and worshipped the place since according to their belief, it was the place of birth of Lord Rama and therefore, could not have been desecrated so as to extinguish in any manner. The idols were kept in the inner courtyard under the central dome on 22/23 December, 1949. The plaintiffs, however, claim in para 3 of the plaint as under:

> *"3. That the said Asthan of Janma Bhumi is of ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown by letters A.B.C.D. in the sketch map appended hereto within which stands the temple building of Janma Bhumi marked by letters E.F.G.K. P N M L E and the building denoted by letters E F G H I J K L E is the main temple of Janma Bhumi wherein is installed the idol of Lord Ram Chandra with Lakshmanji, Hanumanji and Saligramji."*

4425. Therefore, the manner in which the plaintiff has depicted the premises in dispute and claimed it to be a temple is not correct in view of our findings recorded above. The premises in dispute cannot be treated to be a temple in the manner it is being pleaded and claimed by the plaintiffs (Suit-3). Though there are other aspects of the matter which we have already discussed, subject to those findings, as pointed out above also, in our view, **issue No.1(Suit-3) has to be answered in negative. It is decided accordingly**.

4426. **(L) Identity of the property:**In this category fall issues no. 1(B)(a) (Suit-4) and 5 (Suit-5).

4427. **Issue No.1(B)(a) (Suit-4):**

> *"Whether the building existed at Nazul plot no.583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra*

known as Ram Kot, City Ayodhya (Nazul Estate) Ayodhya? If so its effect thereon?"

4428. It is not disputed by the parties before this Court that the Nazul plot, in which the building in dispute existed, was recorded as Nazul, plot no. 583, Khasra of 1931 of Mohalla Kot Ram Chandra known as Ramkot, City Ayodhya (Nazul Estate Ayodhya). In the revenue records, plot number is different. The Nazul number of the plot in which the building in dispute situate is not disputed. It is also admitted by all the parties that the plot in which disputed building existed was recorded Nazul in the First Settlement 1861 and had continued so even when the suit in question was filed.

4429. "Nazul land" means land owned by the Government. It is the own pleading of Sunni Board in para 24(B) of the written statement filed in Suit-5.

4430. In the Legal Glossary 1992, fifth edition, published by the Legal Department of the Government of India at page 589, the meaning of the word "Nazul" has been given as "Rajbhoomi i.e. Government land". It is an Arabic word and it refers to a land annexed to Crown. During the British Regime, immoveable property of individuals, Zamindars, Nawabs and Rajas when confiscated for one or the other reason, it was termed as "Nazul property". The reason being that neither it was acquired nor purchased after making payment. In the old record, we are told when they used to be written in Urdu, this kind of land was shown as "Jaidad Munzabta".

4431. For dealing with such property under the authority of the Lt. Governor of North Western provinces, two orders were issued in October, 1846 and October, 1848 wherein after

the words "Nazul property" its english meaning was given as "Escheats to the Government". Sadar Board of Revenue on 20th May, 1845 issued a circular order in reference to Nazul land and in para 2 thereof it mentioned "*The Government is the proprietor of those land and no valid title to them can be derived but from the Government.*" The Nazul land was also termed as confiscated estate. Under circular dated 13th July, 1859, issued by the Government of North Western Provinces, every Commissioner was obliged to keep a final confiscation statement of each district and lay it before the Government for orders. The kingdom of Oudh was annexed by East India Company in 1856. It declared the entire land as vested in the Government and thereafter settled the land to various individuals Zamindars, Nawabs etc.

4432. At Lucknow revolt against the British Company broke up in May, 1857 which is known as the first war of independence which very quickly angle a substantial part of north western provinces. After failure of the above revolution, the then Governor General Lord Canning on 15th May, 1858 issued a proclamation confiscating propriety rights in the soil with the exception of five or six persons who had given support and assistance to British Officers. This land was resettled first for a period of three years and then permanent propriety rights were given to certain Talukdars and Zamindars by grant of 'Sanad' under Crown Grants Act. In the meantime we all know that under the Government of India Act, 1858 the entire Indian territory under the control of East India Company was placed under Crown w.e.f. First November, 1858. A kind of first settlement in summary we undergone in Oudh in 1861 wherein

it appears that the land in dispute was shown as Nazul and since then in the records, the nature of land is continuously being mentioned as Nazul.

4433. In respect to Revenue records as well as Nazul, DW 2/1-2, Sri Ram Sharan Srivastava who happened to be Collector, Faizabad between July 1987 till 1990 and claimed to have seen the record, made the following statement:

> *''मेरे अधीन राजस्व अभिलेखागार में तीन रेवेन्यू सेटिलमेट्स सन् 1861, 1893–94, व 1936–37 के अभिलेख उपलब्ध थे, जिनका मैंने अध्ययन किया था। इन अभिलेखों में खसरा, खतौनी, खेवट शामिल थे और तीनों सेटिलमंट्स की रिपोर्ट इनके अलावा अलग से उपलब्ध थीं। उपरोक्त तीन सेटिलमेंट्स व रिपोर्ट के अतिरिक्त सन् 1931 में हुए नजूल भूमि के सर्वे से संबंधित रिपोर्ट भी सम्मिलित थीं। उसी 1931 के सर्वे के आधार पर तैयार किये गये खसरा, खतौनी व खेवट भी उपलब्ध थे। इन तीनों बन्दोबस्ती और नजूल के सर्वे के अभिलेखों में विवादित स्थान को जन्मस्थान लिखा हुआ है और कहीं–कहीं रामजन्मभूमि भी लिखा हुआ है। इन उल्लेखों के आधार पर ही मैंने यह निष्कर्ष निकाला कि विवादित स्थल भगवान श्री राम का जन्मस्थान है। उपरोक्त संदर्भित तीनों सेटिलमंट और 1931 के सभी अभिलेखों को मैंने मूल रूप में अपने जिलाधिकारी कार्यालय में मंगवाकर देखा था, अभिलेखागार में जाकर नहीं। सेटिलमेंट की तीनों रिपोर्ट अंग्रेजी भाषा में थीं और प्रत्येक रिपोर्ट 50 पेज तक की थी। ये सभी रिपोर्ट्स टाइपशुदा थीं। तीनों रिपोर्ट्स में सर्वेकर्ता या लेखक का नाम लिखा हुआ था, परन्तु मुझे उनमें से किसी का नाम याद नहीं है। पहले एवं दूसरे सेटिलमेंट के तीनों अभिलेख यानी खसरा, खतौनी और खेवट उर्दू में थे। परन्तु जहां तक मुझे याद है, तीसरे सेटिलमेंट के अभिलेख हिन्दी में थे।'' (पेज 54–55)*

> *''The records of three revenue settlements of year 1861,1893-94 &1936-37 were available in the revenue record room under me. These records included khasra, khatauni, khewat and the reports of the three settlements were available separately besides them. The survey report*

of 1931 in respect of nazul land, was also included besides the three settlements and reports. The khasra, khatauni & khewat prepared on basis of survey of 1931, were also available. In the records of all the three settlements and the nazul survey, the disputed site has been mentioned as Janmsthan and at places Ramjanmbhumi has also been mentioned. On basis of the said mentions, I drew the conclusion that the disputed site was the birth place of Lord Rama. I had summoned and perused the original record of the above-referred three settlements & 1931 survey, in my District Magistrate office and did not peruse them in the record room. The three reports of settlements were in English language and each report ran into fifty pages. All these reports were in typed form. All the three reports bore the name of the surveyor or the scribe, but I do not remember any of those names. The three records of the first and second settlement viz. khasra, khatauni and khewat were in Urdu. However, to the best of my memory, the records of the third settlement were in Hindi." (E.T.C.)

"सभी अभिलेखों की हिन्दी प्रतियां भी मौजूद थीं। वह हिन्दी प्रतियां पहले से रिकार्ड पर उपलब्ध थी, मैंने नहीं बनवाई थीं। ये हिन्दी प्रतियां भी राजस्व अभिलेखागार से ही मेरे पास आई थीं। 1931 के नजूल सर्वे के अभिलेख भी उर्दू में थे, जिनकी प्रतियां राजस्व अभिलेखागार से मूल अभिलेखों के साथ आई थीं।" (पेज 55)

"The Hindi copies of all the records were available. The Hindi copies were already available in the records, and I had not got them prepared. These Hindi copies had also come to me from the revenue record room. The records of nazul survey of 1931, were in Urdu, whose copies had come along with original records from the revenue record

room." (E.T.C.)

"तीनों संटिलमेंट और चौथे, नजूल सर्वे के अभिलेख में कोट रामचन्द्र का ही नाम लिख हुआ था।" (पेज 55–56)

"Only Kote Ramchandra was mentioned in the records of three settlements and the fourth , nazul survey."(E.T.C.)

"आखरी सेटिलमेंट के नम्बरान 159, 160 व 160 ए थे, जो हमें याद नहीं हैं। उन सभी नम्बरान में जन्मस्थान लिखा हुआ था। हर सेटिलमेंट में प्लाट की संख्या बदल जाती थी, जिन प्लाट के नम्बरान मैंने 159 व 160 बताये हैं, वे आखिरी बन्दोबस्त के नम्बरान थे। नजूल के सर्वे में उससे संबंधित नम्बरान 583, 586 थे, जो मुझे याद है।" (पेज 56)

"The numbers of the last settlement were 159, 160 and 160A, which I do not remember. Janamsthan was written against all these numbers. The plot number changes in every settlement. The plot numbers 159 and 160 given by me, were the numbers of the last settlement. The numbers concerned to it in the Nazul survey were 583, 586, which are within my memory." (E.T.C.)

"नजूल सर्वे से संबंधित अभिलेखों में विवादित स्थल से संबंधित नम्बरों में मस्जिद शाह बाबर या मस्जिद जन्मस्थान नहीं लिखा था, बल्कि सिर्फ़ जन्मस्थान लिखा था। विवादित स्थल से संबंधित नजूल नम्बरों में कब्रिस्तान नहीं लिखा था।" (पेज 56)

"In the records related to the nazul survey, neither 'Masjid Shah Babar' nor 'Masjid Janmsthan' was written in the numbers related to the disputed site and instead only Janmsthan was mentioned. Graveyard was not mentioned in the concerned nazul numbers of the disputed site."(E.T.C.)

"पहले व दूसरे बन्दोंबस्त के अभिलेखों में किसी नम्बर में मस्जिद, शाही मस्जिद या जन्मस्थान मसिजद नहीं लिखा था। तीसरे बन्दोबस्त के

खसरा, खतौनी व खेवट में किसी–किसी रिकार्ड में इन्टरपोलेशन थे, जिसमें विवादित स्थल के कुछ नम्बरान में जन्मस्थान मस्जिद या कहीं जामा मस्जिद इण्टरपोलेशन के द्वारा लिखे गये थे। इसकी रिपोट्र मैंने भेजी थी। इस संबंध में मैंने रिपोर्ट 1989 में बोर्ड आफ़ रेवेन्यू को भेजी थी। मेरी रिपोर्ट पर जॉच हुई थी। कोई अधिकारी रेवेन्यू बोर्ड से आये थे। जॉचकर्ता, बोर्ड आफ रेवेन्यू के सचिव के नीचे के अधिकारी थे, मेम्बर नहीं। जिन रिकार्डस में इण्टरपोलेशन किये गये थे और जिनकी रिपोर्ट मैंने भेजी थी, उन्हें कभी ठीक नहीं किया गया क्योंकि मौजूदा मामला अदालत में पेंडिंग था।'' (पेज 56–57)

"In no number of the records of first and second settlement, there was any mention of mosque, royal mosque or Janmsthan mosque. In certain records of khasra, khatauni & khewat of the third settlement, there were interpolations and Janmsthan Masjid or Jama Masjid were interpolated in certain numbers of the disputed site. I had sent its report. I had sent the report in the behalf to the Board of Revenue in 1989. An enquiry was held on my report. Some officer of Board of Revenue had come. The investigator was an officer subordinate to the Secretary, Board of Revenue and was not a member. The records in which interpolation had been made and whose report I had submitted, were never corrected because the matter was pending in Court." (E.T.C.)

4434. We may have another aspect. In para 24(B) of the written statement in Suit-5, Muslim parties (U.P.Sunni Central Board of Waqf) have said:

"The land in question undoubtedly belonged to the State when the mosque in question was constructed on behalf of the State and as such it cannot be said that it could not be decided for the purposes of the mosque."

4435. The claim of the muslim parties is that the entire territory which came in the control of Babar after defeating Ibrahim Lodhi and others became his land since king was the owner of the land and no system of private ownership was recognized and therefore, he was at liberty to direct for any kind of construction on such land and the land could not have been treated to be owned by any private individual or anyone else.

4436. Let us consider this aspect also in the context of the theory of 'Nazul'. Such kind of land cannot be a Nazul land. If the entire territory during Mughal regime would that of a king, as soon as the territory annexation or otherwise changed its hand with the East India Company, they would have entered into the shoes of the Mughal king and got the same rights, obligations, privileges etc. on the land. The status of the land would not have changed in such a manner. Such a land could not be confiscated since it was already the land of the king but when a proclamation was issued for confiscating the land, meaning thereby the East India Company or the British Government did not follow the same principle. In our view, in such a matter, even the doctrine of "escheat" or "bona vacantia" may not be applicable

4437. The question as to who could have been owner of the land in 1528 AD when alleged that the disputed building was constructed by Babar through his Commander Mir Baqi, the concept sought to be canvassed is that law, whether Islam or Hindu Shastras, do not recognise any personal right of ownership upon immoveable property. The entire property within the suzerainty of the king belong to him, who had right to tax its subject in the form of tax or otherwise by realising share

in the agricultural or other income in the immoveable property. The percentage of share may differ and that may not be relevant for our purpose.

4438. The second aspect of the matter is that since ancient time the right of ownership proceeded with possession and is recognized by the well known principle "possession follows title". The individual right of ownership therefore was well recognized in the various personal laws and the only right the king had to acquire the land in known valid means, namely by purchase or gift etc. The obligation upon the king is to protect the subject and his property from enemies and for that purpose he used to raise revenue from the subject in the form of tax and/or share from the income of the property etc. It is said that the King, by virtue of its authority, was not the sole owner of the entire immoveable property within his suzerainty but though the immoveable property was subject to his suzerainty, the individual right of the owner on the property continued to be recognized. Besides, the fact that the land could have been acquired by the king by valid means like purchase, gift etc., meaning thereby other modes of acquisition of immoveable property by King existed otherwise no private owner of the land in question would have been there within his suzerainty.

4439. The learned counsel for the parties in this aspect referred to the doctrine of Escheat/bona vacantia. We find that the right of the King to take property by escheat or as bona vacantia was recognized by common law of England. Escheat property was the lord's right of re-entry on real property held by a tenant dying intestate without lawful heirs. It was an incident, of feudal tenure and based on the want of a tenant to perform the

feudal services. On the tenant dying intestate without leaving any lawful heirs, his estate came to an end and the lord was in by his own right and not by way of succession or inheritance from the tenant to re-enter the real property as owner. In most of the cases the land escheated to the Crown as the lord paramount, in view of the gradual elimination of intermediate or mesne lords since 1290 AD. The Crown takes as bona vacantia goods in which no one else can claim property. In **Dyke Vs. Walford 5 Moore PC 434 = 496-13 ER 557 (580)** it was said "it is the right of the Crown to bona vacantia to property which has no other owner." The right of the Crown to take as bona vacantia extends to personal property of every kind. Giving a notice at this stage that the escheat of real property of an intestate dying without heirs was abolished in 1925 and the Crown cannot take its property as bona vacantia. The principle of acquisition of property by escheat i.e right of the Government to take on property by escheat or bona vacantia for want of a rightful owner was enforced in the Indian territory during the period of East India Company by virtue of statute 16 and 17 Victoriae, C. 95, Section 27.

4440. We may recollect having gone through the history that several estates were taken over by British Company by applying the doctrine of lapse like Jhansi which was another kind of the above two principles. The above provisions had continued by virtue of Section 54 of Government of India Act, 1858, Section 20(3)(iii) of Government of India Act, 1915 and Section 174 of the Government of India Act, 1935. After the enactment of the Constitution of independent India, Article 296 now provides :

"Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union."

4441. The Apex Court in **Pierce Leslie and Co. Ltd. (supra)** has considered the above principles in the context of sovereign India as it stands under its constitution after independence and has observed that "in this country the Government takes by escheat immoveable as well as moveable property for want of an heir or successor. In this country escheat is not based on artificial rules of common law and is not an incident of feudal tenure. It is an incident of sovereignty and rests on the principle of ultimate ownership by the State of all property within its jurisdiction."

4442. The Apex Court placed reliance on **Collector of Masulipatam Vs. C. Vencata Narainapah 8 MIA 500, 525; Ranee Sonet Kowar Vs. Mirza Himmut Bahadoor (2) LR 3 IA 92, 101, Bombay Dyeing & Manufacturing Co. Vs. State of Bombay (1958) SCR 1122, 1146, Legal Remembrancer Vs. Corporation of Calcutta (1967) 2 SCR 170, 204**.

4443. The Judicial Committee in **Cook Vs. Sprigg 1899 AC 572** discussing what is an act of state, observed :

"The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an act of State."

4444. This decision has been followed in **Raja Rajinder**

Chand Vs. Mst. Sukhi and others AIR 1957 S.C. 286.

4445. In **Vajesingji Joravarsingji Vs. Secretary of State AIR 1924 PC 216**, Lord Dunedin said :

> *"When a territory is acquired by a sovereign State for the first time, that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing."*

4446. In **Dalmia Dadri Cement Co. Ltd. Vs. Commissioner of Income-tax AIR 1958 SC 816**, the Court said :

> *"The expression 'act of State' is, it is scarcely necessary to say, not limited to hostile action between rulers resulting in the occupation of territories. It includes all acquisitions of territory by a sovereign State for the first time, whether it be by conquest or cession."*

4447. In **Promod Chandra Deb Vs. State of Orissa AIR 1962 SC 1288**, the Court said, *" 'Act of State' is the taking over of sovereign powers by a State in respect of territory which was not till then a part of its territory, either by conquest, treaty or cession, or otherwise."*

4448. To the same effect was the view taken by the Constitution Bench in **Amarsarjit Singh Vs. State of Punjab**

AIR 1962 SC 1305 in para 12 as under :

> *"It is settled law that conquest is not the only mode by which one State can acquire sovereignty over the territories belonging to another State, and that the same result can be achieved in any other mode which has the effect of establishing its sovereignty."*

4449. In **Thakur Amar Singhji Vs. State of Rajasthan AIR 1955 SC 504**, in para 40, the Court said :

> *"The status of a person must be either that of a sovereign or a subject. There is no tertium quid. The law does not recognise an intermediate status of a person being partly a sovereign and partly a subject and when once it is admitted that the Bhomicharas had acknowledged the sovereignty of Jodhpur their status can only be that of a subject. A subject might occupy an exalted position and enjoy special privileges, but he is none the less a subject ..."*

4450. In **State of Rajasthan and Others Vs. Sajjanlal Panjawat and Others AIR 1975 SC 706** it was held that the Rules of the erstwhile Indian States exercised sovereign powers, legislative, executive and judicial. Their firmans were laws which could not be challenged prior to the Constitution. The Court relied on its earlier two decisions in **Director of Endowments, Govt. of Hyderabad Vs. Akram Ali AIR 1956 SC 60, and Sarwarlal Vs. State of Hyderabad AIR 1960 SC 862.**

4451. In **Promod Chandra Deb Vs. State of Orissa A.I.R. 1962 S.C. 1288 "**act of the State" was explained in the following words:

"an "act of State" may be the taking over of sovereign powers either by conquest or by treaty or by cession or otherwise. It may have happened on a particular date by a public declaration or proclamation, or it may have been the result of a historical process spread over many years, and sovereign powers including the right to legislate in that territory and to administer it may be acquired without the territory itself merging in the new State."

4452. This decision has been followed later on in **Biswambhar Singh & Anr. Vs. The State of Orissa & Ors. 1964(1) Supreme Court Journal 364**.

4453. Sri Jilani, learned counsel for the applicant, however, submitted that the State has already given up and is not contesting the matter though it is a party in the suit. In the circumstances, whosoever may have in the possession in the Nazul record of the Government, it would not result in treating the land in dispute owned by the Government or belonging to the Government. Hence the matter has to be decided between the parties other than the Government, who has given up its case and has made a statement that it is not contesting the matter.

4454. Sri S.P.Srivastava, learned Additional Chief Standing Counsel has made a statement to this effect before us that as per his instructions, the State Government is not contesting the suit.

