

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
SUPREME COURT RULE ORDER XXI RULE 3(1)(A)
I.A. NO. OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 9388 OF 2022

IN THE MATTER OF:

COMMITTEE OF MANAGEMENT ANJUMAN INTEZAMIA MASAJID
VARANASI ..PETITIONERS

VERSUS

RAKHI SINGH & OTHERS ..RESPONDENTS

AND IN THE MATTER OF:

THE APPLICATION FOR IMPLEADMENT AS RESPONDENT-10

ON BEHALF OF:

ASHWINI KUMAR UPADHYAY

OFF: 15, M.C. SETALVAD CHAMBERS, SUPREME COURT

RES: G-284, GOVINDPURAM, GHAZIABAD-201013.. APPLICANT

To,

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Applicant is filing this application for impleadment as Respondent-10 in this extremely important matter for appropriate appreciation of the facts-circumstances. Applicant's right to justice guaranteed under Article 14, right to dignity guaranteed under Article 21, right to religion guaranteed under Article 25, right to restore religious places guaranteed under Article 26 and right to culture guaranteed under Article 29 is directly linked with the instant petition.

2. Applicant was born in Prayag and regularly visited Kashi with family to offer prayers to Lord Mahadeo and Mata Gauri. It is necessary to state that Kashi is a very ancient cultural and religious city and exists since the Vedic period. According to Purans, the time immemorial pooja of Lord Adi Visheshwar is being performed with fresh water of Ganga Ji in North of the Shivlingam. The place has special religious significance for Hindu Devotees as it is one out of twelve 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. 'Adi Visheshwar Jyotirling' at Kashi is Swyambhu Deity and is most ancient out of 12 Jyotirlings established in different parts of Bharat. The Jyotirlings have great position 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 the first Jyotirling Linga under the Vedic Sanatan Dharma.

3. Applicant submits that only those places can be protected, which were erected or constructed in accordance with personal law of the person erected/constructed them, but places erected or constructed in derogation of the personal law, cannot be termed as a '*place of worship*'. It is submitted that retrospective cutoff-date was fixed 15th August 1947 to legalize the illegal acts of barbaric invaders. Though, Hindu Law (Temple Character never changes) was 'Law in force' at the commencement of the Constitution by virtue of Article 372(1).
4. It is submitted that Hindus Jains Buddhists Sikhs have right to profess, practice propagate religion as provided in their religious scriptures and Article 13 prohibits from making law which takes away their rights. Moreover, the status of mosque can be given only to such structures which have been constructed according to tenets of Islam and mosques constructed against the provisions contained in Islamic law cannot be termed as Mosque. *Muslims cannot assert any right in respect of any piece of land claiming to be mosque unless it has been constructed on legally owned and occupied virgin land.* It is necessary to state that property vested in Deity continues to be the Deity's property irrespective of the fact that any person has taken illegal possession and offering namaz.

5. Temple's religious character does not change after the demolition of roof, walls, pillars, foundation and even offering Namaz. After the Pran Pratishtha of idol, *A Temple is Always a Temple* until the Idol is shifted to another temple with the rituals of Visharjan. Moreover, *Religious Character of Temple (Place of Worship) & Mosque (Place of Prayer) is totally different. So, same Law can't be applied on both.*
6. The mosque constructed at temple land cannot be a mosque, not only for the reason that such construction is against Islamic law, but also on grounds that the property once vested in the deity continues to be deity's property and right of deity and devotees are never lost, howsoever long illegal encroachment continues on such property. Right to restore back religious property is unfettered and continuing wrong and injury may be cured by judicial remedy.
7. Barbaric invaders destroyed hundreds of places of worship and pilgrimage to make Hindus Jains Buddhists Sikhs to realize that they have been conquered and have to follow the dictum of Ruler. Hindus Jains Buddhists Sikhs had suffered from 1192 to 1947. *Now the Question is as to whether even after the independence; they cannot seek judicial remedy to undo the barbarian acts through process of court to establish that law is mightier than the sword.*

8. Applicant submits that instant SLP has become infructuous as 1991 Act doesn't bar determination of religious character. The Act is a penal Law so it must be interpreted literally not purposively. Temple is a *place of worship as God resides therein* and that's why *temple is always a temple and its religious character never changes*. On the other hand, Mosque is simply a *place of prayer* and that's why, in gulf countries (birthplace of Islam), it is demolished/shifted even for making road school hospital and public office. Moreover, *Religious Character of Temple (Place of Worship) & Mosque (Place of Prayer) is totally different. So, the 1991 Act can't be applied on Mosque*.
9. The 1991 Act was enacted in the garb of '*Public order*', which is a State subject [Schedule-7, List-II, Entry-1] and '*places of pilgrimages within India*' is also State subject [Schedule-7, List-II, Entry-7]. So, Centre cant enact the Law. Moreover, Article 13(2) prohibits State to make law to take away fundamental rights but 1991 Act takes away the rights of Hindus Jains Buddhist Sikhs to restore their '*places of worship and pilgrimages*', destroyed by barbaric invaders. The Act excludes the birthplace of Lord Rama but includes birthplace of Lord Krishna, though both are incarnation of Lord Vishnu, the Creator and equally worshiped throughout the word, hence it is arbitrary.

