। 4–6 आदमी जरूर थे।*

मेरे ख्याल से जिस वक्त हम विवादित जायदाद पर पहुंचे तो रात के 10 या 11 बज चुके थे। *. . . . . मौके पर मुतदाविया जायदाद में चिराग जल रहे थे। मुझे मालूम नहीं कि चिरागों का इंतजाम किसने किया था। हम चिराग लेकर नहीं गये थे। लोग आते जाते रहते थे* ***मेरे ख्याल से 50–60 आदमी तो वहां पर जरूर थे।***

*. . . . . **हमने साढ़े 11 बजे नफिल पढ़ी थी।**'' (पेज 15)*

*"Some other people of our locality were also with us. **Our locality is in Faizabad, not at Ayodhya.** No body from Ayodhya was with us. We had come on many cycles. We were certainly 4-6 persons. None of the persons who had gone with us are now alive; all of them are no more.*

***It was, as I guess, 10 or 11 O'clock at night when we reached the disputed property**.. . . . Lamps were lighted at the disputed property on the site. I do not know who had arranged the lamps. We had not taken along the lamps. People frequented there. **I guess that 50-60 people were certainly present there. . . . . I had offered 'Nafil' at half past 11**." (E.T.C.)*

''यह सबसे पहली मर्तवा वहां जाने का और फातिया पढ़ने का वाका दिसम्बर, 49 के हादसे से तकरीबन 10–12 साल पहले का है। दिसम्बर, 1949 के हादसे से जो फौरी पिछला जुम्मा गुजरा था उस रोज मैंने वहॉ मुतदाविया जायदाद में नमाज पढ़ी थी। वह जुम्मे की नमाज थी।

मेरे खालाजाद भाई मो0 महमूद साहब भी मेरे साथ जुम्मे की नमाज में शरीक थे। यह नमाज दोपहर बाद तकरीबन सवा बजे के करीब पढ़ी गयी थी। मेरे ख्याल से चार पॉच सौ नमाजी तो जरूर थे। नमाजियों में अयोध्या और फैजाबाद दोनों जगह के लोग थे। . . . . मौलवी अब्दुल गफ्फार साहब ने इमामत की थी।'' (पेज 16)

"This incident of going and offering 'Fatiya' there for the first time, precedes December, 1949 incident by nearly 10-12 years. I had offered namaz at the disputed property on Friday immediately preceding the December, 1949 incident. That was Jumma Namaz.

My cousin, Mohammad Mahmood, had also attended the Friday Namaz with me. This namaz had been offered around a quarter past one in the afternoon. I guess that

namazists were certainly 400-500 in number. Among namazists were included people both from Ayodhya and Faizabad. . . . . Maulvi Abdul Gaffar had performed the job of Imam. "(E.T.C.)

"दिसम्बर 1949 के जिस जुम्मा को मैं नमाज पढ़ने मस्जिद में गया तो कुतबा हो रहा था। ..... उस समय में सोलह सत्रह साल का था।" (पेज 17)

"On which particular Friday in December, 1949 I went to the mosque to offer namaz, 'qutba' was in progress. . . . . At that time I was aged 16-17 years. (E.T.C.)

2492. On page 35, 39 and 41, PW 6 said:

"जब मैं बाबरी मस्जिद गया था पहली बार तब अपने होश संभाल चुका था (फिर कहा कि पहली और आखिरी बार दिन में एक ही दफा गया था और उस समय तक मैं होश संभाल चुका था) रातों के वक्त मैं चार पॉच दफे शब्बे बरात के मौके पर वहॉ गया था।"

"When I went to the Babri mosque for the first time, I had begun to understand the things. (Further stated that I had gone there only once a day, for the first and last time). I went there 4-5 times during nights on the occasion of 'shab-e-barat'." (Page 35)

"उससे पहले मै। 22/23 दिसम्बर 1949 के पिछले जुम्मे की नमाज पर ही दिन के वक्त गया था।" (Page 39)

"Earlier, I had gone there only at the time of the Friday Namaz preceding 22/23rd December, 1949, in the day time.

"दिसम्बर 1949 में जब मैं जुम्मे की नमाज पढ़ने इस मस्जिद में गया तो अंदरूनी सहन के बीच में दक्षिण की तरफ खड़ा हुआ था। जुम्मे की नमाज थी काफी भीड़ थी। 400–500 आदमी उसमें शरीक थे।" (Page 41)

"In December, 1949, when I visited this mosque to

offer the Friday Namaz, I was standing south-wards in the middle of the inner courtyard. There was Friday Namaz; there was much crowd. People attending it were 400-500 in strength." (E.T.C.)

2493. However, regarding memory, when PW 6 was confronted with some contradiction in his statement he said on page 33:

*"(अजखुद कहा कि **मेरी याददाश्त कमजोर है)। मेरी याददाश्त की कमजोरी 1986 से होनी शुरू हुई है।** (फिर कहा कि सन् 1987 से शुरू हुई है।) यह ठीक है कि अब आलम यह है कि **वाजवकात मैं अपने लड़कों के नाम भी भूल जाता हूँ।** .. . . .उसी वक्त से यानी 1987 से मेरी बिनाई भी कमजोर हो गयी है। मुझे उस वक्त सर में चोट लगी थी।" (पेज 33)*

*"(Stated on his own that **my memory is weak**). **I began to develop weakness in my memory from 1986.** (Again stated that it has started from 1987). It is true that condition has now become so serious that **I forget even the name of my sons**. . . . . My 'binai' (vision) has also weakened since that time, that is, from 1987. I had sustained head injuries at that time."(E.T.C.)*

2494. **PW 7, Hasmat Ulla Ansari**, son of Niyamat Ulla has also deposed to have offered Namaz in the disputed building for hundreds of time starting from 1943. The last Namaz he offered in the disputed building about a week before the date when idol was placed therein, i.e. night of 22nd/23rd December, 1949. He further said that he offered Namaz till two days earlier from the date when the idol was placed. However, Namaz was offered in the disputed building till 22.12.1949 is also his statement. He has shown his age as 65 years in 1996, meaning thereby his year of birth comes to 1931. He is High School passed and in the High School certificate he admits to have

mentioned his date of birth 8.1.1934 though he claims that his correct year of birth is 1932. He studied upto Class 4th in a Madrasa at Kaziyana and, thereafter got admission in Katra Middle School at Suthati and studied thereat upto Class 6th and then went to Kolkata, sought admission in Class 8th thereat in Fafas Inter College wherefrom he passed High School. On page 12 he says:

''जब मुझे फाफस कालेज से सार्टीफिकेट मिला अपनी तालीम पूरी करने का तथा मुझे मालूम हो गया था कि मेरा तारीख पैदाइश गलत लिखी गयी है। मैंने आज तक उस गलती को दुरूस्त कराने का कोई कार्य वाही नहीं की।'' (पेज 12)

"When I got a certificate from the Fafas College on completion of my schooling and I came to know about incorrect mentioning of my date of birth, I have not till date taken any steps for rectification of the said mistake." (ETC)

2495. On page 35, PW 7 stated:

''1949 के दिसम्बर के हादसे के वक्त मैं नाबालिग था।'' *(पेज 35)*

"I was a minor at the time of December, 1949 incident." *(ETC)*

2496. About his date of birth, on page 44 he says:

''मैंने जब से होश संभाला तभी से अपनी पढ़ाई शुरू कर दी थी। हम घर में तो पढ़ते ही थे फिर मदरसे में भी जाने लग गये। मेरे वालिद साहब एक सरकारी प्राईमरी स्कूल के टीचर थे उनको इस बात का इल्म था कि बच्चों को दाखिल करते वक्त किस किसी चीज की सूचना देनी जरूरी होती है। मेरा दाखिला आठवें दर्जे से पहले की पढ़ाई के लिए स्कूल में मेरे वालिद साहब ने ही खुद करवाया था। यह भी जरूरी है कि मेरी तारीख पैदाईश मेरे वालिद साहब ने खुद लिखवाई थी। यह जाहिर है कि जो तारीख पैदाईश उन्होंने लिखवाई थी वह सही होगी।'' (पेज 44)

"I started my learning since the time I had come to understand things. I did study at home and then began to

go to school as well. My father was a teacher at a government primary school. He had the knowledge about which particular information is necessary to be given at the time of admission of children. My father had himself got me admitted to school for my pre-class VIII schooling. It is also natural for my father to have got my date of birth recorded on his own. It is explicit that the date of birth which he had got recorded must be true."(E.T.C.)

2497. On page 51, about his education he said:

''1962 से मैं शहर फैजाबाद में रहता आ रहा हूँ। . . . . जब मैं फार्ब्स इन्टर कालेज में पढ़ता था तब हर रोज अयोध्या से आता जाता था। मैं यहॉ पर जुलाई 1948 से मार्च 1951 तक पढ़ा था। हमारा स्कूल सुबह 10 बजे तक चलता था लेकिन शुक्रवार को सुबह 8 बजे से दोपहर 12 बजे तक चलता था। . . . . .कलकत्ता मैं 1946 से 48 तक डेढ साल तक रहा। वहॉ पर मेरे मामू थे मैं उनके यहॉ रहा था। मैं डेढ साल तक सुतहटी के मिडिल स्कूल में पढ़ा था। उसके पहले मैं चार साल तक मदरसे में पढ़ा था।'' (पेज 51)

"I have been visiting the city of Faizabad since 1962. When I was a student of Forbes Inter College, I took to and fro trip to Ayodhya everyday. I studied here from July 1948 to March 1951. Our school used to run up to 10'O clock in the morning; but on Fridays it used to run from 8'O clock in the morning to 12:00 noon. . . . . I was in Kolkata for 1½ years between 1946 and 1948. my maternal uncle was there; I stayed at his place. I studied for 1½ years at the Suthati Middle School. Before that I had studied at Madarasa for four years." (E.T.C.)

2498. On page 60-61, 64 and 74, PW 7 said:

*''इस मस्जिद में बुत रखे जाने वाला हादसे से **2 दिन पहले मैंने आखिरी बार नमाज पढ़ी थी।** उस वक्त तक मैं वहां पर मुतवातिर नमाज पढ़ता आ रहा था यह कहना गलत होगा कि मैंने वहां पर मुतवातिर*

नमाज बुत रखे जाने के हादसे से एक हफ्ता पहले तक पढ़ी थी। मैंने अपना 5 दिसम्बर, 96 वाला यह बयान सुन लिया है जिसमें लिखा गया है ''जब बुत रखा गया उसके एक हफ्ता पहले तक मैं वहां मुतवातिर नमाज पढ़ता था। यह बुत 22 /23 दिसम्बर, 1949 की दरमियानी रात को रखा गया था। यह मेरा बयान सही है लेकिन ***यह भी सही है कि इस हादसा से 2 दिन पहले मैंने इस मस्जिद में अखिरी बार नमाज पढ़ी थी।*** *यह बात मैंने ऊपर लिखे गये बयान से पहले कही थी।*

जिस वक्त मैंने पहली बार बाबरी मस्जिद में 1943 में नमाज पढ़ी तब मेरी उम्र तकरीबन 11–12 साल थी और मैं होश सम्भाल चुका था। यह कहना गलत है कि मैं अपनी उम्र को जानबूझ कर बढ़ा चढ़ाकर बता रहा हूँ या इस बाबत सच्चाई को तोड़ता मोड़ता हूं। . . .जब कजियाना वाले मदरसे में मैं दाखिल हुआ तो मेरी उम्र तकरीबन 9–10 साल रही होगी। . ..हाजी महबूब मुझसे उम्र में तकरीबन 8 साल छोटे हैं।'' (पेज 60–61)

*''**I had for the last time offered namaz two days before** the incident of idol being placed in this mosque. I had been consistently offering namaz there at that time. It would be wrong to say that I had continued to offer namaz only up to a week ahead of the incident of idol being placed. I have heard the December 5, 1996 statement of mine which says 'I consistently offered namaz up to one week preceding the time when idol was placed. This idol was placed on the intervening night of 22/23rd December, 1949'. This statement of mine is correct but **it is also correct that I had for the last time offered namaz at this mosque two days prior to this incident.** I had stated this thing earlier to the statement mentioned above.*

When I, for the first time, offered namaz at the Babri mosque in 1943, I was aged 11-12 years and had begun to understand things. It is wrong to say that I am deliberately

over-stating my age or that I have distorted the truth in this regard. . . . When I was admitted to Kaziana-situated Madarsa, my age would have been nearly 9-10 years. . . Hazi Mahboob is nearly 8 years younger to me."(E.T.C.)