4455. In view thereof and fortified by the law laid down in **State of Bihar and others Vs. Sri Radha Krishna Singh (supra)** despite the fact that building is shown to continued as Nazul plot no.583 of Khasra of the year 1931 of Mohalla Kot Ram Chandra, we find that it will not make any impact upon the

claim of the various parties of the two communities since the State of U.P. is not claiming any right over the property in dispute and has specifically taken a stand of no contest. **The issue 1(B)(a) (Suit-4) is answered accordingly.**

4456. **Issue No.5 (Suit-5)** is as under:

> *"Is the property in question properly identified and described in the plaint?"*

4457. This issue pertains to the identification of the property in dispute as described in the plaint. Counsel for defendants No.4 and 5 submitted that the suit as framed show the property in respect whereto relief was sought as mentioned in the annexures no.1, 2 and 3 to the plaint and do not specify of the boundaries of the property in respect whereto Suit-5 was filed. However, so far as the disputed site and structure is concerned, there is no dispute between the parties in respect thereto either about its identification or description. After the decision of the Apex Court in **Dr. M. Ismail Farooqui's case (supra)** holding acquisition of property by the Central Government under Act, 1993, except the site in dispute, valid, the only area which is now required to dealt with by us in all these cases is that which comprises of the of outer and inner courtyard including disputed structure.

4458. In the peculiar facts and circumstances of the case since the property in dispute against which now the Court is required to consider whether the plaintiffs are entitled for relief or not is well identified and known to all the parties, there is no ambiguity. **Issue No.5 is answered in affirmative i.e. in favour of the plaintiffs.**

4459. **<u>(M) Issues relating to Specific Relief Act:</u>**

4460. Issues no. 8 (Suit-1) and 18 (Suit-5) falls in this category which read as under:

Issue No. 8 :-"Is the suit barred by proviso to Section 42 Specific Relief Act?"

Issue No. 18:-"Whether the suit is barred by section 34 of the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no.3 and also as alleged in paragraph 47 of the written statement of defendant no.4 and paragraph 62 of the written statement of defendant no. 5?"

4461. In Suit-1 issue 8 has been framed in view of the pleadings of defendants no. 1 to 5 (i.e. para 17 of the written statement) as well as para 17 of the written statement of defendant no. 10 which read as under:

Written statement of defendants no. 1 to 5

''दफा 17. यह कि मुद्दई का कब्जा या कोई हक बाकी नहीं रहा और न है। इस वजह से दावा इस्तकरारिया हसब दफा 42 कानुन दादरसी खास नाकाबिल फजीराई अदालत है।''

"Para 17. That right or possession of the plaintiffs remained no more and, therefore, this suit for declaration under Section 42 of the Specific Relief Act is not maintainable. (E.T.C.)

Written statement of defendant no. 10

"17. That as the plaintiff has never remained in possession or occupation of the building in suit, he has no right, title or claim over the said property and as such the suit is even barred by the provisions of Section 42 of the Specific Relief Act."

4462. In Suit-5 para 42 of the additional written statement of defendant no. 3, para 47 of the written statement of defendant

no. 4 and para 62 of the written statement of defendant no. 5 read as under:

"42. That site plan annexure II attached to the abovenoted plaint does not bear any plot no's (settlement or Nazul) nor it is bounded as to give any definite identity of property. Temple Shri Vijay Ragho ji Sakshi Gopal has never been subject matter of the any of the suit O.O.S. 4/89 or O.O.S. 3/89 pending before this Hon'ble Court. Sumitra Bhawan is another temple shown in the site plan. Which is temple of Sheshaawatar Laxmanji Maharaj and that is why it is famous name of his mother Sumitra as Sumitra Bhawan. It has been in possession and management of Mahant Raj Mangal Das one of the panch of Nirmohi Akhara. The Nazul plot no 588 measuring 1-6-13-15 Kachwanceis of Mohalla Ram Kot is recorded with Deity Laxamanji Maharaj through Ram Das Nirmohi who is Guru of Raj Mangal Das. Mah Ram Das of Sumitra Bhwan is recorded in settlement plot no. 168 to 174 as qubiz. Similarly Lomash Chaura Mandir, Sita Koop Mandir, Kuti shown is said map has distinct Deity of Bhagwa Ram Lalaji by the other panches of Nirmohi Akhara namely and respectively Mahant Dwarika Das, Mahant Naval Kishore Das and Ram Gopal Das who are all panches of Nirmohi Akhara. Sankat Mochan temple have been omitted in the said map whereas it did exist on the date of this suit. It has its deity Sankat Mochan Hanomanji and Thakur Ram Janki represented by Sarbarakar Ram Dayal saran Chela of Ram Lakhan saran. Late Ram Lakhan Saran and also belong to the spiritual family of Nirmohi Akhara as he was Naga

chela of Goliki Ram Lakhan Das, one of the old panch of Nirmohi Akhara. Other Samadhis in the name of famous sages have been owned and claimed by answering defendant no. 3 as Samadhies of old Sadhus of Nirmohi Akhara. Panches and Sadhus of Akhara are living in the surrounding since before the human memory. The outer Sahan carried a little temple of Bhagwan Ram Lalaji along with other place which are regularly worshipped according to the customs prevailing amongst Rama Nandi Vairagies. The outer part with this temple of Ram Lallaji and other deities have ever been in management and charge of Nirmohi Akhara as sheibiat till this outer portion with Bhandar was attached U/s 145 Cr. P.C. On 16.2.82 and a receiver is appointed there vide order of Civil Judge Faizabad in Reg. Suit 239/82 Sri Ram Rama Nandi Nirmohi Akhara Versus K.K. Ram Varma etc. due to lootpat committed by Dharam Das. Mr. Deoki Nandan Agarwal has named himself to be witness of Dharam Das. Therefore suit for all these properties by plaintiff 3 is not maintainable for want of possession and is barred by provision of sec. 34 of specific Relief Act.

47. That the suit is barred by the provisions of Section 34 of the Specific Relief Act also.

62. That the plaint is liable to be rejected for want of a real and subsisting cause of action and not seeking relief of possession u/s 34 Specific Relief Act and as per plaint averment there is on surviving cause of action in favour of the plaintiffs."

4463. **Issue 8 (Suit-1)** relates to Section 42 of the Specific

Relief Act, 1963 *(hereinafter referred to as "Act, 1963").* It would be useful first to have a glance over the said provision:

> *42. Injunction to perform negative agreement.-- Notwithstanding anything contained in clause (e) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:*
>
> *Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.*

4464. Before enactment of Act, 1963 the field was governed by the Specific Relief Act, 1877 (in short Act, 1877). The corresponding provision in the earlier enactments was Section 47 pari meteria with the present Section 42. Section 41(e) of Act, 1963 recognize a general rule that an injunction ought not to be granted to prevent breach of contract, the performance of which would not be specifically enforced. For example a contract of personal service is not specifically enforceable. Therefore, no injunction should be granted to restrain its breach and this is what is recognised and specifically provided in Section 41(e) of Act, 1963.

4465. To this general rule enunciated in Section 41(e), the legislature has recognised an exception and has embodied it in Section 42. Where a contract contains both, a negative and an affirmative stipulation, the Court will interfere by injunction to restrain breach of the negative portion of the contract without referring to the question whether or not the whole contract is

capable of specifically enforced. It is said that this provision is in recognition of the view expressed in **Lumley Vs. Wagner, (1865) 1 Eq. 411.** It appears that before the decision in **Lumley Vs. Wagner (supra)** the British Courts were of the view when it may not enforce the positive part of contract, it ought not to restrain by injunction any breach of the negative part. This view was overruled in **Lumley Vs. Wagner (supra)** and Lord St. Leonards observed:

> *"Wherever this Court has no proper jurisdiction to enforce specific performance it operates to bind men's conscience as far as they can be bound to a true and literal performance of their agreement and it will not suffer them to depart from their contracts at their pleasure leaving the party with whom they have contracted to the mere chance of any damages which a jury may give."*

4466. During the course of the argument learned counsel for the defendant-muslim parties have not addressed us as to how Suit-1 deserves to be defeated by virtue of Section 42. The claim of the plaintiff is neither based on any contract nor agreement but it is a personal right of his own, enforcement whereof he has sought by seeking a declaration that he has a right to worship at the place in dispute, i.e., a place for which Suit-1 is confined, i.e., the inner courtyard and secondly that the objects of his worship exist thereat be not disturbed and he should not be obstructed in observance of his personal right of worship. It would have been a different thing if the argument would have been that the obstruction, if any, by the official defendants is in performance of their official duties and enforcement of a statutory order passed by the Magistrate under

Section 145 Cr.P.C., hence an injunction restraining them from creating a so called obstruction which is nothing but the compliance of the statutory order cannot be granted, which could have been considered in its context but here the specific objection is with reference to Section 42 of the Specific Relief Act which in our view is ex facie not attracted in this case. **Issue 8 (Suit-1) is accordingly answered in negative. It is held that the suit is not barred by proviso to Section 42 of Act, 1963.**

4467. **Issue 18 (Suit-5)** relates to Section 34 of Act, 1963 and here also it would be prudent to have a glance over the relevant provision:

> ***"34. Discretion of court as to declaration of status or right . -*** *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.*
>
> *Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.*

4468. The basic submission of defendants no. 3, 4 and 5 (Suit-5) in persuading this Court to hold the suit not maintainable by virtue of Section 34 of Act 1963 is that the

plaintiffs being out of possession of the property for which the suit in question has been filed, cannot seek a mere declaration and injunction unless a relief for possession is also claimed in absence whereof the suit is barred by Section 34 of the Act. This we have already dealt with in detail at various stages earlier also but since it is a substantial objection raised by the defendants and persuaded at length by Sri R.L. Verma, Advocate for Nirmohi Akhara we shall deal here in detail.

4469. Suit-5 has been filed by two plaintiffs, i.e., the idol and the place, i.e., Sri Ramjanambhumi Asthan as deity with the status of juridical personality through next friend for the protection of themselves and the property vests in them. On the date when the suit was filed, both the deities were at the site in dispute despite of the premises under attachment and the management in the hands of a Receiver. We have already held that the plaintiffs no. 1 and 2 are juridical persons. Both are at the site in dispute. It is nobody's case that the deity is not existing or present at the disputed site though by its very nature the management and care has to be taken by a natural person and since the date of attachment it is in the hands of a Receiver. The possession of Receiver is, therefore, qua deity is like that of a shebait or a manager. Since the deities are already there residing and existing, for their purpose it is sufficient to seek a declaration about their status as well as that of property and nothing more is required except where if they have any apprehension of obstruction etc., in the enjoyment of their status or property, they can always seek an injunction for prevention of such obstruction.

4470. Where an action is brought to obtain a declaration of

a person's right vis a vis a property, in such a case bar provided under Section 34 of Act 1963 would not be attracted. In **Limba Bin Krishna and others Vs. Rama Bin Pimplu and anothers, 1889(13) ILR (Bom) 548** while considering the question of applicability of Section 42 of the Specific Relief Act 1877 in a case where the plaintiffs sought a declaration regarding his right to perform worship of an idol, it was held that such a suit is maintainable and not barred by Section 42 of Act 1963. A Division Bench of Bombay High Court relied on a Calcutta High Court in **Mitta Kunth Audhicarry Vs. Neerunjun Audhicarry, 14 Beng. L.R. 166,** Couch C.J., described the right of a plaintiff to perform worship of an idol as 'property' subject to partition, the joint owners being entitled to perform the worship. It also relied on **Pranshankar Vs. Prannath Mahanand, 1 Bom H. C. Rep. 12** wherein it was held that an action would lie to obtain a binding declaration of a person's right to perform the duties of a Pujari and to receive the proceeds of the Mandir.

4471. In **Surayya and another Vs. Annapurnamma, 1919(42) ILR (Mad.) 699** the Court held that a suit for declaring a will allegedly executed by a family member forged is maintainable and not barred by Section 42 of Act 1877.

4472. In a different context, but involving a similar situation, a suit by deity seeking a declaration for the property and injunction restraining the defendants from interfering in the user of the property was held maintainable at the instance of deity. In **Monindra Mohan Banerjee and others Vs. The Shamnagar Jute Factory Co. Ltd. and another, 1938-39 (43) CWN 1056** a Division Bench of Calcutta High Court considered

a suit filed by the worshippers seeking following reliefs:

> *"(1) That the land in dispute may be declared to be the Debsthan of the Shiva Linga deities and a public place of worship of the Hindu public and that the public had acquired an absolute and indefeasible right to the use of the same as a Debsthan by long and uninterrupted user from time immemorial and to build the temples of the deities and for a declaration that the Shamnagar Jute Factory has not right and title thereto or any right to interfere with the building of the temple on the disputed land;*
>
> *(b) for declaration that the action of the Defendant Municipality in refusing sanction for the construction of the temple of the deities was illegal and ultra vires;*
>
> *(c) for declaration that the action of the Defendant in prosecuting the Plaintiffs under sec. 501 of the Bengal Municipal Act was illegal;*
>
> *(d) for an injunction restraining the Defendant Municipality from proceeding with the prosecution;*
>
> *(e) for an injunction upon the Defendants from interfering with the public right of worship and entry on the land;*
>
> *(f) for costs of the suit and*
>
> *(g) for any other relief which they might be entitled under law."*

4473. The Court recorded its finding with respect to the maintainability of suit on pages 1058-1059 and said:

> *"On hearing the learned Advocates on both sides, it*

appears to me that the plaint was undoubtedly defective but at the same time the defects were not of such a character as would justify a dismissal of the entire suit. From the plaint as it is framed it is quite obvious that the suit was not instituted by or on behalf of the deities. It would have been quite in order if the deities themselves had brought the suit through the Plaintiffs as their representatives. They might have prayed for a declaration of their title to the property in suit and for an injunction restraining the Defendants from interfering with their possession and user of the same. As the plaint stands, however, the Plaintiffs who claim to represent the Hindu public of Garulia, come in not as shebaits or as representatives of the idols but as worshippers and some amount of confusion has been introduced in the plaint by mixing up the rights of the deities and those of the worshipping public. From paragraph 9 of the plaint as well as from prayer (a) it will appear that the Plaintiffs want in the first place that the land in suit might be declared to be a Debsthan of the idols and in the second place they want it to be declared that it is a public place of worship and that the Hindu public has, by prescription, acquired an indefeasible right to use the same and to build temples upon it. The right to build temples is therefore claimed by the Plaintiffs as members of the public as a part of their rights as worshippers. It is not claimed by or on behalf of the deities as a necessary adjunct of the proprietary right which the deities might have had in the land in suit. I cannot accept the proposition of law put forward by Mr. Mukherji that as the deities are said to be

public deities the Hindu public of the locality constitute shebaits de jure. In case of a public deity the public undoubtedly have a right of worship but from that it does not necessarily follow that they are the shebaits of the deity in the sense that they are the only people to manage the temporal affairs of the deity and look after its worship. As a matter of fact no such case was attempted to be made in the plaint, which proceeds on the footing that it is a public place of worship and the rights of user which the public have got, carry with them the right to build temples upon the land. Accepting therefore the position that the Plaintiffs have instituted the suit in the capacity of persons interested in the worship of these deities and not as shebaits or as representatives of the idols, I think it was quite competent for them to sue for a declaration that the property in suit belonged to the idols. This is clear from the decision of the Judicial Committee in the case of Abdur Rahim Vs. Mahomed Barkat Ali, L.R. 55 I.A. 96. The deity is not a necessary party to such a suit though it may be desirable to make it a party so that the decision might be made conclusive and binding for all times to come. Similarly the Plaintiffs are entitled to have a declaration in this suit that the land in suit is a public place of worship and that they have a right to use it as such. The deity would also not be a necessary party to a suit for a declaration of this character."

4474. Applicability of Section 34 can be seen from another angle. The deity being an artificial personality, the right of possession as per the Hindu law text vests in the natural person

who is responsible of taking care, i.e., Sewa, Prarthana etc. which is normally called Shebait or manager. It is in this context that it has been held that right to sue or being sued vests in the Shebait. This phrase we have already considered and explained above. It means that since an artificial person does not have a capacity to possess or to act like a natural person, it acts through a natural person and hence right to possession, management and also to bring an action, i.e., corporeal activities vest in such natural person but that does not mean that the deity shall always depend upon such person. Where the rights of deities are otherwise affected, a worshipper can also bring an action for the benefit of the deity and its property but in such a case such next friend shall not be entitled to claim possession. The position may have a different colour where the deity is in the nature of a Swayambhu deity and there is no defined or ascertained natural person who is employed to take its care. The deity is open for worship to public at large but no individual is assigned the job of maintenance of the deity. In such case it is for the Court to appoint a person to take care but when the deity filed suit for protection of itself or its property, on which it is continuing to present/reside or existing, no relief of possession is necessary, a suit for mere declaration can be filed.

4475. In **Anjuman Islamia Vs. Najim Ali and others (supra)** a Division Bench of the Madhya Pradesh High Court in para 8 of the judgment said:

> *"8. It has been contended by the defendants/respondents that the suit as framed for a declaration simpliciter was not maintainable under the proviso to Section 34 of the Specific Relief Act, 1963, for the defendants are in possession of the*

property in suit. In our view the defendants as well as the Court below misconceived the provisions of Section 34 of the S. R. Act. Section 34 of the S. R. Act provides that any person entitled to any loyal 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 such a declaration. There is a proviso attached to Section 34 which contemplates 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. It is under this proviso that the defendants contended that the suit for mere declaration was not tenable without seeking further relief of possession. In our opinion the present suit does not fall under Section 34 of the Act for the reason that the present suit was not instituted by the Anjuman for a declaration of its own right or title to property in suit, or its right to a legal character. But it was a suit, on the other hand, to challenge the defendants assertion for right to property and their legal character in respect thereof. But assuming the suit falls under the provisions of Section 34 of the Act yet it would he tenable for declaration simpliciter and the plaintiff will have locus standi to bring the suit because the plaintiff was not Mutwalli or trustee of the alleged wakf and it did not claim to possess the property in its own behalf. Therefore, the plaintiff was not legally entitled to possession. The plaintiff therefore could not have asked for any further relief for possession. In such a position it was not necessary at all for the plaintiff to claim

any consequential relief and in our opinion there can be no doubt that in the circumstances of this case the plaintiff had a right to ask for a declaratory relief only that the suit property was wakf and not the private property of the defendants. In this view of the matter we are supported by the decisions in Ram Rup v. Sarn Dayal, AIR 1936 Lah. 283 decided by Coldstream, J.-- and Abdul Rahim v. Faqir Mohd, Shah, AIR 1946 Nag. 401."

4476. Section 42 of the Specific Relief Act 1877 has been explained by the Apex Court in **Vemareddi Ramaraghava Reddy and others Vs. Konduru Seshu Reddy (supra)** and in para 11 it says:

"11. In our opinion, S. 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of S. 42 of the Specific Relief Act."

