

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. No. OF 2022

IN

SPECIAL LEAVE PETITION (C) No.9388 of 2022

In the matter of:

Committee of Management of Anjuman
Intezamia Masajid Varansi & Ors.

Petitioners

Versus

Rakhi Singh & Ors.

Respondents

APPLICATION FOR BRINGING ON RECORD ADDITIONAL FACTS AND
DOCUMENTS

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
ABOVE NAMED APPLICANTS

MOST RESPECTFULLY SHOWETH:

1. In this case for proper appreciation of the case necessary facts and documents pertaining to the case are required to be place on record and the same are being filed through the present application. The facts of the case are being divided in different heads.

A. ABOUT KASHI:-

2. It is relevant to mention that Varanasi or Kashi is a puranic ancient religious holy city in existence before Vedic era. Lord Shiva as Lord Adi Visheshwar revealed on earth and established Jyotirlingam at Varanasi alongwith Gangaji.

3. From the time immemorial pooja and rituals of Lord Adi Visheshwar is being performed with fresh water of Ganga Ji existing in the North

of Shivlingam. The place has special religious significance for Hindu Devotees as it is one out of 12 Jyotirlingam worshiped in different parts of India. In Hindu Shastras there is provision for performance of Jalabhishek with Ganga Jal of Lord Adi Visheshwar to acquire merit of salvation and get solution of miseries of worldly life.

4. Kashi has faced a number of attacks from invaders and the temple of Adi Visheshwar was attacked, looted and demolished by the enemy of idol worshippers right from 1193 AD till the year 1669.
5. 'Adi Visheshwar Jyotirling' at Kashi is Swyambhu Deity and is most ancient out of 12 Jyotirlings established in different parts of 'Tapo Bhoomi' "Bharatvarsh". The Jyotirlings have great position under Hindu mythology and its importance have been described in Vedas, Purans, Upnishads and Shastras followed by devotees and worshippers of Santan Vedic Hindu Dharma. 'Adi Visheshwar Jyotirling' at Kashi is the ancient place of Lord Shiva and Goddess Parvati. Adi Jyotirling of Avimukteshwar in Avimukta Kshetra of Kashi is considered as 1st Jyotirling Linga under Vedic Sanatan Dharma.
6. 'Avimuta Khestra' of Kashi have the Linga of Lord Adi Visheshwar, is located to the north of the sacred well, Gyan Vapi while encircling the temple of Avimukteshwara, the shrines of Dandapani, Taraka and Mahakaal all of which are also erected near the Gyan Vapi and Lord Visheshwar temple. As described in various scriptures and Skand Puran, the Jyotirlinga was established by Lord Shiva himself at Kashi creating Avimukteshwara Kshetra in the radius of 5 Kos (Krosh).
7. It is historically proved that in 1585 Raja Todar Mal, the finance Minister of Akbar, who was Governor of Jaunpur, had re-established and reconstructed a magnificent Lord Shiva Temple at its original place consisting of a central sanctum sanctorum (Garbh Griha)

surrounded by Eight mandaps and pavilions, which is known as old temple.

B. ASTHAN LORD ADI VISHESHWAR, THE SWAYAMBHU DEITY:

8. That Adi Visheshwar, “Lord of the Universe” is one on the most exalted titles of SHIVA and his connection with Benares is quaintly depicted in the following sentiment of Purans as mentioned by “James Prinsep”:-

“The Vedas and Shastras all testify that VISHVESHVUR is the first of Devas, Kashi the first of the cities, Ganga the first of rivers and Charity the first of Virtues”

9. Vedas, Purans and Shastras, the sources of Hindu law, specifically define the importance and diameter/dimension of 5 Kos (Krosh) of Shri Aadi Visheshwar Lingam at Kashi, which is considered one of the five Swayambhu Jyotirlingams. In this regard some verses (Shloks) from Shri Skand Puran and Shri Shiv Purans are being reproduced below:-

C. EXTRACT FROM SHREE SKAND PURAN:

- (i) अन्यानिमुक्तिक्षेत्राणिकाशीप्राप्तिकराणिच।
काशींप्राप्य विमुच्येतनान्यथातीर्थकोटिभिः॥

Skand-Chapter 6, Pg.58, Verse No.71.

Translated in English:-

All other forsaken (Avimukta) places are procured through Kashi. Nirvana (to get rid of from the cycle of death and rebirth) is achieved only after getting Kashi. The benefit of Nirvana is not achieved by any other means even by residing in any other religious place.

- (ii) अविमुक्तंमहत्क्षेत्रं पंचक्रोशपरीमितम् ।
ज्योतिलंगमन्तदेकंहि ज्ञेयंविश्वेश्वराभिधम् ॥

Skand-Chapter 7,Pg. 250, Verse-131

Translated in English:-

The Avimukta (forsaken) area is in circle of 5 Kos (Krosh). At this place there is Visheshwar Shivling which is Jyotirling

- (iii) साशक्तिःप्रकृतिःप्रोक्तासपुमानीश्वरःपरः ।
ताभ्याञ्चरममाणाभ्यांतस्मिन्केतेरेघटोद्भव ॥२५ ॥
- (iv) परमानन्दरूपाभ्यां परमानन्दरूपिणि ।
पञ्चक्रोशपरीमाणे स्वपादतलनिर्मिते ॥२६ ॥
- (v) मुने! प्रलयकालेऽपि न तत्क्षेत्रंकदाचन ।
विमुक्तं हि शिवाभ्यां यदविमुक्तंततोविदुः ॥२७ ॥
- (vi) न यदा भूमिवलयं न यदाऽपां समुद्भव ।
तदा विहर्तुमीशेन क्षेत्रमेतद्विनिर्मितम् ॥२८ ॥
- (vii) इदं रहस्य क्षेत्रस्य वेदकोऽपि न कुम्भज ।
नास्तिकाय न बक्तव्यंकदाचिच्चर्मचक्षुषे ॥२९ ॥
- (viii) श्रद्धालवे विनीताय त्रिकालज्ञानचक्षुषे ।
शिवभक्तायशान्ताय वक्तव्यञ्चमुमुक्षवे ॥३० ॥

Skand, Chapter 16 Pg.242, Verses 25- 30.

Translated in English:-

Goddess (Shakti) is nature and God is creator (Shiva). They have made this universe under their feet. They have created 5 Kos (Krosh) area for their pleasure which cannot be extinct during Pralayandam (the last day of universe), and so it is called Avimukta area. When there was no land, no water, the God created this area for His abode. Hey Kumabhaj, nobody has knowledge about the secret this place. Do not say this to an atheist, it is right to say this only to Dharmadarshi, devotees, Vineet, Trikala, Yajna, Shiv Bhakt, shant and Mumukchu.

- (ix) इतिगौरीरितंश्रुत्वाप्रत्युवाचपिनाकधृक् ।
पञ्चक्रोशपरीमाणेक्षेत्रेस्मिन्मुक्तिसद्यनि । ॥९॥
Skand, Chapter 99 Pg.923, Verse-9.

Translated in English:-

O Goddess! There is not even a smallest area without influence of Linga in 5 Kos (Krosh) circle of Avimukt area.

There is book titled as 'Kashi Rahasyam' written by Dr. Jagdish Narayan Dubey on Kashi containing several Verses in Sanskrit. Some of the verses are reproduced below:-

- (i) लिंगरूपधरःशम्भुहृदयाद्धिरागतः ।
महतींवृद्धिमासाद्य पंचक्रोशात्मकोऽभवत् ॥

Kashi Rahasya Chapter 2 page 23 (Verse) -107.

Translated in English:-

Lord Vishnu told saints that in the beginning of establishing universe the lingam was established for the benefit of all in three loks that:-

“we remembered Shambhu and he came out in the form of Lingam from our heart and went on lingering upto 5 Kos (Krosh).”