"इस बयान में गलत लिखा गया है कि मुझे वहां पढ़ाई करने का सार्टीफिकेट मिला था। दरअसल मुझे कभी कोई सार्टीफिकेट नहीं मिला। यह कहना गलत है कि इस बाबत मैं कोई झूठ बोलता हूं।" (पेज 64)

"It is incorrectly written in this statement that I had been given a certificate for having studied there. As a matter of fact, I never got any certificate. It is wrong to say that I tell a lie in this respect."(E.T.C.)

"अयोध्या में हमारे मकान के अगल बगल मस्जिदें हैं 1949 से पहले भी मैं वहॉ नमाज पढ़ने जाता रहा हूँ। क्योंकि बाबरी मस्जिद जामा मस्जिद थी इसलिए मैं यहॉ भी नमाज पढ़ने जाता था यहॉ पर मैं जुम्मे की नमाज पढ़ता था और तराबी भी। जुम्मे की नमाज हर मस्जिद में नहीं पढ़ी जाती। कुछ खास खास मस्जिदों में ही पढ़ी जाती है।" (पेज 74)

"There are mosques in the vicinity of our house at Ayodhya. I had been to that place to offer namaz even earlier to 1949. Since the Babri mosque was Jama Masjid, I used to go to this place too in order to offer namaz. I used to offer Jumma namaz as also Taravi namaz here. Jumma namaz is not offered at every mosque. It is offered only in some particular mosques."(E.T.C.)

2499. On page 77 and 81 again he (PW-7) said:

"22 दिसम्बर, 1949 को मैंने इस मस्जिद में नमाज नहीं पढ़ी थी। 21 दिसम्बर 1949 को भी मैंने वहां नमाज नहीं पढ़ी थी। *मैंने यह बयान ठीक किया है कि जब वहां बुत रखा गया तो उसके एक हफ्ता पहले तक मैं वहॉ पर मुतवातिर नमाज पढ़ता रहा था। मैं वहां पर पांचो नमाज तो नहीं पढ़ता था लेकिन असर की नमाज जरूर पढता था।" (पेज 77)*

*"**I did not offer namaz at this mosque on 22nd December, 1949. I did not offer namaz there on 21st December, 1949 too.** I have correctly deposed that I had continued to offer namaz there up to a week prior to the time when idol was placed there. I certainly did not offer namaz for five times but certainly offered 'Asr' namaz."(E.T.C.)*

''मैंने मदरसा 1944 में छोड़ा था। सुतहटी का मिडिल स्कूल 1945 में छोड दिया था। फौर्ब्स इण्टर कालेज में मैंने दाखिला 1948 में लिया था। मैं वहॉ पढ़ने के लिए हर रोज अयोध्या से जाया करता था। पढ़ाई के वक्त मौसम और दिनों के साथ बदलते रहते थे। मैं साईकिल पर सवार होकर पढ़ने जाया करता था। जब मैं कालेज में जाता था तो नमाज फैजाबाद में ही पढ़ लिया करता था। शाम की नमाज घर के पास वाली मस्जिद में पढ़ता था। . .1949 तक जब मैं फैजाबाद में रहता था तो जुम्मे की नमाज फैजाबाद में पढ़ लेता था और अयोध्या में होता था तो बाबरी मस्जिद में पढ़ता था।

बाबरी मस्जिद में वजू के लिए हौज भी बना हुआ था। वह 4–5 फुट ऊॅचा था और तकरीबन 5 फिट लम्बा भी रहा होगा। हमारे सामने वह हौद इस्तेमाल में नहीं था पानी मटकों में भरा जाता था।'' (पेज 81)

"I left the Madarsa in 1944. I left the Suthati Middle School in 1945. I was admitted at Forbes Inter College in 1948. I used to go to study there every day from Ayodhya. At the time of my education, season would change with the progress of days. I used to go to school by cycle. When I would go to college, I would offer namaz in Faizabad itself. I would offer the evening prayer at the mosque situated near our house. . . .. Till 1949, whenever I was in Faizabad I would offer Jumma namaz in Faizabad, and whenever I was at Ayodhya, I would offer namaz at the Babri mosque.

A tank was also built at the Babri mosque to supply water for 'vaju'. It was 4-5 feet high and would have been nearly 5 feet in length. That tank was not in use within my sight; water used to be filled in 'Matkas' (water

pots).''(E.T.C.)

2500. About his age, on page 78 the witness (PW-7) says:

''मेरी सही पैदाइश 1932 की है न कि 1934 की। मेरी शादी 1955 में हुई थी। मैंने 1951 में हाईस्कूल पास किया था। 1943 में जब मैं इस मस्जिद में नमाज पढ़ने जाता था तो अपने वालिद साहब की उंगली पकड़कर नहीं जाता था। . . मैंने 9 साल की उम्र में मदरसा शुरू किया था।'' (पेज 78)

''The correct year of my birth is 1932, not 1934. I was married in 1955. I passed my high school in 1951. In 1943, whenever I went to offer namaz at this mosque I did not go holding the fingers of my father. . . . I started my schooling at Madarsa at the age of nine years.'' (E.T.C.)