4477. In the context of a suit filed for the benefit of deity by the next friend, the Court held that a mere declaratory suit is proper. In paras 10 and 12 of the judgment the Court held:

"10. The legal position is also well-established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought

by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of cestuui que trustent or beneficiaries in a spiritual sense (See Vidhyapurna Thirthaswami v. Vidhyanidhi Thirthaswami, 1904 ILR 27 Mad. 435 at page 451). ***Since the worshippers do not exercise the deity's power of suing to protect its own interests, they are not entitled to recover possession of the property improperly alienated by the Shebait, but they can be granted a declaratory decree that the alienation is not binding on the deity*** *(See for example, Kalyana Venkataramana Ayyangar v. Kasturiranga Ayyangar, ILR 40 Mad 212:AIR 1917 Mad 112 (FB) and Chidambaranatha Thambiran v. Nallasiva Mudaliar, ILR 41 Mad 124:AIR 1918 Mad 464). It has also been decided by the Judicial Committee in Abdur Rahim v. Mahomed Barkat Ali, 55 Ind. App. 96: AIR 1928 PC 16 that a suit for a declaration that property belongs to a wakf can be maintained by Mahomedans interested in the wakf without the sanction of the Advocate-General, and a declaration can be given in such a suit that the plaintiff is not bound by the compromise decree relating to wakf properties."*

"12. The next question presented for determination in this case is whether the compromise decree is invalid for the reason that the Commissioner did not represent the deity. The High Court has taken the view that the

Commissioner could not represent the deity because S. 20 of the Hindu Religious & Charitable Endowments Act provided only that the administration of all the endowments shall be under the superintendence and control of the Commissioner. Mr. Babula Reddy took us through all the provisions of the Act but he was not able to satisfy us that the Commissioner had authority to represent the deity in the judicial proceedings. It is true that under S. 20 of the Act the Commissioner is vested with the power of superintendence and control over the temple but that does not mean that he has authority to represent the deity in proceedings before the District Judge under S. 85 of the Act. As a matter of law the only person who can represent the deity or who can bring a suit on behalf of the deity is the Shebait, and although a deity is a juridical person capable of holding property, it is only in an ideal sense that property is so held. The possession and management of the property with the right to sue in respect thereof are, in the normal course, vested in the Shebait, but where, however, the Shebait is negligent or where the Shebait himself is the guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. It is open, in such a case to the deity to file a suit through some person as next friend for recovery of possession of the property improperly alienated or for other relief. Such a next friend may be a person who is a worshipper of the deity or as a prospective Shebait is legally interested in the endowment. In a case where the

Shebait has denied the right of the deity to the dedicated properties, it is obviously desirable that the deity should file the suit through a disinterested next friend, nominated by the court. The principle is clearly stated in Pramath Nath v. Pradymma Kumar, ILR 52 Cal. 809. That was a suit between contending Shebaits about the location of the deity, and the Judicial Committee held that the will of the idol on that question must be respect, and inasmuch as the idol was not represented otherwise than by Shebaits, it ought to appear through a disinterested next friend appointed by the Court. In the present case no such action was taken by the District Court in O.P. no. 3 of 1950 and as there was no representation of the deity in that judicial proceeding it is manifest that the compromise decree cannot be binding upon the deity. It was also contended by Mr. P. Rama Reddy on behalf of respondent no. 1 that the compromise decree was beyond was beyond the scope of the proceedings in O.P. no. 3 of 1950 and was, therefore, invalid. In our opinion, this argument is well-founded and must prevail. The proceeding was brought under s. 84(2) of the old Act (Act II of 1927) for setting aside the order of the Board dated October 5, 1949 declaring the temple of Sri Kodandaramaswami as a temple defined in S. 6, clause 17 of the Act and for a declaration that the temple was a private temple. After the passing of the new Act, namely Madras Act 19 of 1951, there was an amendment of the original petition and the amended petition included a prayer for a further declaration that the properties in dispute are the personal properties of the petitioner's

family and not the properties of the temple. Such a declaration was outside the purview of S. 84(2) of Madras Act II of 1927 and could not have been granted. We are, therefore, of the opinion that the contention of respondent no. 1 is correct and that he is entitled to a declaratory decree that the compromise decree in O.P. no. 3 of 1950 was not valid and was not binding upon Sri Kodandaramaswami temple."

4478. No authority is cited by learned counsels to persuade us to take a different view. The suit in question cannot be held barred by Section 34 of Act 1963. **The issue 18 (Suit-5) is accordingly answered in negative, i.e., against the defendants no. 3, 4 and 5.**

4479. (N) Others, if any:

4480. The discussions and the evidences, which we have already considered in respect to the above issues on the question of juridical person, next friend, limitation, possession/adverse possession and relating to characteristics of Mosque and Wakf, etc. there are some other issues which are mostly covered by the findings already recorded above and, hence, the same may also be dealt with hereat.

4481. **Issue No. 2 (Suit-3**):

"Does the property in suit belong to the plaintiff no.1?"

4482. As is evident, the property in suit for the purpose of Suit-3 is the premises within the inner courtyard. The plaintiff, though claimed to be the owner thereof and its counsel has also made a statement to this effect under Order X Rule 2 C.P.C., but not even a single document has been placed on record to show

the title. Faced with this situation, the plaintiff sought to claim acquisition of title by way of adverse possession against the Muslim parties. This claim we have already negatived above. **We answer this issue in negative, i.e., against the plaintiff.**

4483. **Issue No. 4 (Suit-3)** reads as under**:**

"Are plaintiffs entitled to get management and charge of the said temple?"

4484. The plaintiff claim handing over of charge of the property in suit and the disputed structure to it instead of the Receiver. The basis of the claim is that the property in suit was all through a temple even before 1528 and has always been managed, possessed and owned by the plaintiff. It has however miserably failed to prove this fact. This aspect we have already discussed in detail while considering the issues relating to limitation and possession/adverse possession etc. We have also held that the idols were kept under the central dome inside the inner courtyard in the night of 22nd/23rd December, 1949. The plaintiffs having disputed this incident being a factitious and fabricated story, the question of their treating as Shebait in respect of the idols placed under the central dome on 22nd/23rd December, 1949 does not arise since according to their own pleadings, they have not admitted any where of taking care of the deity in the inner courtyard under the central dome of the disputed structure. **Issue No. 4 (Suit-3)**, **therefore, is answered in negative, i.e., against the plaintiffs.**

4485. **Issue No. 14 (Suit-3):**

"Is the suit not maintainable as framed?"

4486. This issue has arisen for the reason that the property in dispute was attached and handed over to the Receiver

pursuant to a statutory order passed by the Magistrate under Section 145 Cr.P.C. on 29.12.1949. If the plaintiff (Suit-3) had any grievance, it could have filed objection before the Magistrate inasmuch order of attachment was a preliminary order and was subject to the final order under Section 145(2) Cr.P.C., but no such objection appears to have been filed by the plaintiff (Suit-3) before the Magistrate. The plaintiffs did not seek any declaration about its title or status and without determining the same, the Civil Judge could not have directed handing over charge from the Receiver to the plaintiff. It is for this reason, in our view, **Suit-3 is not maintainable. The issue is answered accordingly.**

4487. **Issue No. 19 (a) (Suit-4):**

"*Whether even after construction of the building in suit Deities of Bhagwan Sri Ram Virajman and the Asthan, Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant no.13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said Deities?"*

4488. In view of our findings recorded in respect to Issue No. 1 (Suit-5), holding that the place can be a 'deity' and also in view of our finding recorded in respect to the issues relating to possession/adverse possession that the Hindus, believing the place in dispute as birthplace of Lord Rama, had been continuously vising it for the purpose of worship, it is evident that the status of place as deity had continued. We have already held that a deity is not damaged or comes to end due to destruction in any manner, since the spirit of Supreme Being

continue to exist and it will not disappear, particularly when the deity is *Swayambhu,* i.e. self created. The property in dispute, therefore, has a dual character. Firstly, being birthplace of Lord Rama, as per the beliefs of Hindus, it is a *Swyambhu* deity and would continue so long as the place continue, but then, being an immovable property, it also has its nature as property. The question of owning the property is different than the status. On this aspect, we have to examine the relevant area. The area of fort of Lord Rama is said to be quite bigger. It is claimed to have several mansions (eight mansions), besides other kinds of structures. In various evidences, which we have already discussed, it is mentioned that the disputed structure was constructed on some part of the area covered by the Fort of Lord Rama. The suit was filed by the plaintiffs (Suit-5) in 1989 claiming a much larger area. During the course of arguments, we inquired from the learned counsel for plaintiffs (Suit-5), Sri M.M. Pandey, as to what is his concept of place of birth. Whether he considered the area constituting deity equal to a small room or to a small house or a bigger house or the entire locality, city, province or country, as the case may be. Despite of our repeated query, learned counsel could not tell us as to what is his the concept of place of birth for the purpose of this case. Various religious literature, which have been placed before us, show that Ayodhya is believed to be the place of birth of Lord Rama. It did not specify any particular area or a particular place in Ayodhya. We have held that a place can be a deity and a *Swyambhu* deity. It is quite possible that the entire city may be held to be very pious and sacred on account of some occurrence of divinity or religious spirituality. It may happen that a small

place may attain such a status. For example, the tree under which Gautam Buddha attained divine knowledge is considered to be extremely sacred and pious place by Buddhist. When Lord Rama born in Ayodhya and must have played and walked throughout thereat, entire the then territory of city of Ayodhya, from the point of view of all Hindu people, must acquire the status of reverence and piety, but then can it be said that such bigger place cannot absorb and accommodate persons having different faith or religion or those worship differently. No doubt true, if such absorption or accommodation has the result of extinguishing the very place of reverence, meaning thereby the very object of faith and belief may vanish, such absorption may not be allowed, but otherwise, in a country like ours, where unity in diversity is its characteristic, the existence of people or other faith, existence of their place of religion at a place, in wider sense as its known, cannot be ruled out and by necessity they will have to exist, live and survive together. There are several cities in India which are considered to be the place of reverence of highest degree like Kashi, Haridwar, Prayag, Ayodhya, Mathura etc. Can it be said in the independent India governed by a written Constitution the existence of or permissibility to establish or to create place of worship of people of different religion will depend upon undefined, unknown and unclassified kind of faith or belief of another section particularly when it is a case of a majority people in respect of a place. Nobody has ever bothered, the people of different religions in these very places of reverence have been residing thereat since time immemorial and have very well established temples of their faith. In all the places which are

known to be major Tirtha places of Hindus, religious places of other religion are well established and there is complete comity and understanding between all the people. They all mutually respect the places of worship of different religions. At Ayodhya also a large number of Mosques are in existence, which have also came in evidence inasmuch some of the witnesses have estimated the number of Mosques in Ayodhya from 50 to 80. Even in the building in dispute, though the structure was raised as a Mosque known and called a Mosque, yet Hindus continued to visit it and worship thereat on account of their cemented faith and belief which could not be withered due to construction of such building. Simultaneously, Muslims also visited the premises, as we have already noticed, may be occasionally but the fact remains that they visited the premises and offered Namaz. This system and arrangement without any dispute had continued for almost hundred years as evident which we could get and notice above. There do not appear to be any grievance raised by any Hindu that the Muslims cannot visit the premises in dispute, i.e. inner courtyard and offer worship though against the visit of Hindus in the same premises several complaints were made from 1858 and onwards by Muslims, which are part of record.

4489. It has been pleaded and some religious texts have also been placed before us to show that in a place of worship Parikrama is an integral part and, therefore, in every temple around the deity a passage is always made to enable the worshippers to have a Parikrama of deity. In the building in dispute passage for Parikrama was available. It was, therefore, suggested that this Parikrama passage itself suggested that the

building in dispute was not a mosque but the temple. Simultaneously it is also admitted that there are four kinds of Parikrama which the people normally observe at Ayodhya. One is the Parikrama in a particular place of worship for example in the disputed building where the Hindu people believe that Lord Rama was born. The other three kinds of Parikrama are known as **"Panchkosi Parikrama"**, **"Chaudahkosi Parikrama"** and "**Chaurasikosi Parikrama**". We may extract statements of some of the witnesses just to illustrate these three later kinds of Parikrama.

(a) DW3/3, Sri Satya Narayan Tripathi

''विवादित परिसर के बाहर चारों ओर परिक्रमा मार्ग था जिस पर लोग परिक्रमा करते थे। मैंने भी वहॉ परिक्रमा किया है।'' (पेज 14)

"There was circumambulation path around all the sides of the disputed premises, around which people used to perform the circumambulation. I have also performed circumambulation over there."(E.T.C.)

(b) D.W. 3/4 Mahant Shiv Sharan Das

''मैंने वहॉ पंचकोसी और चौदहकोसी परिक्रमा भी की है। पंचकोसी परिक्रमा क्षेत्र के अन्तरगत श्री अयोध्या जी और सरयू के ही किनारे–किनारे चलते–चलते राम गुलेला और बहुत से स्थान, जो सन्तो ने वहॉ बना रखे है और भगवान को वहॉ रखकर पूजा करते हैं, आते हैं। चौदहकोसी परिक्रमा के अन्तरगत गुप्तारघाट आता है इसके अतिरिक्त चौदहकोसी परिक्रमा के अन्तरगत रामघाट और बहुत सी ऐसी जगहें हैं जिनके नाम मैं नहीं जानता हूॅ, परन्तु हैं वे अवध क्षेत्र में ही। फैजाबाद शहर का काफी भाग चौदहकोसी परिक्रमा क्षेत्र के अन्तरगत आता है। इन दोनों परिक्रमाओं अर्थात चौदहकोसी परिक्रमा और पंचकोसी परिक्रमा का विशेष महत्व अक्षय नवमी को होता है।'' (पेज 24–25)

"I have also performed 'Panchkosi' and 'Chaudahkosi' circumambulation over there. The

'Panchkosi' circumambulation region includes Sri Ayodhya Ji, Ram Gulela and many other places along the banks of Saryu, which have been set up over there by saints and who perform worship of deity installed over there. The Guptar ghat falls under the 'Chaudahkosi' circumambulation. Besides this, under the 'Chaudahkosi' circumambulation are the Ram ghat and many other places, whose names I do not know but they are in the Awadh area. A major part of Faizabad district falls under the 'Chaudahkosi' circumambulation area. Both these circumambulations i.e. the 'Chaudahkosi' circumambulation and the 'Panchkosi' circumambulation, have special importance on Akshay Navmi."(E.T.C.)

''परिक्रमा के समय हजारों लाखों लोग पूरे देशभर से व विदेशों से भी आते हैं। ये लोग रामलला जी के दर्शन करने व परिक्रमा करने आते हैं। सबसे पहले ये लोग सरयू जी में स्नान करते हैं, फिर रामजन्म भूमि के दर्शन करते हैं, उसके बाद परिक्रमा करते हैं। परिक्रमा के समय पूरी अयोध्या, उसके आस–पास के गॉव व फैजाबाद भी राम मय हो जाता है।''

(पेज 26)

"Thousands-lakhs of people from the entire country and abroad as well, come over on the occasion of circumambulation. These people come over to have Darshan and perform circumambulation of Ramlala Ji. First of all these people bathe in the Saryu and then have Darshan of Ramjanmbhumi, thereafter perform circumambulation. At time of the circumambulation, the entire Ayodhya, its adjoining villages and Faizabad also are gripped in the fervor of Lord Rama. "(E.T.C.)

(c) D.W. 3/13 Mahant Ram Subhag Das Shastri

''अयोध्या में चार प्रकार की परिक्रमा होती है उसमें पहली परिक्रमा

मंदिर की होती है, जो मन्दिर के अन्दर–अन्दर होती है, दूसरी परिक्रमा पंचकोसी परिक्रमा होती है, तीसरी परिक्रमा चौदहकोसी परिक्रमा होती है, चौथी परिक्रमा 84 कोस की होती है, जो 24 दिन में पूर्ण होती है।''

(पेज 14)

"Four kinds of circumambulations are performed in Ayodhya. Out of them, the first circumambulation is of the temple, which is performed in the inside of the temple. The second circumambulation is the 'Panchkosi' circumambulation, the third is the 'Chaudahkosi' circumambulation. The fourth circumambulation is of 84 'Kose', which is completed in 24 days."(E.T.C.)

(d) D.W 3/14 Jagadguru Ramanandacharya Swami Haryacharya

''मैंने 14 कोसी तथा पंचकोसी परिक्रमाएं भी की हैं। रामजन्मभूमि की परिक्रमा मैंने कई बार किया है। चौदहकोसी परिक्रमा के अन्तरगत जनकौरा, गौशाला मन्दिर, गुरूकुल, कई ग्राम आते हैं। शीतल अमराई भी आती है। मैंने 84 कोसी परिक्रमा अयोध्या की किया है। इसमें कई क्षेत्र आते हैं। गोण्डा जनपद स्थित जमदग्नि आश्रम इस परिक्रमा के दौरान पड़ता है।'' (पेज 22–23)

"I have also performed the 14 'kosi' and 'Panchkosi' circumambulations. I have performed circumambulation of Ramjanambhumi on many occasion. Jankaura, Gaushala temple, Gurukul and many villages fall under the 'Chaudahkosi' circumambulation. I have performed 84 'Kosi' circumambulation of Ayodhya. Many areas fall under it. The Gonda district situated Jamadgini Ashram falls during this circumambulation." (E.T.C.)

''महाराजा दशरथ के राजमहल का क्षेत्रफल जैसा कि बाल्मीकी रामायण में उल्लिखित है, अयोध्या के पॉच–कोस के अन्तर्गत स्थित है। स्वयं कहा कि यह पॉच कोस पंचकोसी परिक्रमा के अन्तरगत है, दशरथ के

राजमहल की ही परिक्रमा होती है। जहॉ से पंचकोसी परिक्रमा शुरू होती है, वहॉ से महराजा दशरथ का राजमहल शुरू होता था तथा जहॉ पर पंचकोसी परिक्रमा समाप्त होती है वहॉ पर समाप्त होता था। इस समय पंचकोसी परिक्रमा कई स्थानों से शुरू होती है कोई ऋणमोचन घाट से, कोई झुमकी घाट से, कोई राजघाट से, कोई नयाघाट से शुरू करता है। परिक्रमा के पीछे जो लोग बसे हुए हैं, वे लोग परिक्रमा तपसीजी की छावनी के पास से ही शुरू करते हैं। जिन घाटों से परिक्रमा शुरू की जाती है, उन्हीं घाटों पर परिक्रमा समाप्त भी होती है तथा लोग परिक्रमा समाप्त करने के बाद सरयू में स्नान करते हैं। वह सभी घाट जहॉ से परिक्रमा शुरू करने के बारे में बताया है, वह सभी सरयू के किनारे स्थित हैं। सरयू अयोध्या के उत्तर तरफ स्थित है इस परिक्रमा में दक्षिण तरफ इस समय के शीतलअमराई से लेकर लोग घूमते हैं। यह शीतल अमराई नामक स्थान अयोध्या में है। यह शीतल अमराई का स्थान विवादित स्थल से दो–ढाई किलोमीटर की दूरी पर होगा।'' (पेज 64)

"The area of the palace of King Dashrath, as mentioned in Valmiki Ramayana, extends over five-six 'kose' in Ayodhya. Stated on his own that this five 'kose' falls under the 'Panchkosi' circumambulation, the circumambulation is performed of the palace of King Dashrath. The palace of King Dashrath begins from the same place, from where the 'Panchkosi' circumambulation starts, and it ends where the 'Panchkosi' circumambulation concludes. At present, 'Panchkosi' circumambulation starts from many places, some from Rinmochan ghat, some from Jhumki ghat, some from Rajghat and some from Nayaghat. The people residing in back of the circumambulation (path), start the circumambulation from near the 'Tapsiji ki Chavani'. The circumambulation concludes at the same ghat from where it starts and after concluding the circumambulation, people bathe in the Saryu. All these

ghats, from where the circumambulation is stated to start, are situated along the banks of Saryu. Saryu is situated in north of Ayodhya. At present, people pass through Shitalamrai in south. This place called Shital Amrai is in Ayodhya. This place Shital Amrai, would be about 2-2½ kilometers away from the disputed site. "(E.T.C.)

''इस समय जो 84 कोसी परिक्रमा की जाती है, वह वर्तमान समय के अयोध्या को ही परिमापित करती है। यह परिक्रमा उत्तर तरफ जमदग्नि कुण्ड से जो गोण्डा जनपद में है शुरू होती है, जहॉ पर राजा दशरथ की गौशाला थी।'' (पेज 66)

"The 84 'Kosi' circumambulation performed these days, measures the Ayodhya of today. This circumambulation begins in north from the Jamadgini Kund, which is in Gonda district, where the cattle shed of King Dashrath existed."(E.T.C.)

(e) D.W.3/17 Sri Mata Badal Tiwari

''दर्शन करने के बाद परिक्रमा की जाती थी मैं चौदह कोसी परिक्रमा के बाद पंचकोसी परिक्रमा करता था। पंचकोसी परिक्रमा एकादशी की तिथि को होती है। चौदहकोसी परिक्रमा करने में लगभग पूरा दिन लग जाता है। चौदहकोसी परिक्रमा करने में पूरी अयोध्या पड़ जाती है। परिक्रमा के अन्तरगत हनुमानगढ़ी मंदिर भी आ जाता है। कनक भवन तथा सुमित्रा भवन भी परिक्रमा के अंदर आ जाता है। मणिराम छावनी भी इसके अन्दर आ जाती है।'' (पेज 6)

"The circumambulation was performed after having Darshan. I used to perform the 'Panchkosi' (of five kose, one kose being equal to two miles) circumambulation after the 'Chaudahkosi' (of fourteen kose) circumambulation. The 'Panchkosi' circumambulation is performed on 'Ekadashi' (eleventh day of lunar month). It took almost full day in completing the 'Chaudahkosi' circumambulation.

The entire Ayodhya is covered in performing the 'Chaudahkosi' circumambulation. The Hanumangarhi temple also falls within the circumambulation. The Kanak Bhawan and Sumitra Bhawaan are also covered in the circumambulation. The Maniram Chavani also falls within it."(E.T.C.)

''रामजन्मभूमि परिसर में मैं चबूतरे की ही परिक्रमा करता था यह चबूतरा राम चबूतरा था।'' (पेज 12)

"In the Ramjanmbhumi premises, I used to perform circumambulation of only the Chabutra. This Chabutra was the Ram Chabutra."(E.T.C.)