D. EXTRACT FROM SIVA MAHAPURAN:

There is Siva Mahapurana in Sanskrit. This has been translated in English by Shanti Lal Nagar. Chapter No. 22 -23 are related to Kashi. Relevant Shlokas with English translation are quoted herein under:-

(i) Chapter 22-page 590, Shlok 21

अविमुक्तं स्वयं लिङ्गं स्थापितं परमात्मना ।

न कदाचित्त्वया त्याज्यमिदंक्षेत्रं ममांशकम् ॥ २१ ॥

Lord Shiva, the supreme soul, there, had been consecrated as a Sivalinga known by the name of Avimukta and spoke. “You have been formed of my amsa as Jyotirlinga and therefore, you never leave this place.”

(ii) Chapter 22 - page 591, Shlok 27

येषां क्वापि गतिन्नास्ति तेषां वाराणसी पुरी ।

पञ्चक्रोशी महापुण्या हत्याकोटिविनाशिनी ॥ २७ ॥

Those who cannot get redeemed elsewhere, they also get redeemed at Kasi. The region of Panca Kos (Krosh), bestows enormous merits, therefore it redeems one of the crores of the killings.

(iii) Chapter 23- Page 594, Shlok 22

महत्क्षेत्रमिदं तस्मादविमुक्तमिति स्मृतम् ।

सर्वेभ्यो नैमिषादिभ्यः परं मोक्षप्रदं मृते ॥ २२ ॥

The great region is called Avimukta. Even after death, this region is better than Naimisaranya and others.

(iv) Chapter 23- Page 594, Shlok 34

पञ्चक्रोशं चतुर्दिक्षु क्षेत्रमेतत्प्रकीर्तितम् ।
समन्ताच्च तथा जन्तोर्मृतिकालेऽमृतप्रदम् ॥ ३४ ॥

This region is spread up to five Kos (Krosh) as in all the directions. One who dies in this region, he achieves nectar.

10. That the Hon'ble Apex Court while upholding the constitutional validity Act of Shri Kashi Vishwanath Temple Act, 1983 in case of Shri Adi Visheshwar of Kashi Vishwanath Temple vs. State of U.P. reported in 1997 (4) SCC Pg.606 has also discussed the importance of Adi Visheshwar given in scriptures. The narration of facts given in para 1 of the judgment are reproduced herein below:-

“...The Linga of Lord Visheshwar appears to have been located to north of the sacred well, Jnana Vapi while encircling the Temple of Avimukteshwara, the shrines of Dandapani, Taraka and Mahakaal all of which are also erected near the Jnana Vapi and Lord Visheshwara Temple. According to Puranic Mahatmya and Kashi Khanda of the Skanda Purana, the Jyotirlinga was established by Lord Shiva himself when he went into exile to the Mount Mandara during the reign of the legendary King Divodasa. Since Lord Shiva himself disguised the Linga, according to Mahatmya Lord Shiva never really left the sacrosanct and sacred temple. Hence, it became “Avimukta” (Never Forsaken). This was also stated by Vaachaspati Mishra in his famous Puranic work “Tirtha Chintamani” in 1460 (Fourteen Sixty) wherein he had stated that “Visheshwara” and “Avimukteshwara” were merely two names for the same Jyotirlinga. Narayan

Bhatta had similarly mentioned it to be so in 16th century in his work “Tirthalisetu”

The copy of judgment titled as Sri Adi Visheshwara of Kashi & Ors. Vs. State of U.P. & Ors. Cited as (1997) 4 SCC 60 is being annexed hereto and marked as **ANNEXURE A-1 (page**

E. GODDESS SHRINGAR GAURI, THE SWAYAMBHU DEITY:

11. Maa Shringar Gauri emerged as ‘Swayambhu Deity ‘adjacent to the Jyotirlingam in the old temple complex because she is ‘Ardhangni’ of Lord Shiva and without her the worship of Shivaling is incomplete. It is relevant to mention that Maa Shringar Gauri is also worshiped as ‘Anpurna Devi’.
12. Gauri Shringar temple is situated in Ishan Kon at the back of Old temple. The Image of Shringar Gauri is kept covered by red cloth. This image is Swyambhu (Vigrah) of the Goddess. It is believed that married women get Ashirwad of Shrividhi.

F. EXTRACT FROM SKANDH PURAN:

13. Skand Puran in Chapter 99-100, it is has been emphasized that the devotee should have Darshan and pooja of Maa Shringar Gauri to complete worship of Lord Adi Visheshwar. In regard to the provision relating to Shriangar Mandap and Maa Shringar Gauri the provisions contained in Skandpuran are reproduced below:-

- i. समारभ्य प्रतिपदंयावत्कृष्णा चतुर्दशी।
एतत्क्रमेण कर्तव्यान्येतदायतनानि वै ॥६१॥
- ii. इमां यात्रांनरः कृत्वानभूयोऽप्यभिजायते।
अन्या यात्रा प्रकर्तव्यैकादशायतनोद्धवा ॥६२॥
- iii. आग्नीधकुण्डे सुस्नातः पश्येदाग्नीध्रमीश्वरम्।

- उर्वशीशं ततो गच्छेत्ततस्तु नकुलीश्वरम् ॥६३॥
- iv. आषाढीशं ततो दृष्ट्वा भारभूतेश्वरं ततः।
लाङ्गलीशमथालोक्य ततस्तुत्रिपुरान्तकम् ॥६४॥
- v. ततोमनः प्रकामेशं प्रीतिकेशमथो व्रजेत्।
मदालसेश्वरं तस्मात्तिलपर्णेश्वरं ततः ॥६५॥
- vi. यात्रैकादशलङ्गानामेषा कार्या प्रयत्नतः।
इमां यात्रां प्रकुर्वाणो रुद्रत्वं प्राप्नुयान्नरः ॥६६॥
- vii. अतः परं प्रवक्ष्यामि गौरीयात्रामनुत्तमाम्।
शुक्लपक्षे तृतीयायां यायात्राविष्वगृद्धिदा ॥६७॥
- viii. गोप्रेक्षतीर्थे सुस्नाय मुखनिर्मालिकां व्रजेत्।
ज्येष्ठावाप्यां नरः स्नात्वा ज्येष्ठां गौरीं समर्चयेत् ॥६८॥
- ix. सौभाग्यगौरी सम्पूज्याज्ञानवाप्यांकृतोदकैः।
ततः शृङ्गारगौरीञ्च त्रैवच कृतोदकः ॥६९॥
- x. स्नात्वा विशालगङ्गायां विशालाक्षीं ततो व्रजेत्।
सुस्नातो ललितातीर्थे ललितामर्चयेत्ततः ॥७०॥

Skand, Chapter 100, Page 1007, Verses 61-70

Translation of Verses 61 to 70

One should have to start its daily journey from Krishna Pratipada to Chaturdashi, Ekadasayetnodhav is another journey is duty of human being, after having bath him Agnindhedhra

Kund 11 Lingas as Agnindheshwar, Urvasishwar, Nakuleshwar, Aasadishwar, Bharbhuteshwar, Langlishwar, Tripurantkeshwar, Manhaprakameshwar, Madalseshwar and Tilparneshwar, be worshiped accordingly, one should acquire merit of getting Rudratva. Now Anupamgauri yatra starts from the day of Shukla Paksha Tretiya provides extreme wealth. One should after having bath in Gopreksha Teerth and have darshan of Sukhniwarnika Devi. Performing worship of Jeshtha Gauri one should have take bath with water of Gyanvapi worshipped Shringar Gauri after completing worship of Shaubhagya Gauri. Thereafter, taking bath on Vishal Ghat on Gangaji have darshan and pooja of Maa Vishalakshi and have darshan and worship of Lalita Devi after having bath on Lalita Teerth Ghat.