2501. On page 85, PW 7 stated:

''नक्शा नजरी पेपर नं0 2/16क . . . .मैंने नक्शा नजरी देख लिया है, इसमें कुछ लाइने लगी हुई हैं। यह ठीक है कि इसमें पश्चिम की तरफ भी कब्रिस्तान दिखलाया गया है। लेकिन मौके के मुताबिक ऐसा नहीं था और इस तरह से यह नक्शा इस दह तक गलत है। . . . . . इस नक्शा–नजरी के हिसाब से कुछ मालूम नहीं पड़ता कि मस्जिद किस खास जगह पर कायम थी। जायदाद मुतदाविया तमाम मस्जिद की ही थी। . . . यह उपर बताया गया चबूतरा मस्जिद में शामिल नहीं था। इस चबूतरे पर दूसरे लोग यानी हिन्दू लोग बुत रखने से पहले भजन–कीर्तन बगैरह किया करते थे। . . यह कहना गलत है कि बुत रखने वाली तारीख से 15 दिन पहले ही उस तरफ मैंने आना–जाना बन्द कर दिया हो। बुत रखने के एक महीना पहले ही वहॉ पर भजन कीर्तन शुरू हो गया था। यह भजन कीर्तन बैरागी लोग कर रहे थे। लेकिन ऐसा नहीं है कि वहॉ पर नेताओं के जोशीले भाषण मुसलमानों के खिलाफ होते रहे हों। यह बैरागी लोग संख्या में तीस–चालीस के करीब होंगे। जब हम लोग नमाज पढ़ने जाते थे, तो यह बैरागी लोग दंगा–फसाद या झगड़ा नहीं करते थे। यह लोग शंख–घड़ियाल या घण्टा नहीं बजाते थे। जब हम असर की नमाज पढ़ने जाते थे तो 8, 10 या 15 तक की तादाद में हुआ करते थे, जुम्मे की नमाज के वक्त यह तादाद काफी ज्यादा हो जाती थी।'' (पेज 85)

''Site plan (paper no. 2/16 Ka). . . . I have seen the

site plan with some lines drawn therein. It is true that a graveyard is shown towards the west as well but it was not so at the site and in this way this site plan is incorrect. . . . . From this site plan nothing is known about a particular place where the mosque stood. The disputed property belonged mostly to the mosque. . . . . This Chabutra, mentioned above, did not form part of the mosque. Other people, that is, Hindus, before laying idol, used to perform 'Bhajan-Kirtan', etc. on this Chabutra. . . . . It is wrong to say that I had stopped visiting that site15 days before the day of laying idol. 'Bhajan-Kirtan' had started there a month before the laying of idols. 'Bairagis' (recluses) were performing 'Bhajan-Kirtan'. But it is not that leaders were delivering provocative speeches against Muslims there. These recluses would be nearly 30-40 in number. Whenever we would go to offer namaz, these recluses would not engage in riot, affray or quarrel. These people would not blow conchs, or ring gongs or bells. When we would go to offer 'Asr' namaz, we used to be 8, 10 or 15 in number. This number would rise considerably at the times of Jumma namaz."(E.T.C.)

2502. **PW 8 Abdul Ajij**, resident of Shahjahanpur, District Faizabad claims to have offered Namaz in the disputed building for hundreds of time starting at the age of ten years. He has stated his year of birth as 1926. His shop of making shoes is in Angooribagh, which he opens in the morning at 8, 9 or 10 and he returns therefrom in the evening as is evident from page 4:

''मेरा कारखाना टाट शाह मस्जिद के पास नही था। यह अंगूरी बाग में वाका था। यह कारखाना कंघी गली में नही था। हमारा कारखाना एक दुकान थी जिसमें हम जूता बनाते थे। हमारी दुकान बाजार के साथ सुबह

आठ बजे, नौ बजे, दस बजे खुलती थी। हम अपने कारखाने से शाम को घर लौटते थे।'' (पेज 4)

"My workshop was not near Tat Shah Mosque. It was situated in Angooribagh. This workshop was not in Kanghi Gali. My workshop was a shop, in which I used to make shoes. My shop used to open along with the market at 8, 9, 10 AM. I used to return home from my workshop in the evening." (ETC)

2503. Chowk Faizabad is at the distance of a mile from his residence while Ayodhya, Sinharhat is about three miles. On page 19 he said:

''मैंने न कहीं लिखा है न मुकम्मल याददाश्त है कि वहां जुम्मे की कुल कितनी नमाज पढ़ी हैं लेकिन 10–12 तो पढ़ी ही होंगी। ये नमाज 1949 के बाद की भी हैं। कुछ पहले की हैं।'' (पेज 19)

"Neither have I written it anywhere nor do I properly remember as to total how many namaz of Jumma were offered by me over there, but must have offered 10-12. These namaz include the post 1949 as well. Few are of earlier period." (E.T.C)

2504. On page 25, he (PW-8) said:

''शाहजहॉपुर की मस्जिद के बाद मैंने नमाज अपने मदरसे की यानी यतीमखाने की मस्जिद में पढ़ी है। यतीमखाना मदरसे की मस्जिद में मैं अपनी निजी तौर पर आराम से नमाज पढ़ लेता था। मुझे यह याद नहीं कि उसके कितने दिनों बाद मैं शाहजहॉपुर के बाहर की यानी फैजाबाद और अयोध्या की मस्जिदों में नमाज पढ़ने जाने लगा था।'' (पेज 25)

"After the mosque of Shahjahanpur, I have offered namaz at the mosque of my 'Madarsa' (school) i.e. the mosque of 'Yatimkhana' (orphanage). I used to privately offer namaz, as per my convenience, at the mosque of 'Yatimkhana Madarsa' (orphanage school). I do not remember as to

after which period thereafter had I started going to offer namaz outside Shahjahanpur i.e. at the mosques of Faizabad and Ayodhya." (E.T.C)