4490. If we believe what has been submitted by learned counsel for the Hindu parties to be correct that Parikrama is an integral part of worship of the deity and if this Parikrama passage is available in a place it should be treated in a temple, very interesting result may arrive in respect to these three kinds of large Parikrama. The area covered by Panchkosi Parikrama includes several localities of Ayodhya wherein number of muslim residences as well as their religious places are also covered. Similarly, Chaudahkosi Parikrama not only covered Ayodhya but some part of Faizabad also and there also similar result would arrive. Chaurasikosi Parikrama obviously goes much much beyond that. Can it be said that all the persons residing and the religious places of other religions constitute part and parcel of such a wider concept of temple. This is neither the intention nor can be accepted. When a person believe in respect to a place that it has divine power, Supreme Being exist thereat which may bless happiness, salvation etc. to the worshipper that does mean that this place of worship has to be

identified in narrowest possible area. For example at Gangotri if one goes it is the particular temple or just above it the Gomukh which is considered sacred and not the entire area where the people also reside and do other daily activities. In the case of place in dispute also, unless we ascertain the exact place in respect whereof the belief of such a large Hindu people is continuing by tradition and custom from generations to generation, it cannot allow us to be guided with such kind of arguments which goes much beyond the belief but in the realm of the procedure of worship which is absolutely different. The core belief in the matter of religion which is essential is something different then what is incidental or ancillary. It is the former which is protected by Article 25 of the Constitution.

4491. In view of the above, to suggest that the entire property in dispute shall vest in the deity without there being any specificity regarding the area would neither be just nor rational. Many of the witnesses appearing on behalf of the plaintiff (Suit-5) as well as plaintiff (Suit-3) and other Hindu parties have averred that according to their faith, the place where the idols are kept, i.e., the area under the central dome of the disputed structure in inner courtyard is the place of birth of Lord Rama. If that be so, it may not be said that the entire property in the inner courtyard would vest in the deity. On this aspect we have already dealt with in detail while considering the issues relating to the place of birth of Lord Rama, i.e., the issues no. 11 (Suit-4), 1 (Suit-1) and 22 (Suit-5).

4492. So far as the property in the outer courtyard is concerned, we have already said that there existed several Hindu structures and the Hindu people used to visit thereat regularly

without there being any intervention or interruption by the Muslim people at least for the last more than 90 years till the date of attachment, i.e., since 1856-57. The Hindu religious structures like Sita Rasoi, Ram Chabutara etc. are claimed to be managed by Nirmohi Akhara, plaintiff (Suit-3). Though they have also stated that this is the place of birth of Lord Rama but those temples in outer courtyard, are being managed by them since the last several decades.

4493. The place of birth as we have already held, therefore, would continue to vest in the deity and in view of the fact that deity is indestructible and imperishable, even the construction of the building in dispute would make no impact on its sacredness and otherwise. So far as the religious structure within the outer courtyard are concerned, they cannot be said to be vested in the deity, (plaintiffs 1 and 2) for the reason that they are the temples claim to be possessed and managed by Nirmohi Akhara defendant no. 3, and its status having claimed as Shebait. This status of Nirmohi Akhara qua the religious structures of Hindus existing in the outer courtyard have not been controverted by anyone. Even OPW 1, the witness deposed on behalf of plaintiff (Suit-5) has also supported this case of Nirmohi Akhara.

4494. So far as the continuous visit of devotees concerned, we have already discussed this issue and held that despite of construction of disputed structure, Hindus continued to visit and worship the place which they believe to be the place of birth of Lord Rama. Simultaneously, in the same premises, muslims also offered their worship as we have already discussed in detail above.

4495. We, therefore, hold that so far as the premises which constitute the place of birth of Lord Rama, continue to vest in the deities, but so far as the Hindu religious structures existing in the outer courtyard are concerned, the same cannot be said to be the property of the plaintiffs (Suit-5), i.e., the deity of Bhagwan Sri Ram Virajman and Sthan Sri Ram Janambhumi as claimed by the defendant no. 13. **Issue No. 19 (a) (Suit-4) is answered accordingly.**

4496. **Issue No. 4 (Suit-5):**

> *"Whether the idol in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph 44 of the additional written statement of defendant no.3?"*

4497. We have already held while deciding Issues No 12 (Suit-4) and 3 (a) (Suit-5) that the idols under the central dome in the inner courtyard were placed in the night of 22nd/23rd, December, 1949 and since then are continuing as such in view of interim injunction granted by the Civil Court on 16.1.1950 and the subsequent stay orders of this Court as well as the Apex Court. In view thereof, no doubt that prior to 6th December, 1992, the idols were there but it cannot be said that the same remained there from time immemorial. Besides, this issue is in the context of the para 44 of additional written statement of defendant no. 3 which reads as under:

> *"That attachment made in the 1949 is only in respect of main building of Garbh Grahya Carrying three "Shikar (शिखर) where in the deity of Bhagwan Sri Ram Chanraji is installed by Nirmohi Akhara from time beyond the human memory and are since then is management and possession*

of it till the said property attached. Therefore, plaintiff 3 can not claim any right to represent him."

4498. The pleading, however, do not talk of 6th December, 1992. On the contrary, it says when the attachment was made in 1949, at that time idols were installed in the main building much before and beyond the human memory, which we have already negatived. Hence, **Issue No. 4 (Suit-5) is answered in negative**, as the idols in question did remain under the *Sikhar* prior to 6th December, 1992, but not from time immemorial and, instead, were kept thereat in the night of 22nd/23rd December, 1949.

4499. **Issue No.15 (Suit-5):**

"Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only regularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22nd December 1949 as alleged by the defendants 4 and 5?

4500. This issue has been framed assuming that the disputed structure was constructed in 1528 AD by Babar or his agent. This aspect we have already discussed in detail while considering issues no. 6 (Suit-1), 5 (Suit-3) and 1(a) (Suit-4). We have already answered that the concerned parties have miserably failed to prove that it was so constructed in 1528 AD by Babar or any of his agent. That being so, the question of offering Namaj in the disputed structure since 1528 AD does not arise at all. With respect to the question as to whether Namaj was ever offered in the building in dispute we find that this aspect has also been discussed and answered in issues no. 15 (Suit-4), 1-B(c) (Suit-4) and 2 (Suit-4) wherein it has been held that the evidence which we have on record shows that atleast from 1860 and onwards Namaj has been offered in the building

in dispute in the inner courtyard and the last Namaj was offered on 16th December, 1949. **Accordingly issue 15 (Suit-5) is answered.** We observe that though it is not proved that Namaj was offered in the building in dispute since 1528 AD, simultaneously it is also not proved that any Namaj was offered in the building in dispute after 16th December, 1949. However, we hold that between 1860 and up to 16th December, 1949 if not regularly, occasionally, intermittently Friday prayers, i.e., Jumma Namaj was offered in the disputed structure which was commonly known as Babri Masjid.

4501. **Issue No.20(b)(Suit-4):**

"Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?"

4502. It has been stated by several witnesses deposing on behalf of plaintiffs (Suit-4) that one Javvad Hussain was Mutwalli of the building in dispute in 1949 when the property in dispute was attached. Certain documents filed as **Exhibit A 55 (Suit-1) (Register 8, page 503); Exhibit A 57 (Suit-1) (Register 8, page 507); and, Exhibit A 59 (Suit-1) (Register 8, page 511)** as well as the report of Waqf Inspector dated 10th December, 1949 and 23rd December, 1949 also show that Javvad Hussain represented himself as Mutwalli of the building and the Inspector of Waqf requested Sunni Board to treat him and continue as Mutawalli of the waqf.

4503. Nothing to contradict the above has been placed on record. We need not to doubt the above stand of the plaintiffs (Suit-4) on this aspect but it is really surprising, had he been

Mutawalli of the building in dispute, responsible for its proper management etc. yet at no point of time he took any step for protection of the building in dispute or to contest the cases in the Court in respect to said property. Not only this, but also the so called Imam, named Abdul Gaffar, as also one Ismail, Moazzim are also missing and they have also failed to take any step. Not even a complaint was filed by anyone of them, if anything wrong was done in the night of 22/23rd December, 1949 preventing them from discharging their duties as also preventing Muslims from offering Namaz in the building in dispute. It appears to us that Javvad Hussain was not a properly appointed Mutwalli of the building in dispute but he simply enjoyed the grant of village Bahoranpur and Sholapur and used to call him as "Nambardar" thereof. In order to justify the amount of revenue he used to realize from the said grant, on papers, he had shown the income and expenditures also but as a matter of fact, did not take care of the building in dispute.

4504. Be that as it may, in the absence of any other claimant and also in the absence of any procedure with respect to appointment of Mutwalli, person who ought to have managed the building in dispute, may be on account of the grant of the two villages, can be treated to be a *de facto* mutwalli. The Management being responsibility of a Mutwalli, the possession of the waqf can also be claimed by him since a worshiper is not entitled for the possession of a waqf property though he may be allowed to file a suit for protection of the property of waqf but possession of such waqf cannot be granted to such worshiper.

4505. In the result we answer **Issue No.20(b) (Suit-4)** holding that at the time of attachment of the building or when

the suit in question was filed, Javvad Hussain was Mutawalli but in his absence or any other Mutawalli succeeding him, relief of possession cannot be allowed to the plaintiffs (Suit-4) who have come before this Court in the capacity of worshipers and not the person who can claim possession of waqf i.e. a Mutawalli.

4506. Issue No. 7 (Suit-5):

"Whether the defendant no.3 alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no.3?"

4507. Basically the objection relates to non service of notice under Section 80 CPC to the State Government. No such objection has been raised by the State Government or its authorities though they are impleaded as defendants no. 7, 8 and 9 to the Suit. Even a written statement has not been filed on behalf of the State Government or its officers. We have already held while considering issue no.10 (Suit-3), that objection regarding notice under Section 80 CPC cannot be taken by a private defendant, if no such objection has been raised and pressed by the State authorities. In view of our discussion and findings recorded in respect to issue no. 10 (Suit-3), we hold that the objection under para 49 of the additional written statement of defendant no. 3 is of no consequence.

4508. Coming to the first part of the issue that the defendant no. 3 alone is entitled to represent plaintiffs 1 and 2 in the absence of any material to show that the defendant no. 3 was in possession of the property within the inner courtyard and looking after and managing the affairs as Shebait, no such right can be claimed by the defendant no. 3. On this aspect the case of

defendant no. 3, i.e., Nirmohi Akhara has already been considered by us while discussing the issues relating to adverse possession. **For the reasons thereof and as discussed, issue 7 (Suit-5) in its entirety is answered in negative**.

4509. `**Issues No. 10** and **11 (Suit-5):**

"Whether the disputed structure could be treated to be a mosque on the allegations contained in paragraph 24 of the plaint?"

"Whether on the averments made in paragraph 25 of the plaint, no valid waqf was created in respect of the structure in dispute to constitute it as a mosque?"

4510. These issues are founded on the averments contained in paras 24 and 25 of the plaint which read as under:

"24. That such a structure raised by the force of arms on land belonging to the Plaintiff Deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindu gods carved thereon, could not be a mosque and did not become one in spite of the attempts to treat it as a mosque during the British rule after the annexation of Avadh. Some salient points with regard thereto are noted. Below.

(A) According to the Koran, Allah spoke to the Prophet thus-

"And fight for the religion of GOD against those who fight against you; but transgress not by attacking them first, for GOD loveth not the trangressers. And kill them wherever ye find them; and turn them out of that whereof they have dispossessed you; for temptation to idolatory is more grievous than slaughter. Yet fight not against them in the

holy temple, until they attack you therein;.....

(B) According to all the Muslim authorities and precedents and the decided cases also, ALLAH never accepts a dedication of property which does not belong to the Waqif that is, the person who purports to dedicate property to ALLAH for purposes recognised as pious or charitable, as waqf under the Muslim law. By his acts of trespass and violence for raising a mosque on the site of the Temple after destroying it by force, Mir Baqi committed a highly un-Islamic act. His attempt to convert the Temple into a mosque did not, therefore, create a valid dedication of property to ALLAH, whether in fact or in law, and it never became a mosque.

(C) That inspite of all that Mir Baqi tried to do with the Temple, the land always continued to vest in the Plaintiff Deities, and they never surrendered their possession over it. Their possession continued in fact and in law. The ASTHAN never went out of the possession of the Deity and HIS worshippers. They continued to worship HIM through such symbols as the CHARAN and SITA RASOI, and the idol of BHAGWAN SRI RAMA LALA VIRAJMAN on the Chabutra, called the Rama Chabutra, within the enclosed courtyard of the building directly in front of the arched opening of its Southern dome. No one could enter the building except after passing through these places of Hindu worship. According to the Muslim religion and law there can be no Idol worship within the courtyard of a mosque, and the passage to a mosque must be free and unobstructed and open at all times to the 'Faithful'. It can never be

through a Hindu place of worship. There can be no co-sharing of title or possession with ALLAH in the case of a mosque. His possession must be exclusive.

(D) A mosque must be built in a place of peace and quiet, but near to a place where there is a sizeable Muslim population, according to the tenets of Islam, and as insisted upon by it, a mosque cannot be built in a place which is surrounded on all sides by Temples, where the sound of music or conch shells or Ghanta Ghariyals must always disturb the peace and quiet of the place.

(E) A mosque must have a minaret for calling the Azan. According to Baillie. "When an assembly of worshippers pray in a masjid with permission, that is delivery. But it is a condition that the prayers be with izan. Or the regular call, and be public not private, for though there should be an assembly yet if it is without izan. And the prayers are private instead of public, the place is no masjid. Accouding to the two disciples." (Pt. I. BK.IX, ch. VII Sec. I,p. 605) Indeed, there has been no mosque without a minaret after the first half century from the Flight. (See-P.R. Ganapathi Iyer's Law relating to Hindu and Mahomedan Endowments, 2nd Edition, 1918. Chap. XVII, P. 388.)

(F) According to the claim laid by the Muslims in their suit No. 12 of 1961, the building is surrounded on all sides by grave-yard known as 'Ganj Shahidan'. There is a mention in the Fyzabad Gazetteer also, quoted hereinabove, of the burial of 75 Muslims at the gate of the Janmasthan, and the place being known as Ganj Shahidan. After the battle of 1855. Although there are no graves

anywhere near the building at Sri Rama Janma Bhumi, or in its precincts, or the area appurtenant thereto, for the last more than 50 years, if the building was surrounded by a grave-yard during the British times soon after the annexation of Avadh by them, the building could not be a mosque, and could not be used as a mosque, for the offering of prayers, except the funeral prayers on the death of a person buried therein, is prohibited in a grave-yard according to the Muslim authorities.

(G) As already stated, there is no arrangement for storage of water for Vazoo and there are the Kasauti pillars with the figures of Hindu Gods and Godesses inscribed thereon in the building.

25. That the worship of the Plaintiff Deities has continued since ever throughout the ages at Sri Rama Janma Bhumi. The place belongs to the Deities. No valid waqf was ever created or could have been created of the place or any part of it, in view of the title and possession of the Plaintiff Deities thereon. ALLAH, as conceived by the Muslims, never got any title or possession over the premises or any part of them. Nor has there ever been any person, living or juridical, who might have put forward any claim to ownership of the property or any part of it. Occasional acts of trespass or attempts to get into possession by the muslims were successfully resisted and repulsed by the Hindus from time to time, and there was no blemish or dent in the continuity of title and possession of the Plaintiff Deities. No title could or did vest in ALLAH over any part of Sri Rama Janma Bhumi by adverse

possession or in any other manner. Neither ALLAH nor any person on his behalf had any possession over any part of the premises at any time what-soever, not to speak of any adverse possession."

4511. We have discussed similar issues in the category of those relating to characteristics of mosque, dedication, valid waqf etc. In the light of the findings recorded therein **we answer issues 10** and **11 (Suit-5) in affirmative.**

4512. **Issue No. 19 (Suit-5):**

"Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no.3?"

4513. This issue emanate from the pleading of para 43 of the additional written statement of defendant no. 3 which reads as under:

"Para 43: That outer portion consisting of Bhagwan Ram Lala on Sri Ram Chabutara alongwith other deities, Chathi Pujan Sthan and Bhandar with eastern outer wall carrying engraved image of Varah Bhagwan with southern and northern wall and also western portion of all carries the present municipal no. 10/12/29 old 506, 507 and older 647 of Ram Kot ward of Ayodhya City had been a continuous referred in main litigation since 1885 till Reg. Suit no. 239/82 of the Court of Civil Judge Faizabad and in every case Nirmohi Akhara was held always in possession and management of this temple so the Bhagwan Ram Lalaji installed by Nirmohi Akhara on this Ram Chabutara is a distinct legal entity owned by def. no. 3. That suit is bad for want of impleadment of necessary party as mentioned

above."

4514. What defendants no. 3 is that Bhagwan Ram Lala installed on Ram Chabutara in the outer courtyard, though was in possession and management of Nirmohi Akhara, but being a distinct legal entity, ought to have been impleaded separately and in the absence thereof the suit is bad for want of necessary party.

4515. The submission is thoroughly misconceived. Once Nirmohi Akhara admits that the deity at Ram Chabutara is managed by Nirmohi Akhara which is a Math, a legal entity, it stands in the position of Shebait to the said deity and in such a case it has well been held that right to sue or be sued vests in Shebait **[See, Bishwanath Vs. Sri Thakur Radha Ballabhji (supra)** and **Jagadindra Nath Vs. Hemanta Kumari (supra)].**

4516. We, therefore, find no substance in the above submission. **Issue 19 (Suit-5) is answered in negative.**

4517. Issue No. 25 (Suit-5):

"Whether the judgment and decree dated 30th March 1946 passed in Suit No. 29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs?"

4518. Suit No. 29 of 1945 was an inter se dispute between the Shia Central Waqf Board and Sunni Central Waqf Board in respect to the property in dispute. Both were claiming it to be a waqf which ought to have been placed within their control. In respect to the suit and the judgment dated 30.03.1946 we have already considered the matter in detail while discussing issue no. 6 (Suit-3).

4519. Admittedly, the plaintiffs of suit in question were not party in the said suit. The judgment, therefore, cannot be

said to be binding upon the plaintiffs. No authority on this question has been placed before us which is binding upon us to take a different view. **Issue 25 (Suit-5) is accordingly answered** holding that the judgment and decree dated 30.03.1946 in Suit No. 29 of 1945 is not binding upon the plaintiffs (Suit-5).

4520. Issue No. 19(c)(Suit-4):

"Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets at the place in dispute?"

4521. We have already held that there existed a religious place of Non-Islamic character before the construction of the disputed structure. From the travel account of William Finch it is also evident that Hindus were worshipping in the Fort of Lord Rama, as he called it, when he visited Ayodhya between 1608 to 1611 AD. It is not the case of the Muslim parties that in that Fort of Lord Rama, besides the place in dispute, there was any other place known as place of birth of Lord Rama which the people used to worship at that time or thereafter also. The disputed structure, as we have already noticed, came into being after the visit of the William Finch but before the visit of father Joseph Tieffenthaler. He (Tieffenthaler) has also mentioned about the worship at the premises in dispute by Hindus during his visit, and, from the description he has given, we are satisfied that the said worship must have been near the structure itself. The cumulative effect of these facts as also the discussion we have already made in respect of various issues above, leaves no doubt

in our mind that even before the construction of the building in dispute, the place which the Hindus believed the place of birth of Lord Rama, used to be worship. We have also held that according to faith, belief and tradition amongst Hindus it is the area covered under the central dome of the disputed structure which they believe to be the place of birth of Lord Rama and worship thereat continuously. Therefore, in the absence of anything otherwise, it can safely be said that only this was the part of the property in dispute which was used as a place of worship by Hindus immediately prior to the construction of the building in question. To this extent the first part of the issue under consideration is answered in affirmative.

4522. So far as the second part is concerned, we do not find that it has any relevance being as a hypothetical question whether a mosque could have come into existence in view of the Islamic tenets at the place of dispute, at such place Hindus were worshiping earlier, for the reason that, as a matter of fact, a building was constructed as a mosque, centuries back, under the Sovereign's command. After its construction, the locals and the other called and treated it, 'a mosque', it was used later, may be intermittently, as we have already held, for offering namaz by Muslims also. It is a different thing that in the same premises Hindus also continued to visit and worship according to their faith and belief but that would not erode in any manner the factual establishment of a structure as a mosque. Whether a person who made this construction or allowed it at that time, acted in accordance with Islamic tenets or not, cannot allowed to be reviewed on judicial side in a court of law which is a creation of much subsequent period. The subsequent statutes not be

applied to a sovereign function as sole Monarch, at a time when his command was supreme and unchallengeable. In our view it is not open to any party to raise such a dispute, which in effect require a judicial review of something which has been done by a king at a time when there was no codified law. We have no doubt in our mind that our jurisdiction to peep into such an objection cannot be stressed to such an extent. Sri Jain sought to refer Article 13 of the constitution and some other provisions but we find all those reference wholly misconceived and in our view the argument is simply noticed to be rejected.