14. Kashi Khand-Chapter 100 has prescribed Gauri Yatra (religious tour of Gauri Temples). This yatra is to be undertaken on Tritieya after Amavasya. (Third day after amavasya)
15. Puranik Law, usage and custom as recognized by Skand Puran provide that to complete the worship and for fulfillment of worldly and spiritual desire it is important to perform pooja of Maa Shringar Gauri who is seated under the Shringar Mandap. As per Shashtrik command contained in Skandpuran a devotee is required to undertake Anupam Gauri yatra from Krishna Paksha Pratipada to Chaturdashi to get happiness and wealth. There is provision for performing pooja of Jestha Gauri before performing pooja of Saubhagya Gauri and before completion of journey the pooja of Shringar Gauri is to be performed which is symbol of Saubhagya.

16. According to Puranic ordains, the Pooja and Worship of Goddess Shringar Gauri is compulsory to achieve the fruit of Worship of Lord Vishwanath.

G. DEMOLITION OF ADI VISHESHWAR TEMPLE IN 1669 (SIXTEEN SIXTY NINE)

17. The barbarian and cruel period of history started in India with the attack of Muhammad-bin-Kasim in 712 century. Thereafter, with the attack of Mohammad Gaznavi India continuously witnessed the most-cruel and barbarian attitude of followers of Islam, who in the name of religion not only looted and plundered the properties but also massacred a number of Hindus, the women were forcibly taken away and they also demolished, destroyed, dismantled and damaged a number of temples and trampled Hindu culture and forcibly converted a large number of Hindus to Islam. The story of Islamic barbarism and terror continued unabated during all the regimes of Muslim rulers and came to a halt with the death of Aurangzeb in 1707 but in another form the said tendency continued by subsequent rulers and same were also copied by Britishers during their rule till India became free.
18. Aurangzeb one of the cruelest Islamic ruler was the champion in destruction of Hindu temples. He had issued 'Farmaans' in the year 1669 to destroy many temples including Kashi and Mathura, which were prominently worshipped by Hindus. The administration complied with the order and demolished a portion of temple of the Adi Visheshwar at Varanasi and later on a construction was raised which they alleged 'Gyanvapi Mosque' but they could not change the religious charter of Hindu temple as the idol of Goddess Shringar Gauri, Lord Ganesh and other associate deities continued in the same building complex

19. On 18.04.1669 Aurangzeb had issued farmaan for demolishing the temple of Lord Shiva i.e. Adi Visheshwar at Benaras. Historians Sir H.M. Elliot and John Dowson in his book “The History of India” as told by its own historians has mentioned that :-

“18.04.1669, it reached the ear of His Majesty, the protector of the faith, that in the provinces of Thatta, Multan, and Benares, but especially in the latter, foolish Brahmans were in the habit of expounding frivolous books in their schools, and that students and learners, Musalmans as well as Hindus, went there, even from long distances, led by a desire to become acquainted with the wicked sciences they taught. The “director of the Faith” consequently issued orders to al the governors of provinces to infidels; and they were strictly enjoined to put an entire stop to the teaching and practicing of idolatrous forms of worship. On the 15th (Fifteenth) Rabi-ul-Akhir (02.09.1669) it was reported to his religious Majesty, leader of the Unitarians, that in obedience to order, the Government officer had destroyed the temple of Bishnath at Benares.”

20. The fact of demolition of Shri Adi Visheshwar temple under the command of Aurangzeb was also mentioned in ‘Maasir-I-Alamgiri,’ a writer of the time of Aurangzeb, which has been translated by Sir Jadunath Sarkar at page 55 confirming the facts mentioned in the preceding paragraph.
21. In fact the original temple was partly demolished and utilizing the remaining structure and the materials a construction was raised and named alleged ‘Gyan Vapi Mosque’ whereas the deities continued in visible and invisible form within the premises of old temple. A large portion of the building and a portion of Tahkhana remained in the control of Hindus.
22. The historians have confirmed that Islamic ruler Aurangzeb had issued an order on 09.04.1669 directing his Administration to demolish the temple of Lord Adi Visheshwar at Varanasi. There is nothing on record to establish that the then ruler or any subsequent

ruler has passed any order to create a Waqf over the land in question or for handing over the land to any Muslim or body of Muslims. The copy of farmaan/ order issued by Aurangzeb is reported to be maintained by Asiatic library Kolkata.

23. The administration could partly demolish the temple structure. The western side of the temple is continuing in its original shape. The upper portion of the western side of the Mandap is still there. The Varanda 16 X 10 around central hall of the temple is still there. The northern and southern walls of the temple structure have been used without any change in the construction raised during the regime of Aurangz.

H. PERIOD AFTER 1669:

24. After partial demolition of ancient temple of Lord Adi Visheshwar, a new construction alleged to be 'Gyan Vapi Mosque' was raised thereat. There is a book written under the title 'History of Benares' by Dr. A. S. Altekar the Professor and Head of the Department of Ancient History and Culture of Banaras Hindu University, wherein he has described the nature of construction raised by Muslims at the place of ancient temple which reveals that:-

- (i) The eastern portion of the open platform of the alleged Mosque is formed by covering with stones slabs on extensive Hindu Mandap about 125 Feet X 18 Feet in dimension a part of which is at present in the possession of Hindus.
- (ii) A portion of Mandap of Hindu temple exists in the courtyard of alleged Gyan Vapi Mosque, still in possession of Hindus.

- (iii) The Construction raised in the regime of Aurangzeb by and large is on the existing columns and remains of ancient temple.
- (iv) At the back of the western wall of alleged Gyan Vapi Mosque there is image of Goddess Shringar Gauri existing since time immemorial and being worshiped continuously.
- (v) Hindus have continued to worship in the western side of the alleged mosque of 'Gupt' i.e. invisible deity. Hindus still continued to worship the place in the dilapidated wall of the ruins to the west of the alleged mosque as the abode of Gauri and her son Lord Ganesh. They also pay homage to Panch Mandap.
- (vi) In fact the ancient temple of Lord Visheshwar was itself converted into the structure in the present form by the engineers of Aurangzeb. They retained much part of old temple as could be possible.
- (vii) The western hall of the temple was merely pull down along with adjoining subsidiary shrines. They utilized useful building material, level up to the debris and allowed to remain in that ugly condition which is still there.
- (viii) A portion of the super structure of the western Mandap can still be seen in ruins today.
- (ix) After demolishing the Mandap and adjoining shrines, the architect of Aurangzeb closed upto the western door of the sanctuary of the Vishwanath, as also of each of the Mandaps on its south and North in order to form the western wall of

their alleged mosque. The three doors filled up can still be very easily detected in the mosque wall at its back. The western wall of the temple remains till the point where the spires commenced.

- (x) The Muslim engineers utilized structurally the central shrine of Vishwanath and the adjoining halls to its north and south they converted the sanctuary of Vishwanath which was of 32 Square feet, into the central hall of the new construction. This hall too is of the same dimension. Adjoining the central sanctuary antechambers are 16 Feet X 10 feet in dimension. They were retained in the new structure and can be still seen round the hall of the alleged mosque.
- (xi) The Mandaps to the south and the north of the shrine of Lord Visheshwar were converted into the side halls of the alleged mosque. Being only 16 feet X 16 feet in dimension they were too small for the purpose. They were, therefore, enlarged into square halls 20 Feet in dimension, by including in them the adjoining antechambers towards the central hall, which were 8 feet in breadth and by reducing the breadth of the wall towards the east and west by 4 feet each way.
- (xii) The eastern portion of the ancient temple could not be structurally utilized, so it was demolished. Part of the area was utilized for constructing an extensive verandah in front of the three halls of the alleged mosque. Pillars utilized for this verandah, however, belong to the old temple and show the Hindu louts motifs upon them.

(xiii) The northern, western and southern boundaries of the alleged mosque are coterminous with those of the temple built by Raja Todarmal. On the eastern side its courtyard covers up the entire Rangamandapa on the east belonging to 15th century temple.

(xiv) A portion of Tahkhana is still in possession of Hindus.