2505. He further said:

''झगड़े वाली जायदाद को मै जानता हूॅ। मैं वहां का रहने वाला तो नही हूं लेकिन फिर भी चौहद्दी के बाबत कुछ बता सकता हूॅ। गालबन इसके पूरब में गंजे शहीदा था। उत्तर की तरफ एक सड़क थी और उसके उपर जन्मस्थान वाका था। दक्खिन की तरफ कब्रिस्तान था। पश्चिम की तरफ मैदान था। झगड़ेवाली जायदाद तमाम की तमाम छत से ढकी हुई थी। मुझे ख्याल नही कि 1942 में ''भारत छोड़ो'' नाम का कोई आन्दोलन चला हो। मुझे ख्याल नही कि उन दिनों में सारी दुनिया में कोई जंग चल रही हो या 1945 में जापान पर कोई एटम बम गिराया गया हो। मैं सबसे पहली बार इस मस्जिद में नमाज पढ़ने आजादी से पहले गया था। मै यह नही बता सकता कि आजादी मिलने के कितने महीने या वर्ष पहले पहली मर्तबा इस मस्जिद में नमाज पढ़ने गया था। बहुत मुद्दत हो चुकी है इसलिए मैं नही बता सकता कि मैने सबसे पहली बार इस मस्जिद में कौन सी नमाज पढ़ी थी। मैने उस मौके के नमाजियों की तादाद नही गिनी और मेरा बताया गया अंदाजा गलत भी हो सकता है। इसलिए मैं नही कह सकता कि उस मौके पर कितने नमाजी थे। मुझे इतना याद जरूर है कि मै अकेला नही था कुछ लोग और भी थे। उनमें हमारे गाव के लोग भी थें उनमें मो0 युसुफ साहब, सरदार अली भी शामिल थे। फैजाबाद शहर के लोगो की बाबत मैने ख्याल नही कियां। मुश्ताक नाम का चिकवा फैजाबाद का वहॉ पर था और इखलाक साहब भी थे। उस वक्त मो0 हाशिम नही थे वैसे वो वहॉ जाते रहते थे। हाजी महबूब वहॉ पर थे। अब्दुल आहद भी वहॉ पर मौजूद थे।'' (पेज 25.–26)

"I know the disputed property. Although I am not a resident of that place, instead I can give some information regarding the boundary. Probably in its east, was Ganje-Shahida. There was road towards north and the Janamsthan was situated above it. There was a graveyard towards south. There was a ground towards west. The

entire disputed property was covered by roof. I do not recollect whether any 'Quit India' movement was launched in 1942. I do not recollect whether in that period some war had broken out in the whole world or that in 1945 some atom bomb had been dropped over Japan. I had gone to offer namaz in this mosque for the first time before independence. I cannot give as to how many months or year before independence, had I gone to this mosque to offer namaz for the first time. Much time has passed, as such I cannot tell as to which namaz was first offered by me in this mosque. I did not count the number of Namazists at that place at that time and the estimate given by me can also be wrong. As such, I cannot tell as to how many Namazists were there at that site. I do remember that I was not alone and few other persons were also there. They included people of my village as well. Mohd. Yusuf, Sardar Ali were also included in them. I did not care about the people of Faizabad city. Mushtaq, a Chikwa of Faizabad and Ikhlaq were also present there. At that time, Mohd. Hashim was not present there. However, he used to visit that place. Hazi Mehboob was present there. Abdul Ahad was also present over there." (E.T.C)

2506. On one hand he stated to have offered Namaz in the disputed building for hundreds of time but simultaneously repeatedly he has said of not being conversant with Ayodhya:

"मैंने अयोध्या को इतना नहीं देखा कि मैं इस सवाल का जवाब दे सकूँ कि इखलाक साहब के मकान में उनकी अपनी मस्जिद है या नहीं।" (पेज 27)

"I am not so much conversant with Ayodhya that I can answer whether Ekhlak has his own mosque in his

house, or not*. (ETC)*

*''**मैं अयोध्या का रहने वाला नहीं बल्कि फैजाबाद का रहने वाला हूँ।**'' (पेज 41)*

*"**I am a resident of Faizabad and not Ayodhya**." (E.T.C)*

''मैं अयोध्या में ज्यादा घूमा हुआ नहीं हूँ।'' (पेज 59)

"I have not traveled much in Ayodhya." (ETC)

''अयोध्या के बारे में ज्यादा नहीं कुछ जानकारी है।'' (पेज 71)

"I do not have much knowledge about Ayodhya." (E.T.C)

2507. For verification of his age on page 16, he said that he was issued a certificate in 1942 wherein his date of birth is mentioned and he possesses the said certificate and has also brought it but then he said that the same he has left at the residence. However, he did not deny that in the last voter-list his age might have been mentioned as 60 years. On page 37, he claims to have offered Namaz in the disputed building on the last Friday before 22nd December 1949. He reached there at 12.00 and the Friday Namaz started at 1.00 PM. Razzak Saheb, Hashim Saheb and Hazi Ahad Saheb were present thereat and till the time of Namaz, the total attendance became 400-450. There were 8 or 10 pitchers containing water for Vazoo. On page 61, he says that the Country became independent in 1947 and before then he had been offering Namaz at the disputed building for about 13 to 14 years. For the first time, Namaz was offered in the disputed building when he was 11 or 12 years of age. Having given his year of birth as 1926, this statement does not appear to be correct being self contradictory.

2508. **PW-9 Syeed Akhlak Ahmad** S/o Syed Haji Abdul Sattar has also deposed to have offered Namaz in the disputed building prior to 1949. He claims that he used to offer Friday prayer (Jumma Namaz) but sometimes he offered all five

prayers in the day. He did not offer Namaz after 22/23 December, 1949 since idol was placed thereafter and the mosque was closed for Namaz. The relevant part of the examination-in-chief to this effect are:

> *''1949 से पहले जुम्मे की नमाज में बाबरी मस्जिद में पढ़ता था। कभी–कभी मुस्तकिल तौर से मैंने पांच वक्त की नमाज भी बाबरी मस्जिद में पढ़ी है। .....22–23 दिसम्बर 1949 के बाद मैंने वहॉ पर नमाज नहीं पढ़ी है। क्योंकि वहॉ पर बुत रख दिया गया था और मस्जिद नमाज के लिए बंद कर दी गयी थी।''*
>
> *"Prior to 1949, I used to offer Jumma's Namaz in the Babri mosque. Occasionally, I have offered five times Namaz in Babri mosque on regular basis. ..... I did not offer Namaz at that place after 22-23 December, 1949, because idols had been installed there and the mosque had been closed for Namaz." (E.T.C.)*

2509. His year of birth comes to 1937 as he disclosed his age 60 years in February, 1997 when his deposition commenced.

2510. PW-9 has gone to the extent of stating that the Namaz was offered in the disputed premises even after the alleged incident of 22/23 December, 1949 and on page 8 he said:

> *''यह याद है कि 1949 के 22/23 दिसम्बर वाले हादसे के बाद भी वहॉ पर लोगों ने नमाज पढ़ा है। लेकिन मुझे अब ध्यान नहीं कि उस वक्त मेरी उम्र क्या थी।'' (पेज 8)*
>
> *"(I) remember that even after the incident of 22/23 December, 1949, people had offered namaz over there, but I do not remember at present as to what was my age at that time." (E.T.C)*

2511. Though, he specifically remember about the date

and the time of his Namaz 50 years back but his memory is so disturbed that he is not able to tell the age of his father at the time of his death, the age of his sister or how much younger she is or when his father actually died, as is also evident from page 11 and 12:

> *''**मेरे वालिद फौत हो चुके हैं। मैं उनकी फौतिगी की तारीख बतला सकता हूँ, लेकिन यह नहीं बता पाऊँगा कि उस वक्त उनकी क्या उम्र थी।**'' (पेज 11)*
>
> ***"My father has expired. I can give the date of his death, but I will not be able to tell as to what was his age at that time."** (E.T.C)*
>
> *''मैं शादीशुदा हूँ। मेरी शादी तकरीबन 35 साल पहले हुई थी। . . . . मेरी अपनी शादी के वक्त मेरी उम्र अन्दाजन 22 से 24 साल के बीच में रही होगी। मेरी शादी के लगभग चार या पॉच साल के बाद मेरे वालिद साहब का इन्तकाल हो गया था। **मेरे लिए यह बता पाना भी मुश्किल है कि मेरी वह बहन जिसकी शादी का जिक्र हुआ है, मुझसे कितनी छोटी है।** जिस वक्त मेरे वालिद साहब का इन्तकाल हुआ, तो मैं कोई काम नहीं करता था। मैं उस वक्त बालिग हो चुका था, मेरी उम्र 27 या 28 साल के करीब थी।'' 'पेज 11–12)*
>
> *"I am married. My marriage was solemnized about 35 years ago.. . . . . At time of my marriage, my age must have been around 22-24 years. My father had expired about 4-5 years after my marriage. **It will also be difficult for me to tell as to how much younger my sister is to me,** reference of whose marriage has been made. When my father died, I was jobless. At that time I had become major and my age was nearly 27 or 28 years." (E.T.C)*

2512. He has a mosque in his own premises, which, according to him, is 200 years old but could not explain as to why instead of offering Namaz in his own premises, he went elsewhere for offering Namaz and that too a daily Namaz on

22nd December, 1949 particularly when the disputed building was about one and half furlong from his residence. His admission about a mosque in his own premises and distance from his residence is on page 16 and 19:

''जो हमारी मस्जिद इस अहाते में है वह लखैरी ईटों से बनी है, उसे आलमगिरी कहते हैं और मेरे अंदाजे से यह ढाई सौ वर्ष पुरानी है। इस मस्जिद का कोई मुतवल्ली नहीं है। इस मस्जिद को कहीं से कोई ग्रान्ट नहीं मिलती।'' (पेज 16)

"My mosque within this campus, is made of 'Lakhairi' bricks. It is called Alamgiri and in my opinion, it is about 250 years old. This mosque has no Mutwalli. This mosque does not receive grant from anywhere." (E.T.C)

''मेरे मकान से विवादित जायदाद का फासला तकरीबन डेढ़ फर्लांग होगा।'' (पेज 19)

''The disputed property would be nearly one – a half furlongs away from my house.'' (E.T.C)

2513. On page 35, he said that for the first time he offered Namaz in the disputed building probably during summer time and it was *Magrib* Namaz. Then on page 37 he said that when he went for the first time for offering Namaz in the disputed building, he was about 13 or 14 year old and when he offered the last Friday Namaz in this building, he was 14 years of age whereafter he could not offer Namaz therein since it was closed. No namaz was allowed to be offered on 23rd December, 1949.

''यह बताना गैर–मुमकिन है कि मैंने सबसे पहली बार मुतदाविया इमारत मे जब नमाज पढ़ी तब हिज्री कैलेण्डर का कौन सा महीना था क्योंकि इस बात को एक मुद्दत हो चुकी है। मेरे ख्याल से मौसम बताना भी मुश्किल है लेकिन मेरा अंदाजा है कि मौसम गर्मी का रहा होगा। . . . . . आजादी मिलने के बाद तो मुझे इस मस्जिद में जाकर नमाज–पढ़ने की बात याद है उससे पहले भी गए होंगे लेकिन अच्छी तरही से याद नहीं

है। जहां तक मुझे याद है आजादी के बाद जो पहली नमाज मैंने इस मस्जिद में पढ़ी थी वह मगरिब की थी। लेकिन उसका मौसम बताना अब मुमकिन नहीं है।'' (पेज 35)

''It is difficult to tell which month of the Hizri calendar was going on when I went to offer namaz at the disputed structure for the first time, because a long time has passed since then. In my opinion, it is also difficult to tell the season but I guess that it would have been summer season. . . . . I do remember having gone to this mosque to offer namaz after attaining independence but I might have gone even earlier but I do not properly remember in this respect. As far as I remember, the first namaz that I offered at this mosque after independence, was Magrib namaz. But now it is not possible to tell its season.'' (E.T.C)

''जब मैं इस मस्जिद में पहली बार मगरिब की नमाज पढ़ने गया तो मेरी उम्र गालबन 13–14 साल की थी। जब यह आखिरी जुम्मे की नमाज मैंने इस मस्जिद में पढ़ी तो मेरी उम्र तकरीबन 14 साल थी। उस रोज की नमाज के बाद मैं इस मस्जिद में नमाज नहीं पढ़ सका क्योंकि उसे बन्द कर दिया गया था। . . . . .23 दिसम्बर को वहां पर नमाज नहीं पढ़ने दी गयी।'' (पेज 37)

''When I went to offer Magrib namaz at this mosuqe for the first time, I was perhaps aged 13-14 years. When I offered Jumma namaz at this mosque for the last time I was nearly 14 year old. After the namaz of that day, I could not offer namaz at this mosque because it was closed. . . . . Namaz was not allowed to be offered there on 23rd December.'' (E.T.C)

2514. The above statement would be interesting to see in the light of the fact that he has disclosed his age as 60 years in