4523. **Issue No. 19 (c), Suit-4** is decided accordingly.

4524. **Issue No.3(b), (c) and (d) (Suit-5)** read as under:

> *"(b) Whether the same idol was reinstalled at the same place on a Chabutara under the canopy?*
>
> *(c) Whether the idols were placed at the disputed site on or after 6.12.1992 in violation of the courts order dated 14.8.1989 and 15.11.91?*
>
> *(d) If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity."*

4525. After the demolition of the disputed structure, the defendants no. 4 and 5 (Suit-5) filed an additional written statement dated 22nd August, 1995 and in para 3 and 13 thereof pleaded as under:

> *"3. That the contents of para 35 J of the Amended Plaint are denied as stated and in reply thereto it is submitted that the demolition of the Babri Masjid appeared to be a pre-planned, deliberate and intentional act on the part of the miscreants and criminals who had assembled at the site on*

the call of the Vishwa Hindi Parishad, Bajrang Dal and Shiv Sena etc. All the acts of the said so-called Kar Sewaks were totally illegal, unjustified and in violation of the orders of this Hon'ble Court as well as of the Hon'ble Supreme Court and amounted to blatant exercise of the Rule of Jungle and the so called construction of make-shift temple and placing of idols in the same on 7.12.92 was all totally illegal and contemptuous and the said idols could not be described as deity under Hindu Law also."

"13. That the Plaintiffs have no cause of action and specially so when the idols placed in the Mosque surreptitiously in the night of 22nd -23rd December, 1949 have been removed on 6-12-1992. The claim, if any, regarding the said idols stood extinguished on the removal of the said idols."

4526. The submission of Sri Jilani and Sri Siddiqui is that once the Deity is removed from the place where it was consecrated or where it was being worshipped, it ceased to have the status of a deity on removal unless reconsecrated. Therefore, it is contended that plaintiff no.1 ceased to be a 'juristic personality' after its removal on 6th December, 1992, rendering suit not maintainable and liable to be dismissed. Reliance is placed on the authority of **"History of Dharmashatra"** by P.V. Kane Chapter XXVI, page 904 which reads as under:

"Punah-pratistha :-(Re-consecration of images in temples). The Brahmapurana quoted by the Devapratisthatattva and the Nirnayasindhu says 'when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is

touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcasts and the like-in these ten contingencies, god ceases to indwell therein.' When an image is polluted by (contact with) the blood of a brahmana or by the touch of a corpse or the touch of a patita it should be re-consecrated. If an image is broken in parts or reduced to particles it should be removed according to sastric rules and another should be installed in its place. When an image is broken or stolen a fast should be observed. If images of metal such as of copper are touched by thieves or candalas, they should be purified in the same way in which polluted vessels of those metals are purified and then they should be re-consecrated. If an image properly consecrated has had no worship performed without pre-meditation (i.e. owing to forgetfulness or neglect) for one night or a month or two months or the image is touched by a sudra or a woman in her monthly illness, then the image should have water adhivasa (placing in water) performed on it, and it should be bathed with water from a jar, then with pancagavya, then it should be bathed with pure water from jars to the accompaniment of the hymn to Purusa (Rg. X. 90) repeated 8000 times, 800 times or 28 times, worship should be offered with sandal-wood paste and flowers, naivedya (food) of rice cooked with jaggery should be offered. This is the way in which the re-consecration is effected."

4527. The matter of reconsecration as and when is required and what is a procedure, how it is to be observed, we

have already discussed in detail while dealing with the issues relating to deities, their rights etc. i.e. issues No.12 and 21 (Suit-4), issues no.1, 2, 3(a), 6 and 21 (Suit-5). The defendant no.3/1 on page 225, 232 of his statement has admitted of removal of deity, as existed under the central dome of the disputed structure upto 6th December, 1992 for a short while and says that the same were restored after a few hours at the same place. To the same effect is the statement of OPW 1-Mahant Paramhans Ram Chandra Das. Nothing has come on record contradicting the said statements of the two witness. Therefore, a very transition and temporary kind of removal is not disputed. The circumstances in which this removal took place is also known to all. A huge mob, in a most abominable manner, caused demolition of the disputed structure against all norms and principles of a civilized society. It is, however, not the case of the defendants that the plaintiffs have any role in this matter. Now, the question is whether such removal, whatsoever were the circumstances, is permissible and secondly; its effect in the light of the answer of the former.

4528. Fortunately, the issue is no more *res integra*. In **Hari Raghunath Vs. Antaji Bhikaji (supra)** the Bombay High Court considered this question and held:

> *"It is not disputed that the existing building is in a ruinous condition and that it may be that for the purpose of effecting the necessary repairs the image may have to be temporarily removed. Still the question is whether the defendant as manager is entitled to remove the image with a view to its installation in another building which is near the existing building. Taking the most liberal view of the powers of the manager, I do not think that as the manager*

of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. To remove the image from that temple and to instal it in another building would be practically putting a new temple in place of the existing temple. Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not concerned in this suit with the question of the temporary removal which may be necessary when the existing building is repaired."

4529. This decision in **Hari Raghunath (supra)** has been quoted and approved by a three Judge Bench of the Apex Court in **Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi (supra)** in para 36 and it says:

"The case is an authority for the proposition that the idol cannot be removed permanently to another place, because that would be tantamount to establishing a new temple. However, if the public agreed to a temporary removal, it could be done for a valid reason."

4530. Therefore in a give situation a temporary removal is permissible and that shall not cause any impact upon the authority and status of the deity.

4531. Now coming to the two orders referred to in issue no.3(c) of the Court, we find that this Court on 14th August,

1989 passed the following order on an application filed by the State of U.P. under Section 94 read with Order XXXIX, Rule 1 and 2 C.P.C. which reads:

> *"This is an application filed by the State of U.P. under Section 94 read with Order 39 Rules 1 and 2 of the Code of Civil Procedure for the grant of injunction:-*
>
> *(i) Restraining the plaintiffs and defendants from disturbing the status quo and organising any activity which may bring about confrontation between Hindus and Muslims and*
>
> *(ii) Ensuring that orders passed by the Court are strictly enforced and are not breached.*
>
> *We have heard Sri S.S.Bhatnagar, learned Advocate General in support of this application. We also heard Sri V.K.S.Chaudhary and Sri Deoki Nandan Agarwal, who submitted in their arguments that the threats expressed by the learned Advocate-General in his application and in his arguments were groundless as no such situation as stated in the affidavit filed in support of the application is in existence or is going to arise as the parties represented by them consisted of law abiding citizens and no breach of peace or any order of the court was intended by them. Sri Abdul Mannan, Counsel appearing for the other side, virtually supported by the application for injunction and narrated the dire consequences if the law is taken to hands by the parties.*
>
> *In this connection, our attention was drawn to the following order dated 3.2.1986 passed by a learned single Judge of this Court in Civil Misc. Writ No.746 of 1986:-*

"Until further orders of the Court, the nature of the property in question as existing today shall not be changed."

It was also brought to our notice that another learned single Judge of this Court has passed an order for appointment of receiver for the property in question in F.A.F.O. No.17 of 1977 on 23rd July, 1987.

In view of the order for appointment of receiver and the order dated 3.2.1986 which has become final, we are not inclined to accept that any of the parties will take law to hands and do anything which may culminate in law breaking. However, since in the writ petition, in which the order dated 3.2.1986 was passed, only some of the parties to the present suits were arrayed, we consider it necessary in the interest of justice that a similar order is adopted in each of the injunction applications in the present suits, as a result whereof until further orders of the Court, the parties to suits No.1 of 1989 (Reg. Suit No.2 of 1950), 2 of 1989 (Reg. Suit No.25 of 1950), 3 of 1989 (Reg. Suit No.26 of 1959), 4 of 1989 (Reg. Suit No.12 of 1961) and 5 of 1989 (Reg. Suit No.236 of 1989) shall maintain status quo and shall not change the nature of the property in question.

Sri V.K.S.Chaudhary strenuously contended that in view of the order appointing receiver, there was absolutely no justification for apprehending that the parties are likely to take the law to their hands, but by way of abundant caution, we have made the above order."

4532. A perusal of this order shows that the parties to the suit were directed to maintain status quo, and, that they shall not

change the nature of the property in question. There is no pleading by the defendants (Suit-5) that in demolition of the disputed structure etc., the plaintiffs are responsible or guilty of violation of this Court's order dated 14.08.1989.

4533. So far as order dated 15.11.1991 is concerned, Sri Jilani informed that no such order was passed by this Court but it appears that the Apex Court on some application had passed an order but the same has not been placed before us during the course of argument. Therefore, we are not able to consider and appreciate the same.

4534. In view thereof we answer **issues no.3(b) and (d) (Suit-5) in affirmative and issue no.3(c) (Suit-5) in negative**.

4535. **Issue No.8 (Suit-5)** reads as under:

> *"Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Ram installed in the disputed structure?"*

4536. This issue has to be considered in the light of the pleadings of defendant Nirmohi Akhara. Its case is that since time immemorial the disputed structure was a temple. There was no demolition. No construction of mosque. The idol under the disputed structure also continued since time immemorial. This case of the Nirmohi Akhara has not been found correct. They have failed to prove it. We have already held so. It is not their case that the idols were kept under the central dome of the disputed structure in the night of 22/23 December, 1949 by any member or Mahants or Pujaris of Nirmohi Akhara and after such placing they continued to take care of the idols and it is the Nirmohi Akhara which is responsible for all this. In fact Nirmohi Akhara having taken a totally different stand, denied occurrence of any such incident.

4537. In these peculiar facts and circumstances and the stand of Nirmohi Akhara, we have no option but to hold that so far as the idols of Bhagwan Sri Ram installed in the disputed structure i.e. within the inner courtyard is concerned, the defendant Nirmohi Akhara cannot said to be Shebait thereof.

4538. Issue No.8 (Suit-5) is accordingly answered against Nirmohi Akhara defendant No.3 (Suit-5).

4539. Issue No.20(a) (Suit-4)

> *"Whether the Waqf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutawallis were allegedly Shia Mohammedans? If so, its effect?"*

4540. This issue has been framed in view of the plea taken by the defendants no.13, 20 and a few others that the building in dispute having been constructed by Mir Baqi, who was a Shia Muslim, the waqf cannot be a Sunni Waqf and therefore, plaintiff no.1 (Suit-4) has no authority to file the suit. We have already answered this question while considering the issue relating to wakf that if a mosque is constructed, under law of Shariat no distinction is made like Sunni mosque or Shia mosque. Every person, who is a worshipper of Islam, as a matter of right, is entitled to enter the mosque and offer Namaz. This aspect has been considered in three Full Bench decisions of this Court in **Jangu & Others Vs. Ahmad Ullah (supra), Queen Empress Vs. Ramzan (supra)** as well as in **Ata-Ullah & another Vs. Azim-Ullah (supra).** The above judgments have been discussed in detail in paras 3254 and 3256 of this

judgment. It is only pursuant to the U.P. Act, 1936 or U.P. Act, 1960, for the effective management and superintendence of waqfs in the State of U.P., two Boards were created and for that purpose only, the waqfs were required to be identified whether a Sunni waqf or Shia Waqf.

4541. Be that as it may, before us, firstly, neither any evidence has been placed to show that Mir Baqi in fact existed during the regime of Babar, and, then nothing is there to prove about his religion, what it was. Some observations here and there by some writers and that too on a sheer guess work would not be sufficient for this Court to investigate into this factual position which relates back to an alleged event of almost 500 years back. Moreover, we have already held that the building in question has not been proved to have been constructed in 1528 AD by Mir Baqi. Therefore the question, whether it was a Sunni waqf or Shia waqf becomes redundant. Moreover, the rights of Hindus would in no manner would be affected whether the building in dispute, if mosque, constitute a 'Sunni Waqf' or 'Shia Waqf' since the consequence, if any, would flow in the same way and would be equal in both the cases.

4542. Our considered opinion is that nature of the waqf whether Sunni or Shia would not cause any impact upon the issues raised by the defendants Hindu parties in these cases. Therefore, for the purpose of suits in question, issue 20(a) (Suit-4) is wholly irrelevant and need not to be answered. **It is ordered accordingly**.

4543. **Issue 25, 26 (Suit-4)** are as under:

"*Whether demolition of the disputed structure as claimed by the plaintiff, it can still be called a mosque and*

if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable?"

"Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished?"

4544. Both these issues are interconnected and can be decided together. The submission of the defendants-Hindu parties is that the plaintiffs are the beneficiaries in the sense that they are only the worshippers and in that capacity had filed the suit in question. This right of the plaintiffs (Suit-4) would continue only so long as the disputed structure was there and after its demolition since there cannot be a mosque in existence, the plaintiffs loose right of worship for all times to come and therefore, the suit in question is liable to be dismissed as no longer maintainable.

4545. On the contrary, the plaintiffs (Suit-4) have pleaded that once there is a waqf by construction of a mosque, it is not confined only to the building but to land also and therefore, even if the building is subsequently damaged, collapsed or demolished, it would not affect the rights of the Muslims to offer prayer (Namaz) at the site in dispute. Even if it is a open site, its status of mosque (waqf) will continue.

4546. While considering the issues relating to the mosque, we have already observed that a waqf can be created only when the wakif is the owner of the land and once he creates a waqf, the property in its entirety vest in the almighty and the wakif ceases to have any relation with the property thereafter. In the case in hand, we have already held that the building in dispute was constructed as mosque and it was so treated, believed and

practiced by all concerned, which included the Hindus also. Moreover, in the absence of any claim as to title, the plaintiffs (Suit-4), have approached this Court on the basis of their interest in the property in dispute derived from possession in the sense of a right to offer Namaz at the disputed site. Such right, in our view, cannot be defeated merely by removing the construction, since the plaintiffs if had a right to possess the land in question, they can continue to maintain their suit irrespective of whether building in dispute has been demolished.

4547. In our view, issues no.25 and 26 (Suit-4) are answered that as a result of the demolition of disputed structure, Suit-4 of the plaintiffs muslim parties cannot be said to be not maintainable. No further aspect need to be answered. **Issues no.25 and 26 (Suit-4) are answered accordingly.**

4548. **Issue No.3 and 4 (Suit-1)** read as under:

> ***Issue No.3***
>
> *"Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the site in suit."*
>
> ***Issue No.4***
>
> *"Has the plaintiff the right to have Darshan of the place in suit?"*

4549. As we have already noticed, Charan Paduka i.e. Sita Rasoi is in the outer courtyard, there is no occasion to make any declaration in this regard. This is not within the scope of Suit-1. So far as the idol and right of Darshan of the place concerned, we have already held that place in suit, in so far as it constitute the place of birth of lord Rama can be visited for Darshan and worship by all the Hindus as a matter of right, who believed and aspire for the same. However, it cannot be said that while

visiting a place for worship, the defendant State or others who are responsible for management of the place of worship cannot impose restrictions provided they are reasonable and necessary for the benefit and facility of the worshippers as also for the safety, security, cleanliness etc. of the deity.

4550. Therefore, subject to such reasonable restriction, as may be necessary in the given facts and circumstances, we hold that the plaintiff has a right to worship the place in suit to the extent it has been held by this Court constituting the birthplace of lord Rama, and if an idol is also placed in such a place, the same can also be worshipped accordingly. **Both these issues are answered accordingly**.

4551. Issues relating to reliefs:

4552. Issue No. 16, Suit-4:

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

4553. In view of our finding on Issue No. 3 since the suit is barred by limitation, the question of entitlement of any relief to the plaintiff does not arise as the suit itself is liable to be dismissed.

4554. **Issue No. 17, Suit-1:**

"*To what reliefs, if any, is the plaintiff entitled?"*

4555. Since the site in dispute includes part of the land which is believed to be the place of birth of Lord Rama and has been held to be a deity and place of worship of Hindus, the plaintiff's right to worship cannot be doubted. To this extent the plaintiff is entitled for a declaration, which is ordered accordingly. However, it is made clear that such right of the plaintiff is always subject to restrictions which may be found

necessary by the competent authority on account of security, safety and maintenance of the place of worship. Since the place of worship is a "Swayambhu deity", whether an idol is kept there or not, would make no difference and it is the matter to be seen by those who are responsible for management of such place, and according to the majority of the worshippers as to how they intend to keep and maintain the place of worship without disturbing its nature as deity. No individual worshipper can insist that such place of worship be maintained in a particular manner. Therefore, except the declaration as above, the plaintiff (Suit-1) is not entitled to any other relief.

4556. **Issue No. 13, Suit-3:**

"*To what relief, if any, is the plaintiff entitled?"*

4557. In view of our findings in respect of issues no. 2, 3, 4, 9 and 14 the plaintiff, Suit-3, in our view, is not entitled to any relief.

4558. **Issue no. 30, Suit-5**:

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

4559. Plaintiffs have sought a declaration that the entire premises described vide Annexures- 1, 2 and 3 belonged to the plaintiffs deities and also a permanent injunction against the defendants prohibiting them from interfering with or raising any objection to or placing any restriction on the construction of the new temple at Sri Ram Janambhumi Ayodhya. We have already held that the area under the central dome of the disputed construction believed and worshipped by the Hindu people as the place of birth of Lord Rama and they were worshiping thereat since time immemorial. This part of the land constitutes

deity, "Sri Ram Janamsthan", and a place of special significance for Hindus. Therefore it has to be treated in a manner where the very right of worship of Hindus of place of birth of Lord Rama is not extinguished or otherwise interfered with. We have simultaneously held that so far as other land within the inner courtyard of the disputed structure is concerned, this open land had been continuously used by members of both the communities for their respective prayers and worship for decades and centuries.

4560. Though the prayer in the suit is worded in the different manner but for complete justice and to avoid multiplicity of litigation as also the adjudication which may settled centuries old dispute finally, we are of the view that we can mould the wordings of the reliefs and can pass an order in respect to respective parties in this case which as suuch may not be covered by the form of relief but is within the scope of the case. In this regard we can rely on the provision under Order VII Rule 7 CPC.

4561. We may also referred to earlier decision of this Court in **Pandohi Ahir Vs. Faruq Khan and another AIR 1954 All. 191**, “A” and “B” were co-sharers. “A” sold a land to “C”. “B” filed a suit claiming possession of the land stating that he was entitled for exclusive possession of the property as the said land was already in his possession to the exclusion of “A”. A Single Judge of this Court held that “A” and “B”, being co-sharers, “B” had no right to claim exclusive possession of the plot to the exclusion of “A” and similarly “A” had no right to transfer specific plot to “C” but can transfer his share in plot to “C” and, thereafter “A” and “C” will hold the plot in question as

co-sharers. It also observed that if the prayer clause in a plaint is not properly worded, the Court should give due consideration to the decree which should be passed. This part of the observation is referable to Order VII Rule 7 C.P.C. Judgment is relied on to overcome the difficulty in the suits with respect to the relief sought therein. In our view, Order VII Rule 7 can be resorted to by the Court when something can be found within the scope of the relief sought by the plaintiff or where a higher relief is claimed but the Court found that the plaintiff is entitled for a lesser relief but the scope of Order VII Rule 7 cannot be extended by widening the scope of the relief which has actually not been called for or to permit plaintiff to wriggle out of the statutory obstruction like limitation etc. on account of a relief claimed by him which is barred or prohibited or cannot be granted for one or the other reason. The Court will not proide a safe passage to a party by reading the words of the reliefs sought by it in a manner which may help it in overcoming the difficulty it otherwise is facing or is bound to face on account of the mandatory provisions of the statute of limitation etc. The scope of Order VII Rule 7 is not to use it as a leverage to help a party to the extent that the other party stand discriminated in an otherwise matter where other party is entitled to get the issue decided in its favour whether it is in respect to limitation, res judicata or similar other statutory provisions. It is the plaintiff who has to be careful enough to find out as to what grievance he actually has, what the real cause of action and what relief one must claim from the Court. The Court will not provide a comfortable question in the form of rewording of all these things to the extent it may change what has actually been

changed by the plaintiff in its entirety.