25. In between 1777- 80 Queen of Indor Ahilya Bai Holkar constructed a new Sri Vishwanath temple adjacent to the old temple of Adi Visheshwar. In this case the original temple will be referred to as ‘ancient’ temple and the temple constructed by Ahilya Bai Holkar as ‘new temple’.
26. On 1809 Hindus recaptured the old temple. On 30th December 1810 the then District Magistrate Mr. Watson sent letter to president council suggesting to hand over Gyan Vapi area to Hindus forever.
27. The remnants of the Hindu temple can be seen on the walls of the alleged Gyan Vapi Mosque which is standing on the destroyed original Kashi Vishwanath Temple. The temple structure which exists prior to the construction of the alleged Gyan Vapi Mosque was built by Raja Man Singh.
28. Temple structure can be seen at the alleged mosque’s rear wall, long believed to the remnant of the original Kashi Vishwanath temple. In 1822, James Prinsep captioned an illustration of the rear wall as “Temple of Vishveshvur” in his Benaras Illustrated that:-

‘The Hindus worshiped the plinth of the mosque as the plinth of the old Kashi Vishwanath temple.’ M.A. Sherring (1868) wrote that the “extensive remains” of the temple destroyed by Aurangzeb were still visible, forming “a large portion of the western wall” of the mosque. He mentioned that the remnant structure also had Jain and Buddhist elements besides the Hindu ones.’

29. Historical fact reveals that in 1698, Bishan Singh, the ruler of Amber, launched an initiative to build the Vishwanath temple. His agents surveyed the surrounding land, and detailed various claims and controversies on the topic. His Court purchased the land around the Gyanvapi precinct, but was unable to rebuild the temple.
30. The building in question contains the image of Swayambhu deity Goddess Shringar Gauri and images of number of God and Goddess, a number of objects of worship and Hindu religious facets within the structure from the time immemorial. The religious character of the building complex as Hindu place of worship is continuing till date despite the construction illegally raised by Muslims.
31. The worshippers of Lord Shiva and Hindus in general are continuously worshipping the Lord Adi Visheshwar, Goddess Shringar Gauri and other deities existing within the property in question. Circumambulation around the deity is integral part of worship recognized by Hindu law. The devotees in thousands circumambulate through Parikaram Marg and perform other rituals and on festive days they assemble in lakhs to perform pooja thereat.
32. The deity Adi Visheshwar is continuing as De-Jure owner of the entire land of Settlement Plot No.9130, 9131 and 9132 in Mauza Shahar Khas, Tahsil and District Varanasi.
33. Aurangzeb passed the order for demolishing the temple in the capacity of a sovereign. The land does not belong to any Muslim, body of Muslim or Waqf board.

I. CIVIL SUIT NO.62 OF 1936 & JUDGMENT IN FIRST APPEAL NO.466 OF 1937 BY HON'BLE ALLAHABAD HIGH COURT REPORTED IN 1942 SCC ONLINE ALLAHABAD PAGE-56

34. One Deen Mohd. filed Civil Suit No.62 of 1936 without impleading any member of Hindu community but impleading only the Secretary of State for India through District Magistrate, Benares and Anjuman Intajamia Masajid, Benares through Secretary for granting declaration that the land bearing No.9130 situated in the city and District Benaras measuring 1 Bhigha 9 Biswa and 6 Dhurs together with enclosure all round described in the plaint was Waqf in possession of that plaintiff and other Musalmans had right to say their prayers specially Alvida prayers and to exercise other religious and legal rights as the need and occasion arise. The copy of Civil Suit No.62 of 1936 filed by Deen Mohd before Sub Judge, Varanasi is annexed hereto and marked as **ANNEXURE A-2 (Page**
35. It is submitted that the Muslims had filed above mentioned suit only for declaration without seeking any consequential relief. This suit was filed even without impleading any person from Hindu community. Therefore, the judgment passed in the suit is not binding upon any member of Hindu community but any document, map, evidence or statement of any witness can be referred to or relied upon by the members of Hindu community.
36. In Civil Suit No.62 of 1936 on behalf of the Secretary of State for India in Council the written statement was filed refuting the plaint allegations and it was stated that the idols and the temple which stand there exist since long before the advent of the Mohammadan Rule in India. The copy of written statement filed on behalf of Secretary of State for India in Council in Civil Suit No.62 of 1936 is annexed hereto and marked as **ANNEXURE A-3(page**
37. In substance the Government of India in the written statement filed in Civil Suit No.62 of 1936 stated that:-

(a) “In paragraph 2 it has been stated that “The entire plot of land on which the Mosque, ‘pacucca’ courtyard stray grave, staircase in front of gate, together with ‘pucca’ enclosures all around and a ‘pipal’ tree stand belongs to Government and has never been dedicated nor could have been dedicated to the Mosque.”

(b) In paragraph 11:-

The idols and the temple which stand there exist since long before the advent of the Mohammadan Rule in India. The other allegations made in the said paragraph are denied. It is submitted that the non-Muslims have been using the land for their religious purposes as a matter of right and have got a right of way over it. The allegation that they were permitted by persons in-charge of the Mosque is unfounded and baseless.

(c) In Paragraph 12:-

The land in question was ever stamped with the character of ‘Waqf’ land. It was never dedicated to God, nor could it have been dedicated and God has no proprietary interest. further that -

The Mohammadans of that time or for the matter of that Aurangzeb himself was not the owner of the site in which the old temple of Vishwanath existed and which was demolished by Aurangzeb owing to the religious antipathy, hence it could not have been dedicated according to the true spirit of the Mohammadan faith”

38. In R.S. No. 62 of 1936 on behalf of Defendant No.2 i.e. The Secretary of State for India examined a number of witnesses namely (i) Gauri Shankar, (ii) B. Mangala Prasad, (iii) Pandit Madho Ram Saud, (iv) Jagannath Prasad Mehta, (v) Dawrka Das, (vi) Lakshmi Dass, (vii) B.

Madho Prasad, (viii) Vinay Nand Tewari, (ix) Ramesh Chandra De, (x) Ram Mohan Bhatia, (xi) M. Chandu Lal, (xii) Raghunandan Upadhyaya, (xiii) Dr. Parmatma Saran, (xiv) Dr. A.S. Altekar, (xv) Hari Prasad Das. The typed copy of statements of witnesses are being placed on record.

- (i) Shri Gauri Shankar was examined as D.W.1. A typed copy of the statement of Shri Gauri Shankar D.W.1. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-4(page**
- (ii) Shri Mangala Prasad was examined as D.W.2. A typed copy of the statement of B. Mangala Prasad D.W.2. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-5(page**
- (iii) Pandit Madho Ram Saud was examined as D.W.3. A typed copy of the statement of Pandit Madho Ram Saud D.W.3. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-6(page**
- (iv) Shri Jagannath Prasad Mehta was examined as D.W.4. A typed copy of the statement of Jagannath Prasad Mehta D.W.4 in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-7(page**
- (v) Shri Dawrka Das was examined as D.W.5. A typed copy of the statement of Dawrka Das D.W.5 in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-8(page**
- (vi) Shri Lakshmi Dass was examined as D.W.6. A typed copy of the statement of Lakshmi Dass D.W.6. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-9 (page**
- (vii) Shri B. Madho Prasad was examined as D.W.7. A typed copy of the statement of B. Madho Prasad D.W.7 in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-10 (page**
- (viii) Shri Vinay Nand Tewari was examined as D.W.8. A typed copy of the statement of Vinay Nand Tewari D.W.8. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-11(page**

- (ix) **Shri** Ramesh Chandra De was examined as D.W.10. A typed copy of the statement of Ramesh Chandra De D.W.10. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-12(page**
- (x) Shri Ram Mohan Bhatia was examined as D.W.11. A typed copy of the statement of Ram Mohan Bhatia D.W.11. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-13(page**
- (xi) **Shri** M. Chandu Lal was examined as D.W.12. A typed copy of the statement of M. Chandu Lal D.W.12. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-14 (page**
- (xii) **Shri** Raghunandan Upadhyia was examined as D.W.9. A typed copy of the statement of Raghunandan Upadhyia D.W.9. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-15(page**
- (xiii) Dr. Parmatma Saran was examined as D.W.13. A typed copy of the statement of Dr. Parmatma Saran D.W.13. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-16 (page**
- (xiv) Dr. A.S. Altekar was examined as D.W.14. A typed copy of the statement of Dr. A.S. Altekar D.W.14. in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-17 (page**
- (xv) Shri Hari Prasad Das was examined as D.W.15. A typed copy of the statement of Hari Prasad Das D.W.15 in Civil Suit No.62 of 1936 is being annexed hereto and marked as **ANNEXURE A-18(page**

39. From the statement of witnesses it is clear that:-

- (i) The worship of Goddess Shringar Gauri and other deities were being performed in the precincts of old temple.
- (ii) Avi Mukteshwar was being worshiped by its place. He was in invisible form there. Parikrama of Avi Mukteshwar was being undertaken by the devotees.