February, 1997 in accordance whereto his year of birth comes to 1937 and if he offered first Namaz in the disputed building at the age of 13 even then it comes to 1950 though he admits that after 23rd December, 1949 Namaz was not allowed to be offered in the disputed building. This exercise shows the incorrectness and unreliability of his statement about the last date of offering Namaz as 22nd December, 1949. About his year of birth, he himself has stated on page 43 and he tried to make some improvement about his year of birth on page 48:

''लेकिन मैंने अपने बालदैन से सुना है कि मै सन् 1937 के आसपास पैदा हुआ था।'' (पेज 43)

"But I have heard from my mothers that I was born in or around 1937." (E.T.C)

''मैं अपनी शादी के वक्त अपनी एकजेक्ट उम्र नहीं बता सकता क्योंकि मुझे अपनी पैदाइश का ऐक्जेक्ट तारीख सन् महीना इल्म नहीं है। मेरी पैदाइश सन् 1937 के आस पास की है जैसा कि मैं पहले कह चुका हूँ।''(पेज 48)

"I cannot tell my exact age at the time of my marriage because I do not know the exact date, month and year of my birth. I was born in or around 1937 as I have already stated." (E.T.C)

2515. Then we find that he also admits to have gone to Gonda for education at the age of 8/9 where he stayed for three years i.e. upto the age of 11/12.

''मैं जिस वक्त गोण्डा तालीम हासिल करने गया तो मेरी उम्र तकरीबन 8–9 वर्ष की थी। मैंने वहॉ पर हिफ्ज की तालीम तीन साल के लिए ली थी। . . . . . मैं तकरीबन 11–12 साल की उम्र में गोण्डा से अपनी तालीम पूरी करके वापस आ गया था।'' (पेज 49)

"When I went to Gonda to have schooling I was nearly 8-9 year old. I had acquired schooling in 'Hifz'

there for three years. . . . . I came back from Gonda after completing my education at the age of about 11-12 years." (E.T.C)

2516. Taking his year of birth as 1937, we find it extremely difficult to accept that when he was at Gonda, how occasion came to offer Namaz in the disputed building at all particularly when he claims that he offered Namaz in the disputed building after independence 1947:

''इन लोगों के साथ ज्यादातर मैंने जुम्मे की नमाज पढ़ी है और यह 1947 के बाद पढ़ी गयी है।'' (पेज 50)

"I have mostly offered Jumma namaz with these persons and I have done so after 1947." (E.T.C)

2517. On page 36 he said that he went in the disputed building about five or six days earlier to 22/23 December, 1949 for offering Namaz which was a Friday Namaz which again is a contradiction:

''मेरा अंदाजा है कि 22–23 दिसम्बर 1949 के हादसे से 5–6 रोज पहले मैं इस मस्जिद में नमाज पढ़ने गया था। वह जुम्मे की नमाज थी।'' (पेज 36–37)

"I guess to have gone to offer namaz at this mosque five-six days before the 22nd/23rd December, 1949 incident. That was a 'Jumma namaz' (congregational prayer of Friday)." (E.T.C)

2518. **PW-14 Jalil Ahmad** son of Mohd. Yakub also deposed about offering Namaz in the disputed building prior to 1949 i.e. before the placement of idol therein. He however confined his claim of offering Namaz on Fridays only and said:

''मैंने आखिरी बार इस मस्जिद में नमाज इसमें बुत रखने के ***पहले जुम्मा पर पढ़ी थी।*** *मैंने उस मस्जिद में ईषा व जुमा दोनों की नमाजें पढ़ी हैं।''*

"My last Namaz in this mosque was the Jumma preceding the installation of idol therein. I have offered both Isha & Jumma Namaz in this mosque." (E.T.C.)

2519. **PW-21 Dr. M. Hashim Qidwai** S/o Abdul Mazid Qidwai had the occasion of visiting Fyzabad between July 1939 to October 1941 when his father was posted thereat. He was a student at Lucknow and used to visit Fyzabad in holidays during the period of posting of his father. For the first time he claimed to have visited Fyzabad in December, 1939. Regarding offering of Namaz, he said:

''दिसम्बर सन् 39 में मैं अपने परिवार के सदस्यों के साथ बाबरी मस्जिद देखने गया और वहीं पर मगरिब की नमाज पढ़ी उसके बाद मैं बराबर मई सन् 41 तक हर छुट्टी में फैजाबाद जाता रहा। इस दौरान मैंने 15–20 बार मगरीब की नमाज़ और चार–पांच बार असिर की नमाज और दो तीन जुमे की नमाज बाबरी मस्जिद में पढ़ी।''

"In December, 1939 I had gone to see the Babri mosque along with my family members and had offered the Magrib Namaz there. Thereafter, in every holiday I regularly visited Faizabad till the year 1941. In this period I offered the Magrib Namaz for 15-20 times, the Asir Namaz for 4-5 times and 2-3 Jumma Namaz, in the Babri mosque." (E.T.C.)

2520. On page 16 however he said:

"मैने पहली बार अलीगढ़ में अक्टूबर 1948 में नमाज अदा किया।"

"I offered Namaz first time in October 1948 at Aligarh."

(E.T.C.)

2521. The witness had mentioned the factum about offering Namaz since 1942 to 1948 almost six years with such specification but when he was confronted that where was a mosque near the residence of his father at Fyzabad and details

were asked he said :

"फैज़ाबाद कैण्ट में जहां हमारे पिता जी रहते थे उससे थोड़ी दूर पर एक मस्जिद है। मुझे इस समय उस मस्जिद का नाम याद नहीं है। चूँकि यह बात 60 वर्ष पुरानी है।" (पेज–31)

"In Faizabad cantt, there is a mosque just ahead of the place where my father lived. At this moment, I do not recollect the name of that mosque in as much as this matter is 60 years old." (E.T.C.)

"मैं नमाज पढ़ने कार से जाता था। उस मस्जिद में मेरे ख्याल में 10–15 दफे जुमे की नमाज पढ़ी थी।" (पेज–31)

"I used to go to offer Namaz by car. As far as I remember, I offered Namaz of Jumma(Friday prayers) 10 to 15 times in that mosque." (E.T.C.)