4562. In order to mould relief under Order VII Rule 7, reliance is placed on a Division Bench decision in **Sardar Ali Raza khan Vs. Sardar Nawazish Ali Khan AIR (30) 1943 Oudh 243**, it was held therein that where more is claimed, the plaintiff may get what is found due to him even though less that what he has claimed. Where more is claimed any smaller amount may be given if found due to the plaintiff. This proposition cannot be doubted but then we may refer to the further observation of the Court that relief not founded on the pleadings should not be granted. It is not proper for a to Court to displace the case made by a party in his pleading and to give effect to an entirely new case which that party has not made out in his pleading and which he has expressly disclaimed. But where the substantial matters which constitute the title of all the parties are touched, though obscurely, in the issues, and they have been fully put in evidence and have formed the main subject of discussion in the Court, the Court may grant a relief though it may not be founded on the pleadings. Therefore, the mould of relief will depend upon the case and recourse to Order VII Rule 7 can be had only to the extent it do not make violence with the pleadings and reliefs in the suit.

4563. Considering the scope of Order VII Rule 7 C.P.C. in **Smt. Neelawwa Vs. Smt. Shivawwa AIR 1989 Kar. 45**, a Division Bench observed:

> *"The normal rule that relief not founded on the pleadings should not be granted is not without an exception. Where substantial matters constituting the title of all the parities are touched in the issues and have been fully put in*

evidence the case does not fall within the aforesaid rule. The Court has to look into the substance of the claim in determining the nature of the relief to be granted. Of course, the Court while moulding the relief must take care to see that relief it grants is not inconsistent with the plaintiff's claim, and is based on the same cause of action on which the relief claimed in the suit, that it occasions no prejudice or causes embarrassment to the other side; that it is not larger than the one claimed in the suit, even it the plaintiff is really entitled to it, unless he amends the plaint; that it had not been barred by time on the date of presentation of the plaint."

"No doubt the plaintiff has sought for exclusive title and he has not been able to prove his exclusive title; but has been able to prove, that he is entitled to a half share in the suit properties. When a party claims exclusive title to the suit property and is liable to establish that he is entitled to half of the suit property, it will not be unusual for the Court to pass a decree for partition and possession of his half share. In fact such a relief flows from the relief prayed for in the plaint that he is the exclusive owner of the entire property. When a larger relief is claimed and what is established, is not the entire relief claimed in the suit but a part of it, as whole includes a part, larger relief includes smaller relief, and it also arises out of the same cause of action. ... Therefore, even if a separate suit has to be filed for partition, the defendant does not have any sustainable defence. Therefore no prejudice will be caused to the defendant/ respondent if a preliminary decree for partition

and separate possession is passed in this suit itself."

4564. Relief of declaration and injunction is discretionary but it is the duty of the Court to administer justice between the parties and not to convert itself into instrument of injustice or an engine of oppression. In **Executive Committee of Vaish Degree College, Shamli and others Vs. Lakshmi Narain (supra)** the Court said:

> *"27. . . . . the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the court according to sound legal principles and ex debito justitiae. The court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these circumstances, while exercising its discretionary powers the court must keep in mind the well settled principles of justice and fairplay and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum."*

4565. In **American Express Bank Ltd. Calcutta Steep Co. (supra)** the Court said:

> *"22. Undoubtedly declaration of the rights or status is one of discretion of the court under Section 34 of the Specific Relief Act, 1963. Equally the grant or refusal of the relief of declaration and injunction under the provision of that Act is discretionary. The plaintiff cannot claim the relief as of right. It has to be granted according to sound principles of law and ex debito justicia. The court cannot convert itself*

into an instrument of injustice or vehicle of oppression. While exercising its discretionary power, the court must keep in its mind the well settled principles of justice and fair play and the discretion would be exercised keeping in view the ends of justice since justice is the hall mark and it cannot be administered in vacuum. Grant of declaration and injunction relating to commercial transactions tend to aid dishonesty and perfidy. Conversely refusal to grant relief generally encourages candour in business behaviour, facilitates free Row of capital, prompt compliance of covenants, sustained growth of commerce and above all inculcates respect for the efficacy of judicial adjudication. Before granting or refusing to grant of relief of declaration or injunction or both the court must weigh pros and cons in each case, consider the facts and circumstances in their proper perspective and exercise discretion with circumspection to further the ends of justice."

4566. In the light of the above and considering overall findings of this Court on various issues, following directions and/or declaration, are given which in our view would meet the ends of justice:

(i) It is declared that the area covered by the central dome of the three domed structure, i.e., the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per faith and belief of the Hindus, belong to plaintiffs (Suit-5) and shall not be obstructed or interfered in any manner by the defendants. This area is shown by letters AA BB CC DD is **Appendix 7** to this judgment.

(ii) The area within the inner courtyard denoted by

letters B C D L K J H G in Appendix 7 (excluding (i) above) belong to members of both the communities, i.e., Hindus (here plaintiffs, Suit-5) and Muslims since it was being used by both since decades and centuries. It is, however, made clear that for the purpose of share of plaintiffs, Suit-5 under this direction the area which is covered by (i) above shall also be included.

(iii) The area covered by the structures, namely, Ram Chabutra, (EE FF GG HH in Appendix 7) Sita Rasoi (MM NN OO PP in Appendix 7) and Bhandar (II JJ KK LL in Appendix 7) in the outer courtyard is declared in the share of Nirmohi Akhara (defendant no. 3) and they shall be entitled to possession thereof in the absence of any person with better title.

(iv) The open area within the outer courtyard (A G H J K L E F in Appendix 7) (except that covered by (iii) above) shall be shared by Nirmohi Akhara (defendant no. 3) and plaintiffs (Suit-5) since it has been generally used by the Hindu people for worship at both places.

(iv-a) It is however made clear that the share of muslim parties shall not be less than one third (1/3) of the total area of the premises and if necessary it may be given some area of outer courtyard. It is also made clear that while making partition by metes and bounds, if some minor adjustments are to be made with respect to the share of different parties, the affected party may be compensated by allotting the requisite land from the area which is under acquisition of the Government of India.

(v) The land which is available with the Government of India acquired under Ayodhya Act 1993 for providing it to the parties who are successful in the suit for better enjoyment of the property shall be made available to the above concerned parties in such manner so that all the three parties may utilise the area to which they are entitled to, by having separate entry for egress and ingress of the

people without disturbing each others rights. For this purpose the concerned parties may approach the Government of India who shall act in accordance with the above directions and also as contained in the judgement of Apex Court in **Dr. Ismail Farooqi (Supra)**.

(vi) A decree, partly preliminary and partly final, to the effect as said above (i to v) is passed. Suit-5 is decreed in part to the above extent. The parties are at liberty to file their suggestions for actual partition of the property in dispute in the manner as directed above by metes and bounds by submitting an application to this effect to the Officer on Special Duty, Ayodhya Bench at Lucknow or the Registrar, Lucknow Bench, Lucknow, as the case may be.

(vii) For a period of three months or unless directed otherwise, whichever is earlier, the parties shall maintain status quo as on today in respect of property in dispute.

4567. Before parting with this matter, we find it necessary to place on record our appreciation to learned counsels, Sri Ravi Shankar Prasad, Sri P.R. Ganpathi Ayer, Sri K.N. Bhat, Senior Advocates; Sri Zafaryab Jilani, Sri M.A. Siddiqui, Sri S.I. Ahamad, Sri C.M. Shukla, Sri S.P. Srivastava, Sri M.M. Pandey, Sri R.L. Verma, Sri Tarunjeet Verma, Sri Hari Shankar Jain, Sri Rakesh Pandey, Sri R.K. Srivastava, Sri P.N. Mishra, Amitabh Shukla, Sushri Ranjana Agnihotri, Sri Ajay Kumar Pandey, Sri D.P. Gupta, K.G. Mishra, Sri Fazle Alam, Sri Ved Prakash and Sri Ramakant Srivastava, Advocates who assisted us with ability and it is because of their hard labour in placing voluminous record including religious, historical and other kinds of texts etc., before the Court in a systematic manner that we have been

able to decide one of the most delicate, complicated and cumbersome matter involving almost the entire population of the country. The cordial atmosphere, peaceful and amicable behaviour which they have shown in the Court also deserve our commendation.

4568. This was a gigantic and herculean task. The record of the case was so voluminous that without having a few very competent and expert hands we could not have accomplished our task. We place on record commendation to the able and effective assistance provided by Sri Hari Shankar Dube, O.S.D. Ayodhya Bench, Sri Chintamani Ram, Bench Secretary, and Sri Yusuf Khan, Court's Staff, S/Sri Akhilesh Kumar Nayak, P.S., Awadhesh Kumar, Puneet Srivastava, Kushal Agarwal, Yogendra Kumar Singh, Arvind Kumar Gupta and Alkesh who are the Court's personal staff and worked almost day-night enabling us to complete this matter.

4569. Since the judgment has become extremely bulky and it may be difficult to find different factual and legal aspects, therefore, for convenience we have prepared three indexes, (i) General Index, (ii) Citation; and, (iii) Reference Books which are appended with this judgment as **Appendix Nos. 9, 8 and 10**.

4570. The number of issues are 120 (including sub-issues). We, therefore, summarize our findings on different issues, suitwise, as under:

Suit-4

1. Issue 1 (Suit-4) is answered in favour of plaintiffs.

2. Issue 1(a) (Suit-4) is answered in negative. The plaintiffs have failed to prove that the building in dispute was built by Babar or by Mir Baqi.

3. Issues 1(b), 6, 13, 14 and 27 (Suit-4) are answered in affirmative.

4. Issue 1-B(a) (Suit-4) is answered in affirmative and it is held that the fact that the land in dispute entered in the records of the authorities as Nazul plot would make things difference.

5. Issue 1-B(b) (Suit-4) is not answered being irrelevant.

6. Issue 1-B(c) (Suit-4)-It is held that building in question was not exclusively used by the members of muslim community. After 1856-57 outer courtyard exclusively used by Hindu and inner courtyard had been visited for the purpose of worship by the members of both the communities.

7. Issue 2 (Suit-4) is answered in negative, i.e., against the plaintiffs.

8. Issue 3 (Suit-4) is answered in negative, i.e., against the plaintiffs. It is held that Suit-4 is barred by limitation.

9. Issue 4 (Suit-4)-At least since 1856-57, i.e., after the erection of partition wall the premises in outer courtyard has not been shown to be used/possessed by muslim parties but so far as the inner courtyard is concerned it has been used by both the parties.

10. Issue 5(a) (Suit-4) is answered against the plaintiffs.

11. Issue 5(b) (Suit-4) is answered in favour of defendants and Hindu parties in general.

12. Issues 5(c), 7(c), 8, 12, 22 (Suit-4), are answered in negative.

13. Issue 5(d) (Suit-4) not pressed by the defendants,

hence not answered.

14. Issue 5(e) (Suit-4) is decided in favour of plaintiffs subject to that issue 6 (Suit-3) is also decided in favour of defendants (Suit-3).

15. Issue 5(f) (Suit-4) is answered in negative, i.e., in favour of plaintiffs and against the defendants.

16. Issue 7(a) (Suit-4) is answered in negative. It is held that there is nothing to show that Mahant Raghubar Das filed Suit-1885 on behalf of Janamsthan and whole body of persons interested in Janamsthan.

17. Issue 7(b) (Suit-4) answered in affirmative, i.e., in favour of plaintiffs (Suit-4).

18. Issue 7(d) (Suit-4) is answered in negative to the extent that there is no admission by Mahant Raghubar Das plaintiff of Suit-1885 about the title of Muslims to the property in dispute or any portion thereof. Consequently, the question of considering its effect does not arise.

19. Issues 10 and 15 (Suit4) are answered in negative, i.e., against the plaintiffs and muslims in general.

20. Issue 11 (Suit-4)-It is held that the place of birth as believed and worshipped by Hindus his the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.

21. Issue 16 (Suit-4)-No relief since the suit is liable to be dismissed being barred by limitation.

22. Issue 17 (Suit-4) answered in negative holding that no valid notification under Section 5(3) of U.P. Act No. 13 of 1936 was issued.

23. Issue 18 (Suit-4)-it is held that the decision of the Apex Court in **Gulam Abbas Vs. State of U.P. and others, AIR 1981 SC 2199** does not affect findings on issue 17 (Suit-4) and on the contrary the same stand supported and strengthen by the said judgment.

24. Issue 19(a) (Suit-4)-It is held that the premises which is believed to be the place of birth of Lord Rama continue to vest in the deity but the Hindu religious structures in the outer courtyard cannot be said to be the property of plaintiffs (Suit-5).

25. Issue 19(b) (Suit-4) is answered in affirmative to the extent that the building was land locked and could not be reached except of passing through the passage of Hindu worship. However, this by itself was of no consequence.

26. Issue 19(c) (Suit-4)-It is held that Hindus were worshipping at the place in dispute before construction of the disputed structure but that would not make any difference to the status of the building in dispute which came to be constructed at the command of the sole monarch having supreme power which cannot be adjudicated by a Court of Law, came to be constituted or formed much after, and according to the law which was not applicable at that time.

27. Issue 19(d) and 19(e) (Suit-4) are answered in favour of the plaintiffs.

28. Issue 19(f) (Suit-4)-In so far as the first part is concerned, is answered in affirmative. The second part is left unanswered being redundant. In the ultimate result the issue is answered in favour of plaintiffs (Suit-4).

29. Issue 20(a) being irrelevant not answered.

30. Issue 20(b) (Suit-4)-It is held that at the time of attachment of the building there was a Mutawalli, i.e., one Sri Javvad Hussain and in the absence of Mutawalli relief of possession cannot be allowed to plaintiffs who are before the Court in the capacity of worshippers.

31. Issue 21 (Suit-4) decided in negative, i.e., in favour of the plaintiffs. The suit is not bad for non-joinder of deities.

32. Issues 23 and 24 (Suit-4) are held that neither the Waqf Board is an instrumentality of State nor there is any bar in filing a suit by the Board against the State. It is also not a 'State' under Article 12 of the Constitution and can very well represent the interest of one community without infringing any provision of the Constitution.

33. Issues 25 and 26 (Suit-4)-Held that as a result of demolition of the disputed structure it cannot be said that the suit has rendered not maintainable. Nothing further needs to be answered.

34. Issue 28 (Suit-4)-It is held that plaintiffs have failed to prove their possession of the disputed premises, i.e., outer and inner courtyard including the disputed building ever.

Suit-1

1. Issue 1 (Suit-1)-It is held that the place of birth, as believed and worshipped by Hindus, is the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.

2. Issue 2 (Suit-1)- It is held that the idols were kept under the central dome of the disputed structure within inner courtyard in the night of 22nd/23rd December, 1949 and prior thereto the same existed in the outer courtyard. Therefore, on 16.01.1950 when Suit-1 was filed the said idol existed in the inner courtyard under the central dome of the disputed structure, i.e., prior to the filing of the suit. So far as the Charan Paduka is concerned, the said premises existed in the outer courtyard. Since Suit-1 is confined only to the inner courtyard, question of existence of Charan Paduka on the site in suit does not arise.

3. Issues 3 and 4 (Suit-1)-It is held that plaintiffs have right to worship. The place in suit to the extent it has been held by this Court to be the birthplace of Lord Rama and if an idol is also placed in such a place the same can also be worshipped, but this is subject to reasonable restrictions like security, safety, maintenance etc.

4. Issues 5(a), 5(c), 5(d), 9(c) and 11(a) (Suit-1) are answered in negative.

5. Issue 5(b) (Suit-1)-Held, the Suit 1885 was decided against Mahant Raghubar Das and he was not granted any relief by the respective courts, and, no more.

6. Issue 6 (Suit-1) is answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shahanshah/Emperor Babar in 1528 AD.

7. Issue 7 (Suit-1) is decided in negative, i.e., against the defendants muslim parties.

8. Issue 8 (Suit-1) is answered in negative. Suit is not

barred by proviso to Section 42 of Specific Relief Act, 1963.

9. Issue 9 (Suit-1) is decided in favour of plaintiffs (Suit-1).

10. Issue 9(a) (Suit-1) is answered in favour of plaintiffs (Suit-1).

11. Issue 9(b) (Suit-1) is answered against the plaintiffs.

12. Issue 10 (Suit-1) is answered in negative, i.e., in favour of plaintiffs of Suit-1.

13. Issue 11(b) (Suit-1) is answered in affirmative.

14. Issue 12, 13, 15, 16 and 21 (Suit-1) are answered in negative, i.e., in favour of the plaintiffs (Suit-1).

15. Issue 14 (Suit-1) has become redundant after dismissal of Suit No. 25 of 1950 as withdrawn.

16. Issue 17 (suit-1)-The plaintiffs is declared to have right of worship at the site in dispute including the part of the land which is held by this Court to be the place of birth of Lord Rama according to the faith and belief of Hindus but this right is subject to such restrictions as may be necessary by authorities concerned in regard to law and order, i.e., safety, security and also for the maintenance of place of worship etc. The plaintiffs are not entitled to any other relief.

Suit-3

1. Issue 1 and 16 (Suit-3) are answered in negative.

2. Issue 2, 3, 4 and 9 (Suit-3) are answered in negative, i.e., against the plaintiffs.

3. Issue 5 (Suit-3) is answered in negative. The defendants have filed to prove that the property in dispute

was constructed by Shahanshah/Emperor Babar in 1528 AD.

4. Issue 6 (Suit-3) is not proved hence answered in negative.

5. Issue 7(a) and 7(b) (Suit-3) are answered in negative, i.e., in favour of plaintiffs and against the defendants in Suit-3.

6. Issue 8 (Suit-3) is decided in negative.

7. Issue 10 (Suit-3) is decided in favour of plaintiff. It is also held that a private defendant cannot raise objection of maintainability of suit for want of notice under Section 80 CPC.

8. Issue 11 and 12 (Suit-3) are decided in negative, i.e., in favour of plaintiffs.

9. Issue 13 (Suit-3)-The plaintiff is not entitled to any relief in view of the findings in respect of issues 2, 3, 4, 14 and 19.

10. Issue 14 (Suit-3) is answered in affirmative. It is held that the suit as framed is not maintainable.

11. Issue 15 (Suit-3) is answered in affirmative, i.e., in favour of plaintiffs (Suit-3).

12. Issue 17 (Suit-3) is decided in favour of plaintiffs. Nirmohi Akhara is held a Panchayati Math of Ramanandi Sect of Bairagi, is a religious denomination following its religious faith and pursuit according to its own customs. However, its continuance at Ayodhya is found sometime after 1734 AD and not earlier thereto.

Suit-5

1. Issue 1 (Suit-5) is answered in affirmative. Plaintiffs

1 and 2 both are juridical persons.

2. Issue 2 (Suit-5) is not answered as it is not necessary for the dispute in the case.

3. Issue 3(a) (Suit-5) is answered in affirmative. The idols were installed under the central dome of the disputed building in the early hours of 23rd December, 1949.

4. Issue 3(b), 3(d), 5, 10, 11, 14 and 24 (Suit-5) are answered in affirmative.

5. Issues 3(c), 7, 19, 23 and 28 (Suit-5) are answered in negative.

6. Issue 4 (Suit-5) is answered in negative. The idol in question kept under the Shikhar existed there prior to 6th December, 1992 but not from time immemorial and instead kept thereat in the night of 22nd/23rd December, 1949.

7. Issue 6 (Suit-5) is decided in negative, i.e., in favour of plaintiffs (Suit-5).

8. Issue 8 (Suit-5) is answered against the defendant no. 3, Nirmohi Akhara.

9. Issue 9 (Suit-5) is answered against the plaintiffs.

10. Issue 13 (Suit-5) is answered in negative, i.e., in favour of plaintiffs. It is held that suit is not barred by limitation.

11. Issue 15 (Suit-5)-It is held that the muslims at least from 1860 and onwards have visited the inner courtyard in the premises in dispute and have offered Namaj thereat. The last Namaj was offered on 16th December, 1949.

12. Issue 16 (Suit-5)-Neither the title of plaintiffs 1 and 2 ever extinguished nor the question of reacquisition

thereof ever arise.

13. Issue 18 (Suit-5) is answered in negative, i.e., against the defendants no. 3, 4 and 5.

14. Issue 20 (Suit-5) is not answered being unnecessary for the dispute in the case in hand.

15. Issue 21 (Suit-5) is answered in negative, i.e., against the defendants no. 4 and 5.

16. Issue 22 (Suit-5)-It is held that the place of birth as believed and worshipped by Hindus his the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner courtyard in the premises of dispute.

17. Issue 25 (Suit-5) is answered in affirmative. It is held that the judgment dated 30.03.1946 in Suit No. 29 of 1949 is not binding upon the plaintiffs (suit-5).

18. Issues 26 and 27 (Suit-5) are answered in negative, i.e., in favour of plaintiffs (Suit-5).

19. Issue 29 (Suit-5) is answered in negative, i.e., in favour of plaintiffs.

20. Issue 30 (Suit-5)-The suit is partly decreed in the manner the directions are issued in para 4566.

4571. In the result, Suit-1 is partly decreed. Suits 3 and 4 are dismissed. Suit-5 is decreed partly. In the peculiar facts and circumstances of the case the parties shall bear their own costs.