- (iii) Sringer Gauri was situated near Punch Mandap and was being worshiped there. There were Gyan Madap, Mukit Mandap, Varoj Manap, Shobha Mandap and Sringer Mandap.
 - (iv) Markeshewar is underground and in invisible form and is worshiped by devotees.
 - (v) Hindus are owners of whole land and entire land inside the boundary wall is in the possession of Hindus.
 - (vi) Panch Kosi Parikrama was being undertaken by devotees.
 - (vii) Pooja and worship of deities was going on within the old temple complex and entire area had the character of Hindu place of Worship.
 - (viii) Hindus have been worshipping the Asthan and also invisible deities according to Shastrik provisions.
 - (ix) Despite the fact that old temple could be partly demolished and in haphazard manner a construction had been raised during the regime of Aurangzeb but in fact no Mosque was constructed and the place in question could not be a Waqf property and the construction raised by Muslims by no stretch of imagination could be termed as Mosque.
40. The statement made by witnesses relating to the Asthan Adi Visheshwar and Goddess Sringer Gauri was not challenged from the Muslim side. Therefore, from the evidence it is clear that Goddess Sringer Gauri is existing from the time immemorial within the campus of ancient temple and is being worshipped throughout. It is also proved that the Asthan Adi Visheshwar is being worshiped continuously by devotees.

41. The State of Uttar Pradesh passed U.P. Act No.29 of 1983, known as the Uttar Pradesh Kashi Vishwanath Temple Act,1983 thereby defining the temple as:-

Section 4 (9) "Temple" means the Temple of Adi Visheshwar, popularly known as Sri Kashi Vishwanath Temple, situated in the City of Varanasi which is used as a place of public religious worship, and dedicated to or for the benefit of or used as of right by the Hindus, as a place of public religious worship of the Jyotirlinga and includes all subordinate temples, shrines, sub-shrines and the Asthan of all other images and deities, mandaps, wells, tanks and other necessary structures and land appurtenant thereto and additions which may be made thereto after the appointed date;

42. The U.P. State Legislature has recognized the deity 'Adi Visheshwara' Jyotirlinga in its original form alongwith subsidiary deities existing from the time immemorial within old temple complex and the right of devotees to worship there. The entire property including "property in question" i.e. old temple complex vested in deity Adi Visheshwar is to be managed by Board of Trustees. It is the duty of the State Government and the Board of Trustees to recover the entire property belonging to and dedicated to 'Adi Visheshwar' and the 'Asthan' which has been usurped and encroached upon by Anjumn Intazamia Masaajid Committee and its supporters and followers.
43. The property in question vests in the Board of Trustees constituted under U.P. Kashi Vishwanath Temple Act,1983. The Board is under obligation to manage the property of temple.
44. The Muslims never got proprietary right over the property in question. None of the Muslim has so far dedicated the land to the God for the simple reason that the property belongs to deity. The deity will not

lose its rights only for the reason that during foreign rule the temple was substantially damaged as the right of the deity over the property is never lost and the right of worshippers to perform pooja of the deity and the Asthan is protected under Hindu Law.

J. HINDU LAW:-

45. Under Hindu law which is applied in India from much before BC Era, it is well recognized that once the property has vested in deity the same will continue to be His property in perpetuity and deity can never be divested from its property. As mentioned in the preceding paragraphs there are idols and object of worship within the property in question and the temple has not lost its religious character at any point of time.
46. That the juristic personality of the deity under Hindu law has been explained by the apex Court in famous Ayodhya Case reported in 2019 (15) Scale page 1. Some paras from judgment are being extracted below-

Para 115

“A Hindu may make an endowment for a religious purpose. There is a public interest in protecting the properties endowed and ensuring that the original pious purpose of the dedicator is fulfilled. The law confers legal personality on this pious purpose. However, as Chief Justice B.K. Mukherjea notes, it is the idol, as the material manifestation of the juristic person which is “looked upon” as the centre in which the property vests. The idol as an embodiment of a pious or benevolent purpose is recognized by the law as a juristic entity. The State will therefore protect property which stands vested in the idol even absent the establishment of a specific or express trust. The pious purpose or “benevolent idea” is elevated to the status of a juristic person and the idol forms the material expression of the pious purpose through which legal relations are affected. It is the pious purpose at the heart of the dedication which is the basis of conferring legal personality on the idol and which is the subject of rights and

duties. The need to confer juristic personality arises out of the need for legal certainty as to who owns the dedicated property, as well as the need to protect the original intention of the dedicator and the future interests of the devotees. It was open for courts to even confer the personality on the community of devotees in certain situations, but the idol is chosen as a centre for legal relations as the physical manifestation of the pious purpose.”

Para 116

“.....The idol constitutes the embodiment or expression of the pious purpose upon which legal personality is conferred. The destruction of the idol does not result in the termination of the pious purpose and consequently the endowment. Even where the idol is destroyed, or the presence of the idol itself is intermittent or entirely absent, the legal personality created by the endowment continues to subsist. In our country, idols are routinely submerged in water as a matter of religious practice. It cannot be said that the pious purpose is also extinguished due to such submersion. The establishment of the image of the idol is the manner in which the pious purpose is fulfilled. A conferral of legal personality on the idol is, in effect, a recognition of the pious purpose itself and not the method through which that pious purpose is usually personified. The pious purpose may also be fulfilled where the presence of the idol is intermittent or there exists a temple absent an idol depending on the deed of dedication. In all such cases the pious purpose on which legal personality is conferred continues to subsist.”

K. MUSLIM LAW:-

47. The principles of Mohammedan Law have been compiled by Sir Dinshaw Fardunji Mulla wherein the provisions of Islamic have been enumerated. In the 21st edition of the book the subject AUQAF relating to provisions for creating Waqf has been given. The followings paragraphs relevant for the propose are being reproduce below:-

173. Waqf as defined in the Waf Act:-

Waqf means the permanent (174) dedication by a person professing the Musalman faith of any property (175-177) for any purpose recognized by the Musalman law as religious, pious or charitable (178).

176. Subject of Waqf must belong to waqif:-

The property dedicated by way of Waqf must belong to the waqif (dedicator) at the time of dedication. A person who is in fact the owner of the property but is under the belief that he is only a mutawalli thereof is competent to make a valid Waqf of the property. What is to be seen in such cases is whether or not that person had a power of disposition over the property.

188. Waqf by immemorial user:-

If land has been used from time immemorial for a religious purpose, e.g., for a mosque, or a burial ground or for the maintenance of a Mosque, then the land is Waqf by user although there is no evidence of an express dedication.

48. Waqf can be created only on the land dedicated by a waqif who is owner of the land. It is apparent that entire land vested in the deity Lord Adi Visheshwar and He is the owner of the property in question which was usurped by Aurangzeb in the capacity of a ruler. The property did not belong to him. In any case there is no evidence that the property was dedicated to the almighty.
49. The alleged Gyan Vapi Mosque is only a structure and same cannot be regarded as Mosque. The another aspect is that the disputed construction has not been erected over any Waqf property. The principle Waqf by user cannot be applicable as the alleged Gyan Vapi Mosque was constructed after demolishing a Hindu temple after 1669

at the same very place and the date of construction of alleged Mosque is well known.