"इस समय मुझे मस्जिद का एरिया याद नहीं है अर्थात यह मस्जिद कितनी लम्बी व चौड़ी है।" (पेज –32)

"At this time, I do not recollect the area of the mosque, that is, its length and breadth." (E.T.C.)

2522. He was in B.A. in Lucknow University during 1939-41, however, he added further and on page 38-39 said:

"जब मै अपने ससुर के साथ विवादित स्थल पर गया तो नमाज भी हम लोगो ने पढी थी। हमारे ससुर हमारे साथ बाबरी मस्जिद मगरिब की नमाज पढने 2–3 बार गये थे। हमारे ससुर हमारे साथ पहली बार सन् 1940 की पहली या दूसरी जनवरी को गये थे।" (पेज –38)

"When I went to disputed site, along with my father-in-law, we offered Namaz there. My father-in-law, along with me, had gone to Babari mosque twice or thrice to offer Namaz of Magrib(prayer offer just after sunset). For the first time, on 1st or 2nd January, 1940 my father-in-law, along with me, went there." (E.T.C.)

"हम लोग जब पहली बार अयोध्या देखने गये थे और जब मगरिब का वक्त हो गया तो नमाज पढ लिया खास मकसद अयोध्या देखना और मस्जिद को देखना दोनो ही था। ***अयोध्या देखने का एक मंशा यह भी था कि रामचन्द्र जी कहां पैदा हुए और दूसरा बाबरी मस्जिद को देखना था।"*** *(पेज 38–39)*

"It was the time of Magrib(prayers offered just after sunset) When we arrived at Ayodhya first time, we offered Namaz, our main purpose was to see Ayodhya and mosque both. ***The motive behind visiting Ayodhya was to see the birth place of Ramchandra Ji as well as Babari mosque****." (E.T.C.)*

2523. On page 41, he gave the exact date on which he visited the disputed building for the first time which reads:

"अपने वालिद के फैजाबाद वाले मकान से तकरीबन पौन घन्टा लगा था। ***पहली दफा जब मै बाबरी मस्जिद विवादित ढॉचा में गया था तो 27 दिसम्बर 1939 का दिन था।"*** *(पेज –41)*

"It took nearly forty five minutes in reaching there from my father's house at Faizabad. ***It was 27th December, 1939, when I visited first time the disputed Babari mosque****." (E.T.C.)*

2524. On page 47 he says that on the first and second visit on the disputed building he saw everything inside and outside which reads:

"मै जब विवादित भवन में पहली और दूसरी बार गया तो वहां सब चीजें मस्जिद के अंदर और बाहर देखा था। मस्जिद के अंदर गुम्बद थे खम्बे थे और दालान या हाल था मेरे ख्याल में 10–12 खम्बे रहे होगे।। स्वयं कहा कि मस्जिद के अंदर मेम्बर, मेहराब बना था। खम्बे मेरे ख्याल में पत्थर के थे। सीमेंट और चूने के नही थे। खंबे कई अर्थात मुखतलिफ रंग के थे। मुझे इस वक्त तफसील याद नही है पर कई रंग के थे। एक आध पत्थर लाल भी थे और एक आध काले भी रंग के थे। इन पत्थरों पर कुछ

नक्काशी थी। उन खंबो पर किसी जानदार का चित्र नहीं बल्कि नक्काशी थी। यह नक्काशी मुखतलिफ किस्म की कुछ फूल पत्ती अरायशी और कुछ तसवीर बनी थी।" (पेज–47)

"When I went to the disputed building at first and second time, I saw all the things inside and outside the mosque. Inside the mosque there were a dome, pillars, and a dalan or hall. As far as I remember, there would be 10-12 pillars. Stated that an arch & a member were built in the mosque. As far as I remember, there were pillars of stone. They were not made of cement and lime. The pillars were of different colours. At this moment, I do not recollect in detail about their colours, but they were of various colours. One or two stones were of red colour and other one or two of black colour. There were some engravings on these stones. There was no painting of any living things but only engraving on these pillars. Some flowers, leaves , Arayashi and paintings of different colours were used in this engraving." (E.T.C.)

2525. Then on page 54 he says:

"अजखुद कहा कि उस समय इतने सारे खम्बे वहॉ मौजूद नही थे।" (पेज –54)

"On his own stated that at that time pillars were not present there in such a large numbers." (E.T.C.)

2526. He gave further particulars of his first time visit the disputed building on 27th December, 1939 on page 61-62:

"जब मै पहली बार विवादित भवन में अपनी फैमिली के साथ गया था तो मैने मगरिब की नमाज वहां अदा की थी। मै पहली बार 27 दिसम्बर सन 1939 में गया था। हमारे साथ हमारे फैमिली के मेम्बर्स ने भी नमाज अदा की थी सिवाय मेरी कजिन सिस्टर के। जब हम पहली बार विवादित स्थल पर गये थे तो मेरी गाड़ी उस विवादित भवन के पूरब सडक पर खड़ी थी फिर कहा कि पूरब के गेट की ओर खड़ी थी। फिर कहा कि पूरब की

सड़क पर खड़ी थी।" (पेज 61–62)

"When I, along with my family, went to the disputed building at first time, I offered Namaz there just after sunset (Namaz of Magrib). I went there first time on December 27, 1939. Also, the other members of my family except my cousin sister offered Namaz, along with me. When I went to the disputed site at first time, my vehicle was parked on the eastern road of the disputed building. Then stated that the vehicle was parked at the eastern gate. Then stated that it was parked on the eastern road." (E.T.C.)

2527. His residence at Fyzabad Cantt. was about 5-6 miles from the disputed building. Subsequently at page 68 said:

"पर मेरी याददाश्त ने मेरा साथ नही दिया।" (पेज –68)

*"**But my memory failed me**." (E.T.C.)*

2528. He also made corrections in his earlier statement about the topography of the building and on page 73 said:

***"मैने बाद में जब अपने बयान को पढ़ा तो मुझे ख्याल आया कि यह सही नहीं है और वास्तव में वहॉ जंगलेनुमा दीवार से पार्टीशन था।** चूँकि 12 दिसम्बर के बाद आज ही मुझे मौका मिला इसलिए इस गल्ती को दुरूस्त करने के लिए पहले नहीं कहा।"*