Dated: 30.09.2010

APPENDIX-1

JANAM ASTHÁN.
(TARIKH - A - AYODHAYA, PUBLISHED IN 1902)

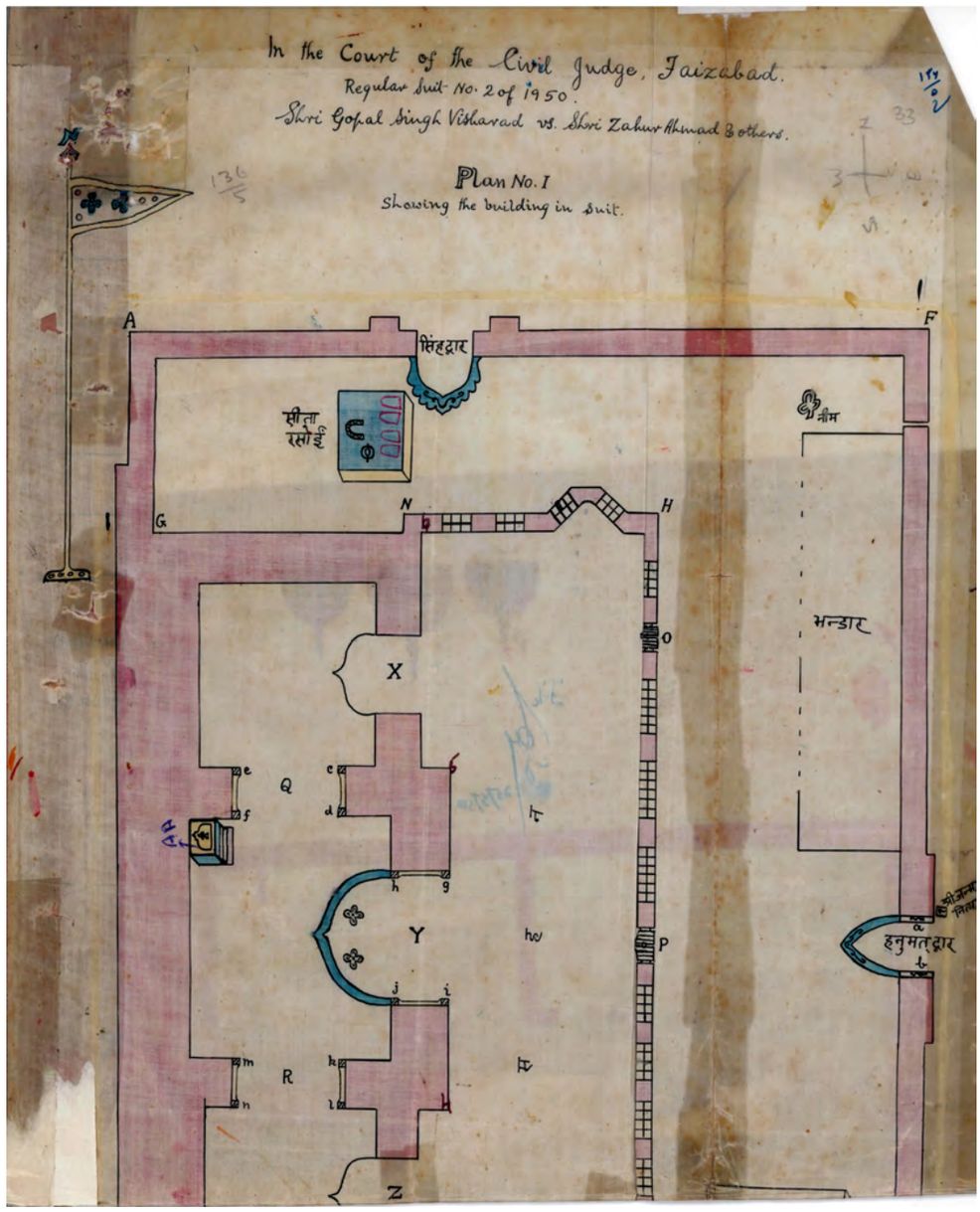
APPENDIX-1A

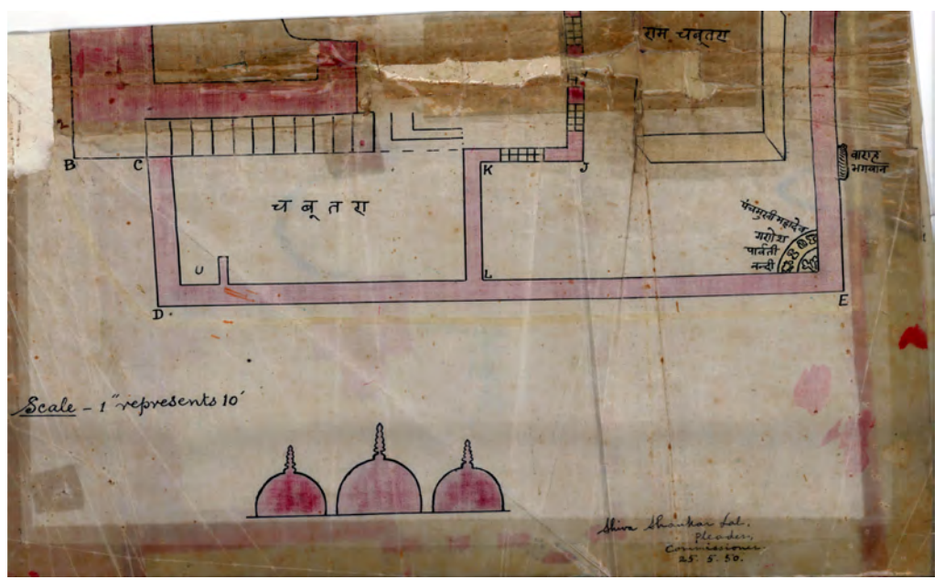

नक़ल नक़्शा किश्तवार मौज़ा राम कोट
परगना हवेली अवध तहसील व ज़िला फ़ैज़ाबाद
बाबत सन १९३७ ई० मुताबिक़ सन १३४४-४५ फ़सली
सरहद हवेली
नामा
बंजर
बाग़
आबादी
रास्ता
सड़क पुख़्ता
मन्दिर
क़ब्रिस्तान
चाह पुख़्ता
नक़ल किया
मुक़ाबला किया
COURT FEE
ONE RUPEE FOUR ANNAS
INDIA
TRUE COPY

APPENDIX-1B

(A fair copy of Appendix 1A, site plan map with Hindi Translation)

APPENDIX-2

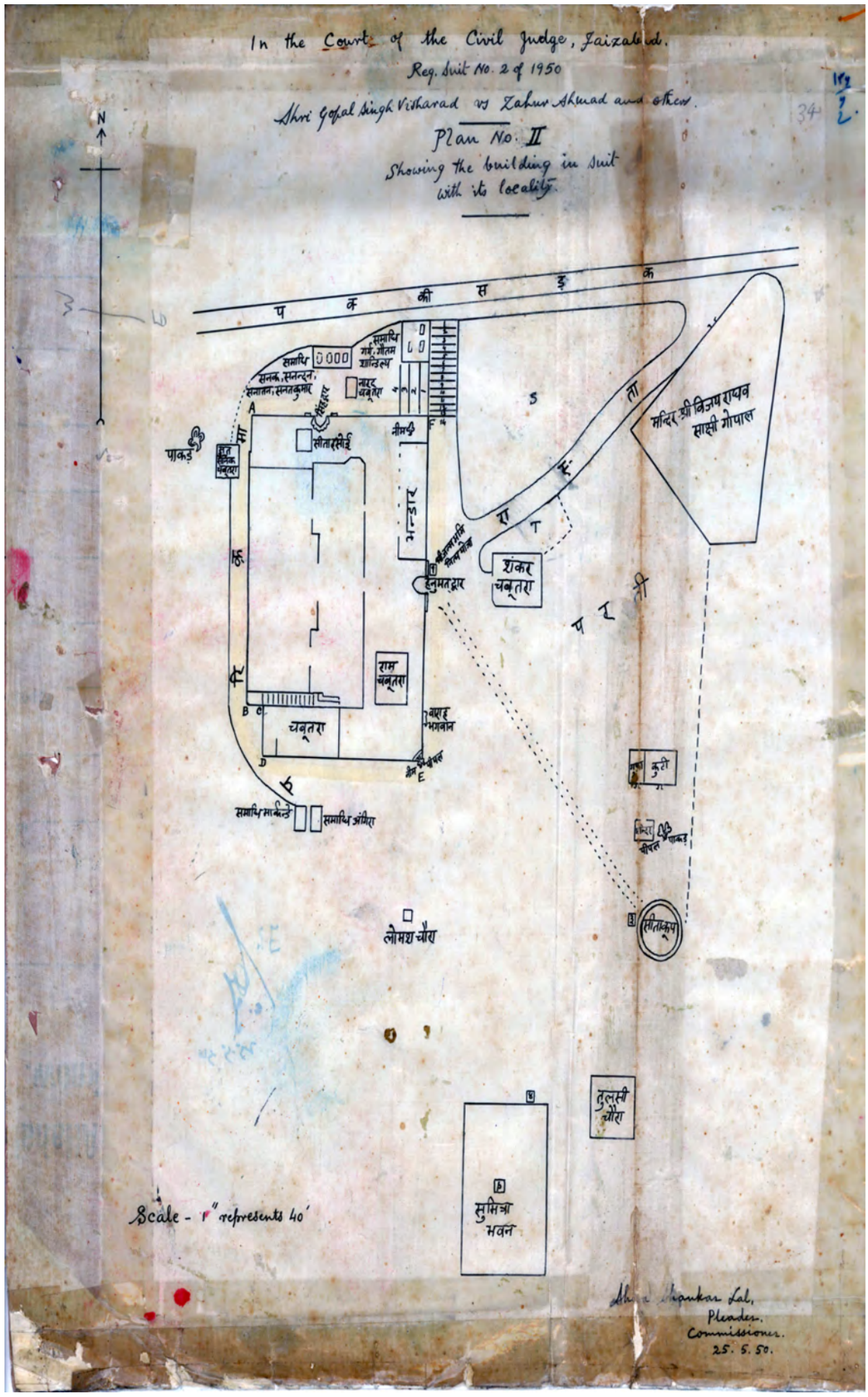

In the Court of the Civil Judge, Faizabad.
Regular Suit No. 2 of 1950.
Shri Gopal Singh Visharad vs. Shri Zahur Ahmad & others.
Plan No. I
Showing the building in suit.
सिंहद्वार
सीता रसोई
नीम
भन्डार
हनुमत द्वार
X
Y
Q
R
A
F
G
H
N
O
P
Z


राम चबूतरा
चबूतरा
बारहू भगवान
Scale - 1" represents 10'

APPENDIX-2A

(A FAIR COPY OF APPENDIX-2)

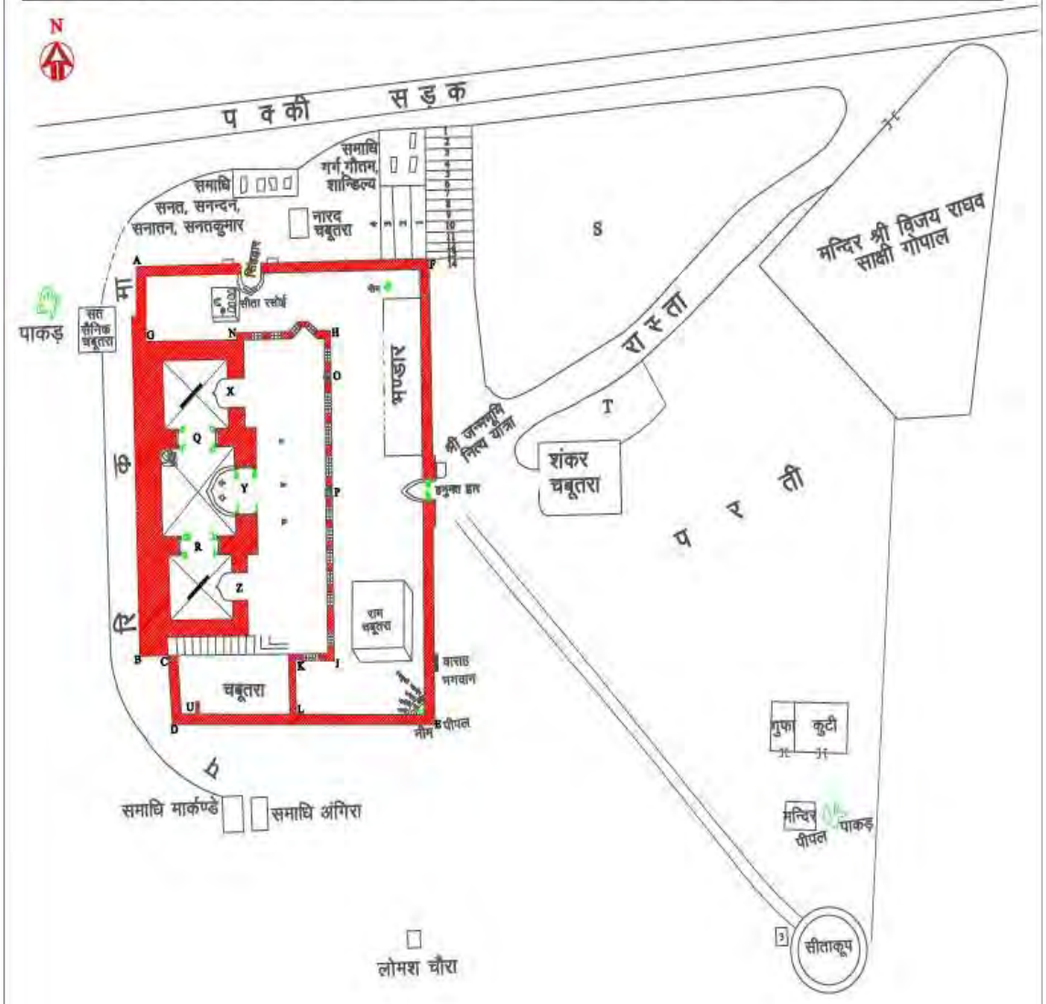
APPENDIX-2B


In the Court of the Civil Judge, Faizabad.
Reg. Suit No. 2 of 1950
Shri Gopal Singh Visharad vs Zahur Ahmad and others.
Plan No. II
Showing the building in suit with its locality.
N
पक की सड़क
समाधि सनक, सनन्दन, सनातन, सनत्कुमार
समाधि गर्भ, गौतम शान्तित्मा
नारद चबूतरा
सीतारसोई
नीमड़ी
पाकड़
मन्दिर
हनुमत द्वार
शंकर चबूतरा
मन्दिर श्री विजय राघव साक्षी गोपाल
राम चबूतरा
चबूतरा
वाराह भगवान
कुंआ
समाधि मार्कण्डेय
समाधि अंगिरा
लोमश चौरा
सीताकूप
तुलसी चौरा
सुमित्रा भवन
Scale - 1" represents 40'
Shankar Lal,
Pleader.
Commissioner.
25. 5. 50.

APPENDIX-2C

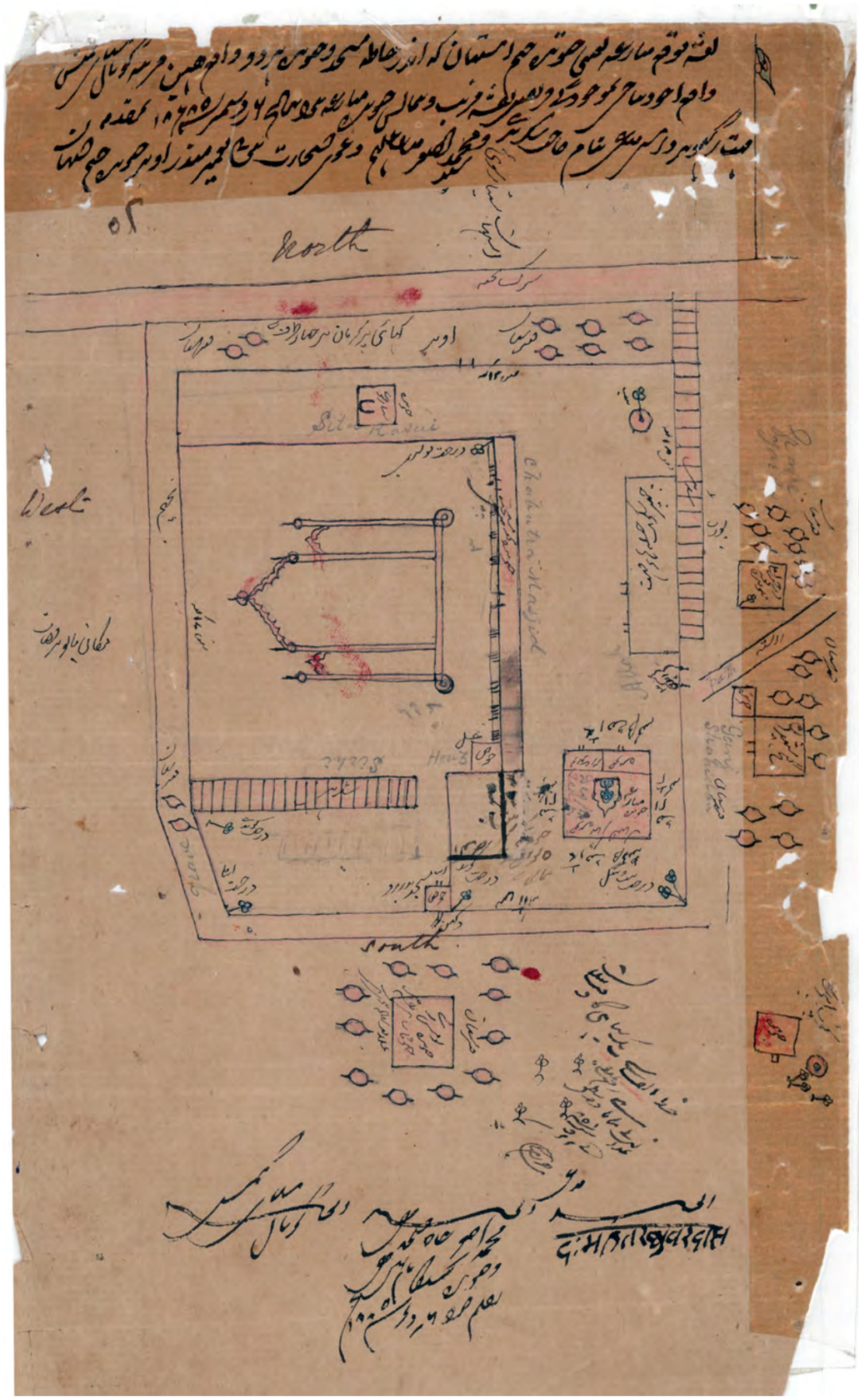
SHOWING THE BUILDNG IN THE SUIT WITH ITS LOCALITY

BASED ON THE PLAN NO. 01 & PLAN NO. 02, PREPARED BY SHRI SHIV SHANKAR LAL PLEADER, COMMISSIONER, DATED 25.05.1950 IN THE COURT OF THE CIVIL JUDGE FAIZABAD REGULAR SUIT NO. 2 OF 1950 / SHRI GOPAL SINGH VISHARAD V/S ZAHUR AHMAD AND OTHERS.



A,B,C,D,E,F - Building in suit No. 2 of 1950.
G,H,J,K,L,D,C,B - Inner Building.
N,H,J,K, - Walls enclosing Pucca court-
- Yard in front of inner (main)-
- building.
O&P - Iron Bar Gates.
U - Pucca platform having a urinal.
X,Y,Z - Arched Gates.
Q&R - Arches.
S &T - Huts and Dhunis of Sadhus.
a,b,c,d,e,f,g,
h,i,j,k,l,m,n - Kasauti pillars.