L. IF WAQF EVER CREATED:

50. The property in question does not belong to any Waqf. The property had already vested in deity Adi Visheshwara lakhs of years before the start of British Calendar year and is continuing to be the property of deity. No Waqf can be created on the land already vesting in a deity. In the historical books written during the Mughal regime and thereafter even Muslim historians have not claimed that Aurangzeb after demolishing the temple structure of Adi Visheshwara had created any Waqf or thereafter any member of Muslim community or Ruler was dedicated such property to Waqf.
51. The Waqf Board has no power or jurisdiction to register any part of the property in question as Waqf property and such registration cannot change the nature of the property from Hindu Temple into a Mosque and notification if any, issued by Waqf board registering the property in question as Waqf property is ultra vires, null and void.
52. A Mosque can be constructed over the property dedicated by waqif, who should be the owner of the property. A construction raised under the orders of any Muslim ruler or by any Muslim over the land of a temple cannot be construed as Mosque. A Waqf can be created only on the land dedicated to Waqf by wakif who is owner of the land. In the instant case it is clear that from the time memorial the land and property belong to the deity and therefore there can be no Mosque thereat.
53. From the on 15th August 1947 the character of the property in question was of Hindu Temple as the images of plaintiff deities and along with other associate deities was there and they were being worshiped.

54. If any super structure has been created over the Temple land, by Muslims, same will be only a structure and cannot acquire the status of a Mosque for the reason that over a Hindu Temple already vested in the deity, no construction can be raised and such construction cannot change the nature of Temple property.

M. PLACES OF WORSHIP (Special Provisions) Act, 1991

55. That Parliament passed an Act known as Places of Worship Act, 1991 (hereinafter referred to as P.W. Act). Section 2 , 3 and 4 of the Act, are being reproduced below:-

“2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “commencement of this Act” means the commencement of this Act on the 11th day of July, 1991;

(b) “conversion”, with its grammatical variations, includes alteration or change of whatever nature;

(c) “place of worship” means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.

3. Bar of conversion of places of worship.—

No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.—

(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority: Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th (Fifteenth) day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,—

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.”

56. That in view of the provisions contained in the Act the Court has to visualize as to what was the religious character of the place in question on 15.08.1947 and whether it was a place of Hindu or Muslim worship or putting a super structure can convert a temple into a mosque or vice versa.
57. That to find out the religious character of the property in question, one has to take into consideration the historical and religious background of the entire Avimukt Area and also the nature of construction raised by Muslims thereat and the fact that deities continued to exist within the building complex were being worshiped by devotees and the sentimental attachment of the devotees with the deities and the Asthan and fact that worshippers have been undertaking Panch Koshi Parikrama daily around the entire building complex performing all the rituals.
58. In Section 4 of the P.W. Act the Parliament has purposely used the word “religious character”, to mean that the Temple, Mosque, Church, Gurudwara etc. should have been constructed according to tenets of the religion without encroaching upon the land of another faith.
59. Section 4(4) of the P.W. Act provides that the religious character of a place of a worship existing on 15.08.1947 shall continue to be the same as existed on that day.

N. Religious Character of the Place of Worship in question:-

60. That from the narration of the facts and available evidences it is clear that Asthan of Adi Visheshwar Jyotirlingam is being worshiped in a radius of 5 Kos (Krosh) and the entire area is sacred for the devotees of Lord Visheshwar and the entire 5 Kos (Krosh) area is essential and integral part of worship over which the deity exists from the time immemorial.
61. If any portion of a temple is demolished under the orders of a ruler i.e. the sovereign of the time and a super structure is put thereon, the same will not change the religious character of the shrine.
62. In this case it is historically proved that Aurangzeb, the ruler in the series of Moughal invaders, got demolished upper portion of temple of Adi Visheshwar at the property in question in 1669 and thereafter a construction was raised on the first floor in the madness of power, which Muslims call 'Gyan Vapi Mosque" but pooja and worship in other part of the temple complex including of the deity Goddess Maa Shringar Gauri, Lord Ganesh, Lord Sun and other God and Goddess continued within the old temple premises and throughout in the entire Shivlinagm area of 5 Kos (Krosh).
63. The evidence recorded in Civil Suit no.62 of 1936 reflects that the entire area of 5 Kos (Krosh) was having religious character of Sanatan Dharma.
64. It has been proved by the witnesses that worship of Gauri Shankar, Tarkeshwar, Nand Kesheswar, Mahaoleshwar beneath the "Pipal tree" at south east corner over the chabutra, then Gyan Vyapi well, Ganesh Ji known as Madadi Panch Vinayak then Maheshwar under third pipal tree then Mukteshwar in a hidden place and the south west corner then worship of Sringar Gauri in the western chabutra in the wall of the

Khandhar then panch Mandap near Shringar Gauri then Ganesh ji image imbedded in the wall then Chandreshwar in the corner i.e. north west corner and thereafter worship of Avimukteshwar in hidden form at the northern gate over the chabutra was undertaken by devotees.

65. It has also been proved by the witnesses that after worshiping the deities in visible and invisible form the devotees were circumambulating five Kos (Krosh) Parikarma Marg.
66. The building during the regime of Aurangzeb was constructed over the pillar existing in the old temple. One of the witness in former suit has deposed that 'over the pillars there are still images of Trishul, Chandrama and other Hindu symbols. In the ceiling stones there are bell mark, 'Churi'marks and flower too.'
67. In the former suit witnesses have also deposed that 'there are special forms of idol and also in hidden form, hidden form means that the idol is inside the ground. There is Gyan Mandap, Mukti Mandap, Varoj Mandap, Sobha Mandap, Sringar Mandap all these five together is called Panch Mandap. The Panch Mandap exists within Khandhar.'
68. Avi Mukteshwar is worshiped there as Asthan. Markendeshwar is also hidden underground since ancient times. According to Khashi Khand there are hidden deities at the place in question. In Khandhar area there is image of Lord Ganesh.
69. The witnesses have also deposed in Suit No. 62 of 1936 regarding the manner in which devotees were performing pooja and observing rituals within the old temple compound and outside and within the area of five Kos (Krosh) Parikrama Marg. It is has been stated that devotees undertake Ant Grahi Parikrama, and also Panch Kos (Krosh) Parikrama. The witness Gauri Shankar has stated that Panch Kos (Krosh)i Parikrama commences in the following manner:-

- (i) “First they bathe at Manikanika. Then they go to Vishwanathji Annupurna, Dhundhraj Ganesh and then go to Gyan Vapi, and there they rest in Vishram Mandap, and there they take the ‘Sankalapa’ and then they take vow of silence and start on the Panch Kosi (Krosh) Parikaram. There is Vyas Gaddi inside the ‘Baradari’ near the well and there the pilgrim rests and takes the vow. Thus Panch Kosi (Krosh) Commences from this place. After the ‘Sankalpa’ they go round the ‘mandap’, i.e. the ‘baradari’ and then go over the floor to the Shringar Gauri Panch Mandap etc., and then by the same eastern gate they go to the Mankanika side and there drink water thrice and give up the vow of silence and they go by the Ganges bank and then after five day’s walk round Benares they again reach Mankanika and from there they go to Viswanathji.”
- (ii) The other witnesses whose names have been mentioned above have also stated the same facts as was stated by Gauri Shankar. All witnesses have confirmed the ongoing pooja of the Asthan, Goddess Sringar Gauri, Lord Ganesh and of existing visible and non visible deities and about the Parikram being undertaken of the entire place by the devotees.
- (iii) In the said statement it has also come in the evidence that ‘Thahkahana’ in the southern side was in possession of Hindus and managed by collector.
- (iv) In the said suit it is also come in the evidence that there were shops at the northern gate of the compound. There is ‘Naubat Khana’ of the old temple above it. Generally Naubat Khanas are on the gates of temples and its doors open in three sides.

(v) It has also come in the statement of witnesses that in the old temple area Hindus go there for worship throughout the day from 3:00 Am to 12:00 Hours in the Night.