10. Right to justice, right to judicial remedy, right to dignity are integral part of Article 21 but 1991 Act violates them. Likewise, right to pray profess practice propagate Hinduism Jainism Buddhism Sikhism, guaranteed under Article 25, is being blatantly offended by 1991 Act. Similarly, the 1991 Act blatantly offends the rights of Hindus Jains Buddhists Sikhs to restore, manage, maintain and administer *places of worship and pilgrimage*, guaranteed under Article 26.
11. Applicant submits that Right to restore and preserve the script and culture of Hinduism Jainism Buddhism Sikhism, guaranteed under Article 29 is also being offended by the 1991 Act. Moreover, directive principles are nevertheless fundamental in the governance of the Country and Article 49 directs the State to protect the places of national importance from disfigurement and destruction. Similarly, State is obligated to respect the ideals and institutions and value and preserve the rich heritage of Indian culture. Applicant submits that State has no legislative competence to enact law infringing the fundamental right guaranteed to citizens in view of the embargo created by Article 13. Moreover, the Act affects right to religion of Hindus Jains Buddhists Sikhs and snubs their voice against illegal inhumane barbarian action committed in pre-independence period.

12. S.4(1) of the Act violates the concept that *‘Temple property is never lost even if is enjoyed by strangers for hundreds of years; even the king cannot deprive temples of their properties. The Idol/deity which is embodiment of supreme God and is a juristic person, represents the ‘Infinite- the timeless’ cannot be confined by the shackles of time.*
13. Centre neither can take away the power of Civil Courts to entertain the suit for restoration nor can take the power of High Courts and Supreme Court conferred under Article 226 and 32. The impugned Act has barred right and remedy against encroachment made on religious places of Hindus Jains Buddhists Sikhs. Moreover, Centre has transgressed its legislative power in barring remedy of judicial review, which is the basic feature of the Constitution.
14. Applicant submits that since 1192 to 1947, barbaric invaders damaged and desecrated religious places of Hindus Jains Buddhists Sikhs, depicting Indian cultural from north to south, east to west. Moreover, the 1991 Act has destroyed basic doctrine of the Hindu Law relating to the deity as *deity and its property is never lost and devotees have the right to sue a wrongdoer for restoration of property.* It’s a well-established principle in the Hindu law, that *property once vested in deity will continue to be deity’s property.*

15. Petitioner submits that on the touch stone of the principle of secularism read with Articles 14-15, it is very clear that State cannot show its inclination or hostile attitude towards any religion, may be majority or minority. Therefore, 1991 Act violates the principle of secularism as it violates the right of Hindus Jains Buddhists Sikhs for restoration of their places of worship destroyed before 15.8.1947 even through the mediation and the Court.
16. Petitioner submits that the 1991 Act, without resolution of dispute through the process of law, has abated the suit and proceedings, which is *per se* unconstitutional and beyond the law-making power of Centre. The provisions of 1991 Act cannot be implemented with retrospective effect and the remedy of disputes pending, arisen or arising cannot be barred. Centre neither can close the doors for aggrieved persons nor can take away the power of District Court, High Court and Supreme Court of India. The maxim "*ubi jus ibi remedium*" has been frustrated by the 1991 Act as pending suits and proceeding in respect of which cause of action have arisen and continuing wrong, the remedy of the aggrieved person for resolution of disputes through the Court have been abolished, which violate the very concept of justice and 'Rule of law'.

17. There are many International Conventions on cultural and religious heritage and India is signatory of them. So Centre is obligated to act in accordance with the conventions- (i) *Fourth Geneva Convention 1949 reinforced the protection of 'Places of worship which constitute cultural and spiritual heritage of people* (ii) *Statutes of United Nations and UNESCO* (iii) *Hague Convention for the Protection of Cultural Property in the event of Armed conflict 1954* (iv) *World Heritage Convention 1972* (v) *Convention for the Protection of Architectural Heritage of Europe 1985* (vi) *European Convention on Protection of Archaeological Heritage 1969* (vii) *European Landscape Convention 2000* and (viii) *The European Convention on Protection and Promotion of Diversity of Cultural Expressions 2005.*

PRAYER

Keeping in view the above stated facts and circumstance, it is respectfully prayed that the Court may graciously be pleased to:

- a) implead the Applicant as Respondent No-10;
- b) pass such order(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

23.05.2022

ASHWANI KUMAR DUBEY

NEW DELHI

ADVOCATE FOR APPLICANT