(vi) In substance the witnesses have confirmed that:-

‘The worship is done all over the compound. The deities Goddess Sringer Gauri, Lord Ganesh Lord Sun, Nandiji and Gyanvyapi including Gangeshwar, Shiva Parvati, Tarkeshwar, Badri Narayan, Panch Mandapa and invisible Gods were being worshiped within the old temple complex. Many places are worshiped because Gods existed there and of some gods the marks are in the walls. The wall in which the marks of the Gods is to the west.’ For the old Vishwanath also the Gyan Vapi well is worshiped.

(vii) The witnesses have also stated that land of old temple belongs to the Government. The western Khandahar belongs to Government.

(viii) To the south of the alleged Gyan Vapi Mosque there is underground cell which is in possession of Hindus.

(ix) In the said suit Dr. A.S. Altekar who was head of Department of Ancient Indian History and Culture in Benaras Hindu University also appeared as witness. He stated has that ‘Hindu used to visit these ruins and to pay their obeisance to the empty sanctuaried of Vishwanath and other gods there. They followed the theory of ‘Sthan mahapuraj’ sanctity of the place and were satisfied with this procedure.

(x) Dr. A. S. Altekar has firmly deposed that :-

“The photo of Singar Gauri is Exhibit 20. Photo of Exhibit 21 is of what at present is worshiped as Panch Mandap. At present Panch Vinayks are worshiped near the Gyan Vapi.”

- (xi) In Substance the witnesses have confirmed that around 1937 the place in question had Hindu religious character. The same position of the place in question continued upto 1947 and thereafter and it was and is having the religious character of Hindu place of Worship.
70. On the basis of un-rebutted oral evidence recorded in Civil Suit No. 62 of 1936 and other evidences it is clear that on 15.08.1947 and till date the property in question has Hindu religious place of worship. Even if Muslims have encroached upon the land and raised a super structure over a small area of the temple complex, the same will not change the religious character of temple. It may be pointed out that encroacher can never take advantage of its illegal action. The illegality cannot be allowed to perpetuate.
71. It is pertinent to mention that in Civil Suit No.637 of 1996, which was dismissed in default on 06.12.2014, by an order passed by Civil Judge Varanasi, an advocate commissioner appointed by the Ld. Civil Judge had made spot inspection on 30.07.1996, and had submitted its report in the Court. He has confirmed that the remains of demolished structure were visible. In western side after closing three doors and over the debris of demolished structure another structure like mosque have been raised. In the western side in the shape of chabutara the materials of demolished structure are present. Towards the western side it was told and apparent pooja of lord Ganesh, Sringar Gauri and other deities was being performed. The Parikrama Path (circumambulation) road was there in the southern side there was Tahakhana beneath the big Chabutara in front of which Gyanvyapi Koop (Well), Nandiji, Gauri Shankar, Maheshwar after Parikrama Path where there. In the Southern side there was cellar (Tahkhana)

and there was small gate for entering into it. One key of Tahkhana was with plaintiff no.2 (Som Nath Vyas) who opened the lock. There was another lock put by the administration and they refused to open the lock for want of the direction. The Parikrama path was there and due to new barricading hindrance was being created towards southern side.

72. From the facts stated in the preceding paragraphs it is abundantly clear that the property in question has uninterruptedly continues the character of Hindu place of worship. Therefore, section 4 of the Places of Worship Act can be applied in favor of temple and devotees.
73. The old temple and Asthan is dedicated to Lord Shiva and the entire temple complex vest in the deity from ancient times i.e. from thousands of years much before the Islamic rule. It is well established principle of Hindu law that property vested in the deity shall continue to be the property of deity and even no ruler can take possession of such property. In case, if any person or Ruler showing the might of power or muscle power has usurped the property of deity, the same will not confer any right to him and the ownership will revert back to the deity as soon as such cloud is vanished.
74. The property in question is not a Waqf property for the simple reason that as per Hindu Law the property vested in the deity shall continue the deity property. A mosque can be constructed only on a Waqf property. Waqf can be created by a waqif who is the owner of the property. In this case Aurangzeb, did not create any Waqf and did not bequeath the property in question to the God. Therefore, the construction in question cannot be even presumed to be a mosque.
75. In view of the facts of this case, the property in question continues to be a Hindu place of worship.

O. Ownership of the property in question

76. The entire property in the radius of 5 Kos (Krosh) vest in the Asthan Adi Visheshwar from the time immemorial and deity is the owner of entire land and property. Deity continues to be De-Jure owner of the property in question despite the fact that during the regime of Aurangzeb a portion of the temple complex was demolished and a super structure was raised thereat which is claimed to be a Mosque by Muslims. The action of taking forcible possession of a religious place cannot change the nature of property and also the ownership rights of the existing deity.
77. It is apparent that Kashi Vishwanath Act has recognized the right of deity over the property and after the enforcement of the Act it is the duty of the State Government and the Trust Board to restore the deities in the old temple complex with all honor and dignity.
78. The Respondents No.1 to 5 herein filed Civil Suit No.693 of 2021 before Civil Judge (Sr.Div.), Varanasi for declaration, permanent and mandatory injunction asserting right of Darshan and Pooja by virtue of Article 25 of the Constitution of India. The copy of Civil Suit No.693 of 2021 filed by Respondents No.1 to 5 herein before Civil Judge (Sr.Div.), Varanasi is annexed hereto and marked as **ANNEXURE A-19**(page
79. The Respondents No.1 to 5 also filed application under Order 39 Rule 1 & 2 of CPC with affidavit annexing therewith the statements of witnesses and deposed in Civil Suit No.62 of 1936 for granting temporary injunction restraining the Defendants from demolishing, damaging, destroying or causing any damage to the images of deities Goddess Maa Srinigar Gauri at Ashthan of Lord Adi Visheshwara alongwith Lord Ganesh, Lord Hanuman, Nandji and other visible and

invisible deities within old temple complex. The copy of application under Order 39 Rule 1 & 2 of CPC filed by Respondents No.1 to 5 herein in Civil Suit No.693 of 2021 before Civil Judge (Sr.Div.), Varanasi is annexed hereto and marked as ANNEXURE A-20(page _____

80. The Respondents No.1 to 5 herein filed application No.11-Ga under Section 75 and Order 26 Rule 9 & 10 r/w Section 151 of CPC in Civil Suit No.693 of 2021 for appointing an Advocate Commissioner to make inspection of the property in question in the light of the averments made in the plaint and in the application for grant of interim relief which is supported by an affidavit. The copy of application No.11-Ga under Section 75 and Order 26 Rule 9 & 10 r/w Section 151 of CPC in Civil Suit No.693 of 2021 filed by Respondents No.1 to 5 herein before Civil Judge (Sr.Div.), Varanasi is annexed hereto and marked as ANNEXURE A-21(page _____
81. The Ld. Civil Judge being of the opinion that the inspection of the place may be helpful in deciding the case, allowed the application 11-Ga appointing Advocate Commissioner vide order dated 18.8.2021. The copy of order dated 18.8.2021 passed by before Civil Judge (Sr.Div.), Varanasi has been filed as ANNEXURE P-1 (Pg.36-37) to the SLP.
82. On 19.8.2021 an application was filed for directing that entire commission proceeding be video graphed. The true copy of application filed by Respondents No.1 to 5 herein before Civil Judge (Sr.Div.), Varanasi in Civil Suit No.693 of 2021 dated 19.8.2021 is annexed hereto and marked as ANNEXURE A-22(page _____
83. On 3.1.2022 the Defendant No.4 filed an application No.35-Ga under Order 7 Rule 11 (d) CPC for dismissing the suit on the ground that same is barred by provisions of the Places of Worship Act,1991.

84. The Respondents No.1 to 5 herein filed reply to the application filed by Defendant No.4 on 4.4.2022. The copy of reply dated 4.4.2022 filed by Respondents No.1 to 5 herein before Civil Judge (Sr.Div.), Varanasi in Civil Suit No.693 of 2021 is annexed hereto and marked as **ANNEXURE A-23**(page
85. The Ld. Civil Judge passed an order on 5.4.2022 to the effect that order dated 29.10.2021 passed by the Court had not been complied with and therefore, application 35-Ga could not be heard before that. The Court of the opinion that the order passed earlier should be complied first and directed to hear application 13-Ga and 28-Ga on 6.4.2022. The copy of order dated 5.4.2022 has been filed as ANNEXURE P-8 (pg.79-80) with the SLP.
86. The Ld. Civil Judge passed an order on 8.4.2022 appointing Shri Ajay Kumar, as Advocate Commissioner directing that report be submitted in presence of parties in the light of application filed by the Plaintiffs and further directed that Advocate-Commissioner be get the videography of the entire proceeding. Further that Advocate Commissioner would obtain police assistance if required for executing the commission. This order dated 8.4.2022 has been filed as Annexure P-9 (Pg.81-85) with the SLP.
87. An application No.42-Ga was filed on 18.4.2022 by Ld. DGC before Ld. Civil Judge, Varanasi in Civil Suit No.693 of 2021 to clarify the order dated 8.4.2022 as to whether Advocate Commissioner could enter within the barricading and mosque area. The copy of application dated 18.4.2022 filed by Ld. DGC before Ld. Civil Judge, Varanasi in Civil Suit No.693 of 2021 is annexed hereto and marked as **ANEXURE A-24**(page
88. The Defendant No.4 i.e. Petitioner herein filed Writ Petition No.2946 of 2022 before Hon'ble Allahabad High Court challenging order dated

18.8.2021, 5.4.2022 and 8.4.2022 passed by Ld. Civil Judge, Varanasi. The copy of Writ Petition No.2946 of 2022 has been filed as Annexure P-10 (Pg.86 to 109) with the SLP.

89. The Hon'ble Allahabad High Court vide order dated 21.04.2022 dismissed the Writ Petition filed by present Petitioner i.e. Defendant No.4 before Civil Court, which has been impugned in the SLP.
90. The Ld. Civil Judge passed an order on the application 42-Ga on 26.4.2022 clarifying earlier order mentioning that there was no restriction in entering the barricading and mosque area and directed that Advocate Commissioner to complete inspection in the presence of both the parties and provided that at the time of inspection the parties, their advocates along with one associate would present during commission proceeding. The order dated 26.4.2022 has not been challenged by the Petitioner herein. The copy of order dated 26.4.2022 passed by Ld. Civil Judge, Varanasi in Civil Suit No.693 of 2021 is annexed hereto and marked as ANEXURE A-25(page
91. The Advocate Commissioner (Shri Ajay Kumar) commenced proceeding on 6.5.2022 which continued on 7.5.2022. The inspection was made of the outer portion of the disputed premises. When Advocate Commissioner reached at barricading gate he was not allowed to enter into the premises and therefore, the proceeding held up.
92. On 7.5.2022 the Petitioner herein filed an application 56-Ga for changing the Advocate Commissioner Shri Ajay Kumar before Ld. Civil Judge, Varanasi, who invited objection on the said application fixing 9.5.2022 for disposing. The Petitioner herein has not filed application 56-Ga before this Hon'ble Court. It is relevant to point out that the Petitioner acted in pursuance of the order passed by Ld. Civil Judge as confirmed by Hon'ble High Court vide order dated 21.4.2022

- and he has only prayed in this application for changing the Advocate-Commissioner. The copy application 56-Ga filed by Defendant No.4 before Civil Judge, Varanasi in Civil Suit No.693 of 2021 dated 7.5.2022 is annexed hereto and marked as **ANNEXURE A-26** (page
93. It is relevant to mention that on 9.5.2022 an application 61-Ga was filed on behalf of Respondents No.1 to 5 herein for directing the Advocate-Commissioner to conduct commission proceeding within entire barricading area and that nobody should be allowed within the area except the commission's team. The copy of application 61-Ga dated 9.5.2022 filed by Responds No.1 to 5 before Civil Judge, Varanasi in Civil Suit No.693 of 2021 is annexed hereto and marked as **ANNEXURE A-27** (page
94. The Ld. Civil Judge decided application 56-Ga vide order dated 12.5.2022 appointing Shri Vishal Singh as Special Advocate Commissioner and Shri Ajay Pratap Singh to assist the Commissioners in the proceeding. The copy of order dated 12.5.2022 has not been filed with the SLP. The copy of order dated 12.5.2022 passed by Civil Judge, Varanasi in Civil Suit No.693 of 2021 is annexed hereto and marked as **ANNEXURE A-28**(page
95. The Ld. Civil Judge also disposed of application 61-Ga vide order dated 12.5.2022 directing the administration to ensure the compliance of order passed earlier for conducting the commission proceeding smoothly. It was further directed that none else except the inspection team would remain in the premises and that the Director General of Police and Chief Secretary, U.P. Government would be responsible for smooth functioning of the commission proceeding. The order dated 12.5.2022 passed by the Civil Judge, Varanasi in Application 61-Ga in Civil Suit No.693 of 2021 is annexed hereto and marked as **ANNEXRE A-29** (page
96. It is relevant to point out that the Petitioner has not come to the with clean hands and has tried to suppress material facts. It is strange that

even the copy of Civil Suit, the copy of application for appointing Advocate Commissioner, the reply filed by the Respondents on 4.4.2022 to the application filed under Order 7 Rule 11 of CPC have not been placed on record.

97. It is relevant to mention that Petitioner has itself filed an application on 7.5.2022 for changing the Advocate Commissioner which has been redressed by Ld. Civil Judge by passing order dated 12.5.2022. The Advocate Commissioners have filed reports before the Ld. Civil Judge. Once the Petitioner has accepted the appointment of commissioner, took part in the proceeding without challenging the order dated 26.4.2022, the present SLP has become infructuous.
98. It is relevant to mention that the Advocate Commissioner made inspection of the so called Gyanvapi mosque on 16.5.2022. In the area of Vaju Khana after removing the water of pond a very big Shiva Lingam has been found. The length and width of the Shiva Lingam is still to be ascertained. It appears that the Shiva Lingam is of bigger size which is visible at present.
99. It is further submitted that the next course of action for the Trial Court would be to decide the application filed by the Plaintiffs for removing the walls encircling the Shiva lingam by directing appropriate authority or person to carry out the order, so that truth may come out.
100. It is further submitted that the Trial Court has still to find out the further course of action to be taken on Commissioners report and pass orders on the application of Plaintiffs to find out the length and width of Shiva Lingam.
101. After the reports filed by the Advocate Commission it is evident that the disputed structure is having religious character of a Hindu temple. During commission the Respondents have witnessed following signs of Hindu temple:-

“Sanskrit Sloke (in basement of Vyasji), Pillars of Hindu temple, broken Hindu idols, place to keep sub shrines (Alla), Paan, Lotus, dome of the mosque is covering a shikhar of Hindu temple, Swastik signs in the mosque, Trishool sign in the mosque, Well near Vaju Khana, entire western wall is evidence of a huge structure of Hindu temple.”

102. Therefore, the application 82-Ga dated 17.5.2022 filed by Respondents No.1 to 5 herein has to be decided first. The religious character of the property has to be determined first before deciding the application filed by the Petitioner herein under Order 7 Rule 11 for proper adjudication of the matter in issue.
103. In view of the facts of the case it is submitted that the present SLP is not maintainable is liable to be dismissed.

PRAYER

For the facts stated herein above it is most respectfully submitted that this Hon'ble Court may be pleased to;

- A) Permit the Respondents No.1 to 5 herein to bring on record additional facts and documents by way of present application;
- B) Pass such other orders as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY

DRAWN BY

FILED BY

HARI SHANKAR JAIN,
Advocate

VISHNU SHANKAR JAIN,
Counsel for the Respondents No.1 to 3

Filed on: 19.05.2022
Place: New Delhi