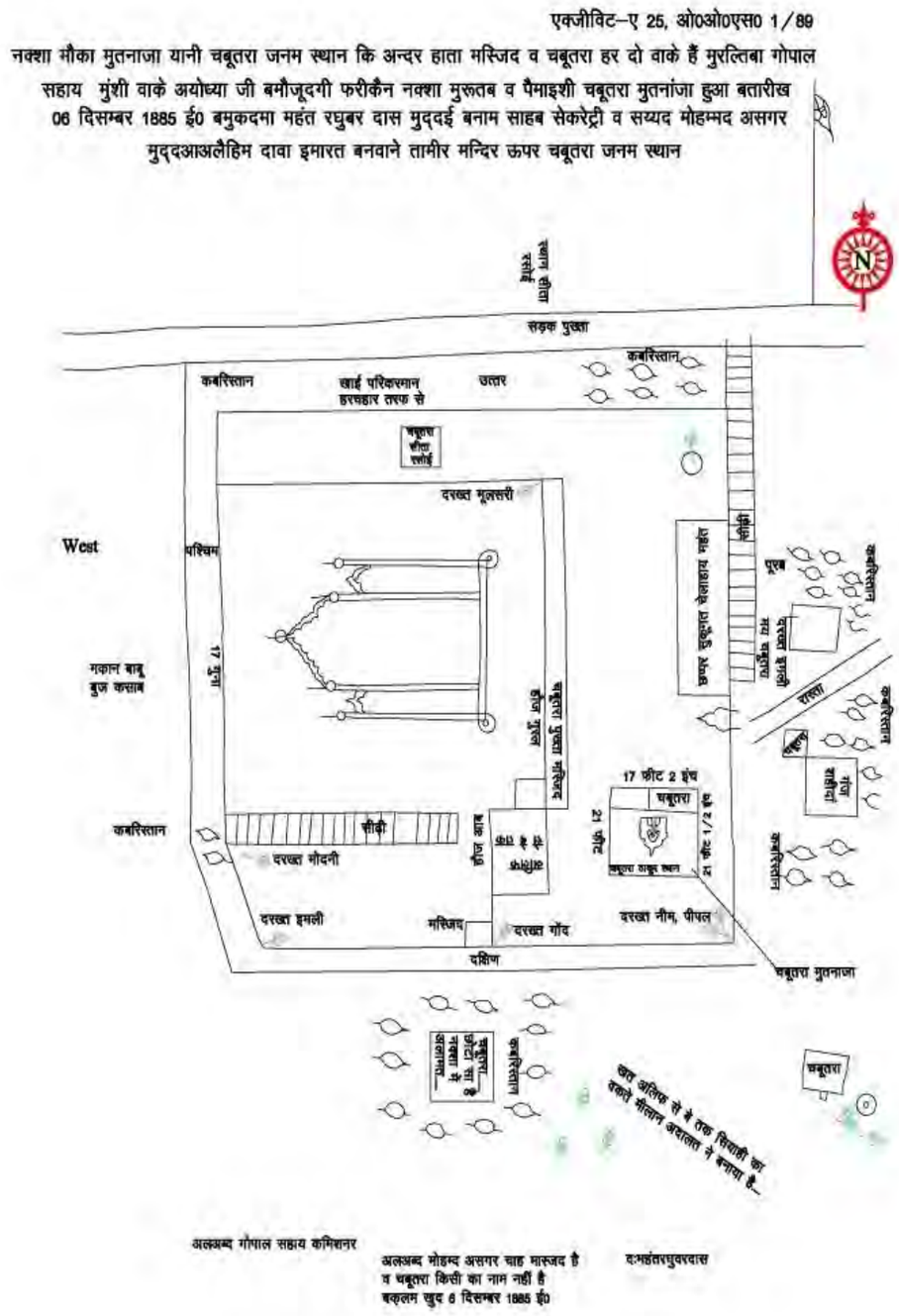
APPENDIX-3



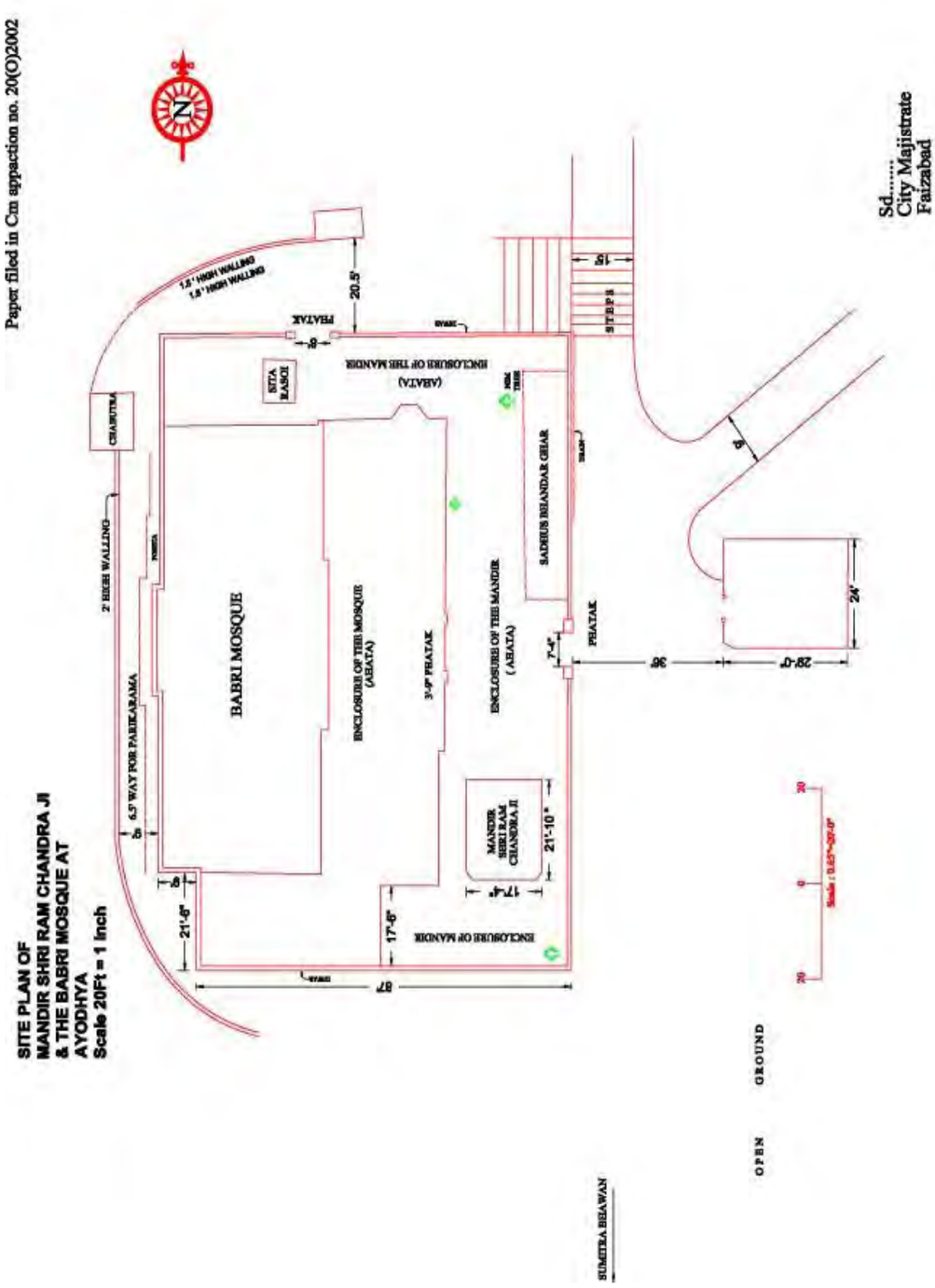
61/280/1885 (EX. A-25 in OOS 1/89)

APPENDIX-3A

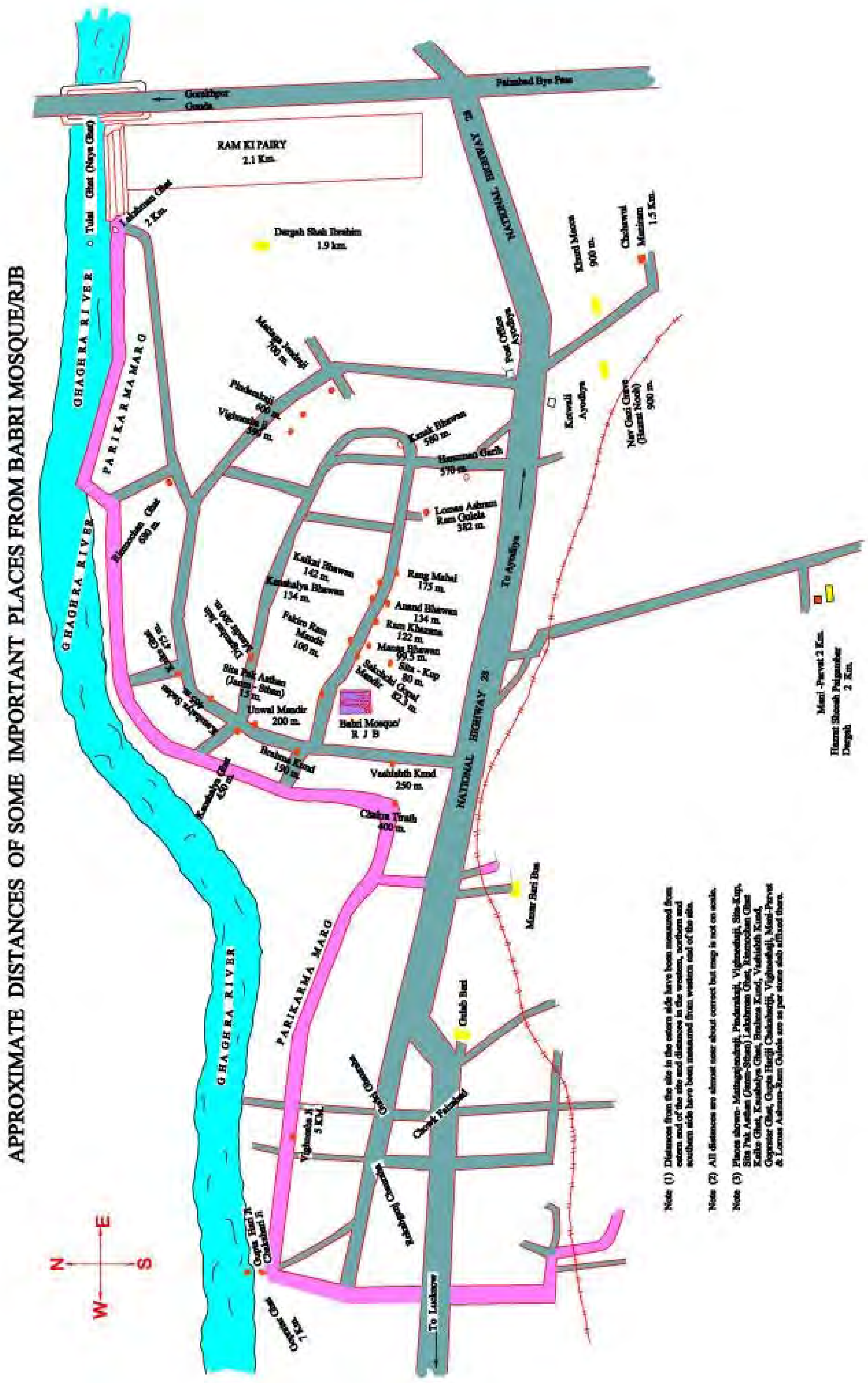
(A Fair of Appendix-3, Site Plan Map with Hindi Translation)



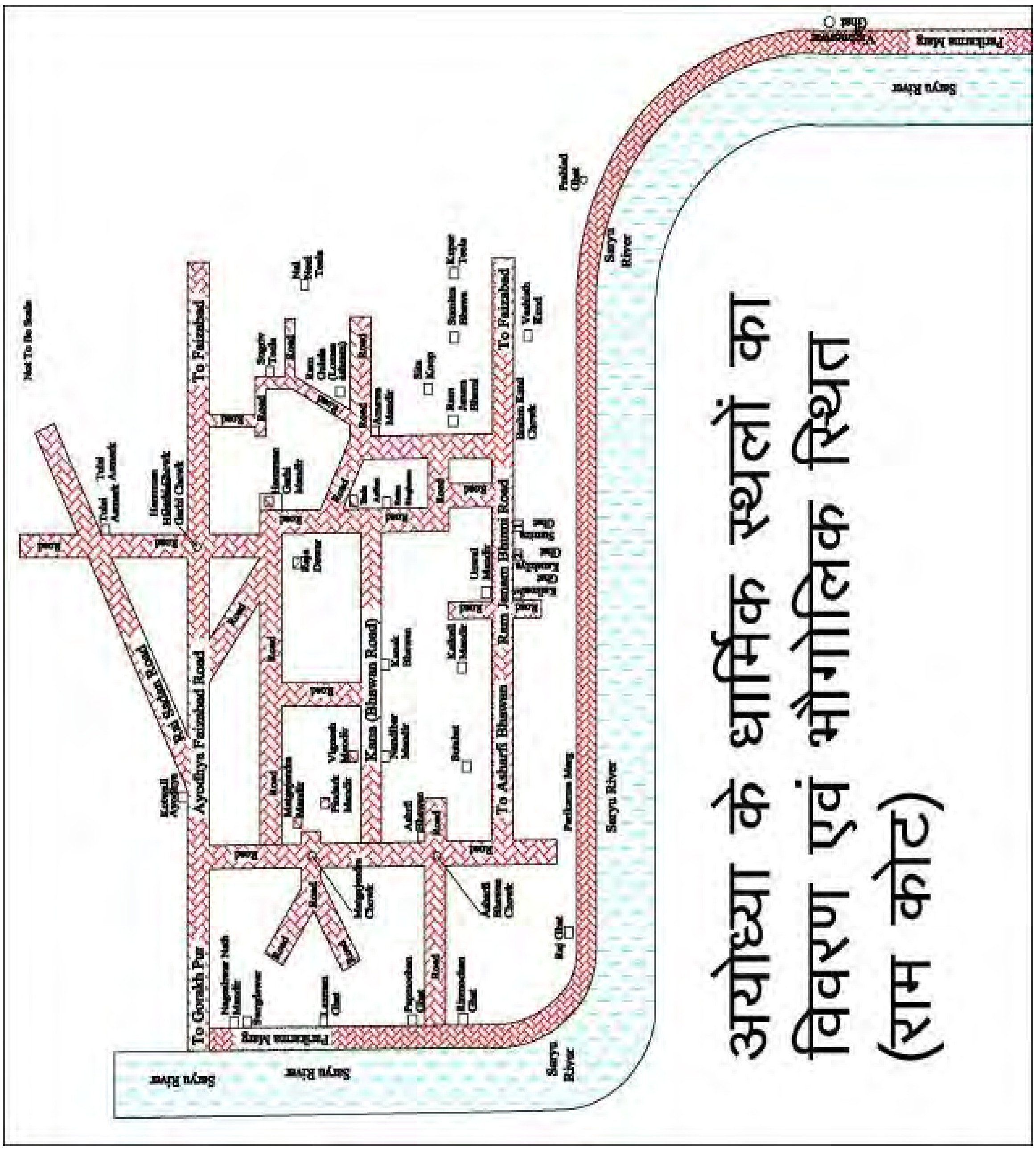
APPENDIX-4


Paper filed in Cm appaction no. 20(O)2002
SITE PLAN OF
MANDIR SHRI RAM CHANDRA JI
& THE BABRI MOSQUE AT
AYODHYA
Scale 20Ft = 1 Inch
Sd.....
City Majistrate
Faizabad
BABRI MOSQUE
ENCLOSURE OF THE MOSQUE (ABATA)
ENCLOSURE OF THE MANDIR (ABATA)
MANDIR SHRI RAM CHANDRA JI
SADHUS BHANDAR GHAR
SITA RASOI
CHABUTRA
2' HIGH WALLING
6.5' WAY FOR PARIKRAMA
PHATAK
STEPS
ENCLOSURE OF MANDIR
SUMITRA BHAWAN
OPEN GROUND

APPENDIX-4A


APPROXIMATE DISTANCES OF SOME IMPORTANT PLACES FROM BABRI MOSQUE/RJB
RAM KI PAIRY
2.1 Km.
GHAGHRA RIVER
PARIKARMA MARG
NATIONAL HIGHWAY 28
Babri Mosque/
R J B
To Ayodhya
To Lucknow

APPENDIX-4B


अयोध्या के धार्मिक स्थलों का
विवरण एवं भौगोलिक स्थित
(राम कोट)
To Faizabad
Ayodhya Faizabad Road
To Gorakh Pur
Ram Janam Bhumi Road
To Asharfi Bhawan
Saryu River
Parikrama Marg

APPENDIX-5A

200C1/48

APPENDIX-5B

200C1/50

APPENDIX-5C

200C1/51

APPENDIX-5D

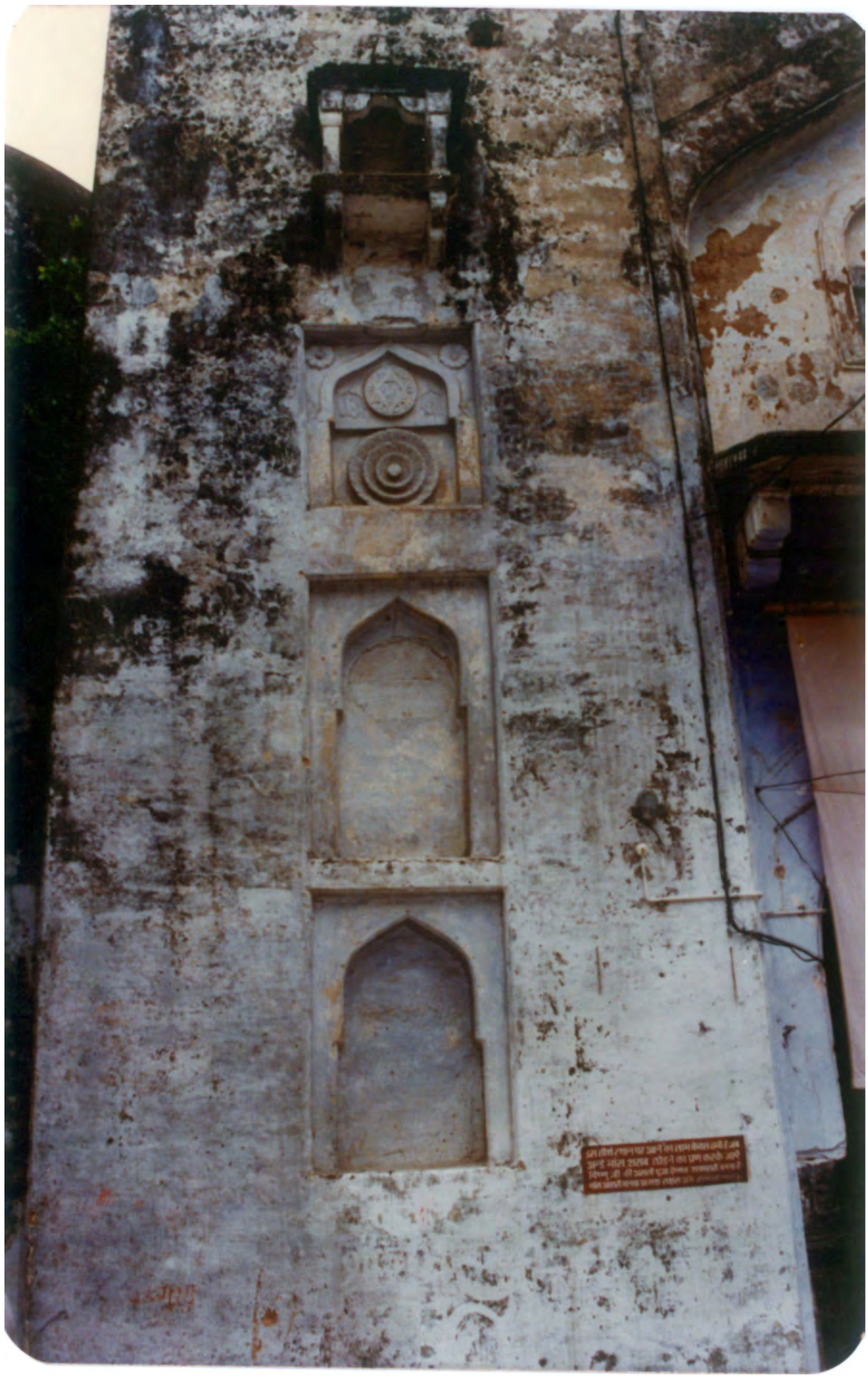
200C1/52

APPENDIX-5E

200C1/54

APPENDIX-5F

200C1/87



APPENDIX-5G

200C1/104

APPENDIX-5H

200C1/105

APPENDIX-5 I

200C1/109

APPENDIX-5 J

200C1/114

APPENDIX-5K

200C1/115

APPENDIX-5L

200C1/141

APPENDIX-5M

200C1/146

APPENDIX-5N

200C1/147

APPENDIX-5O

200C1/166

APPENDIX-5P

200C1/167

APPENDIX-5Q

200C1/181

APPENDIX-5R

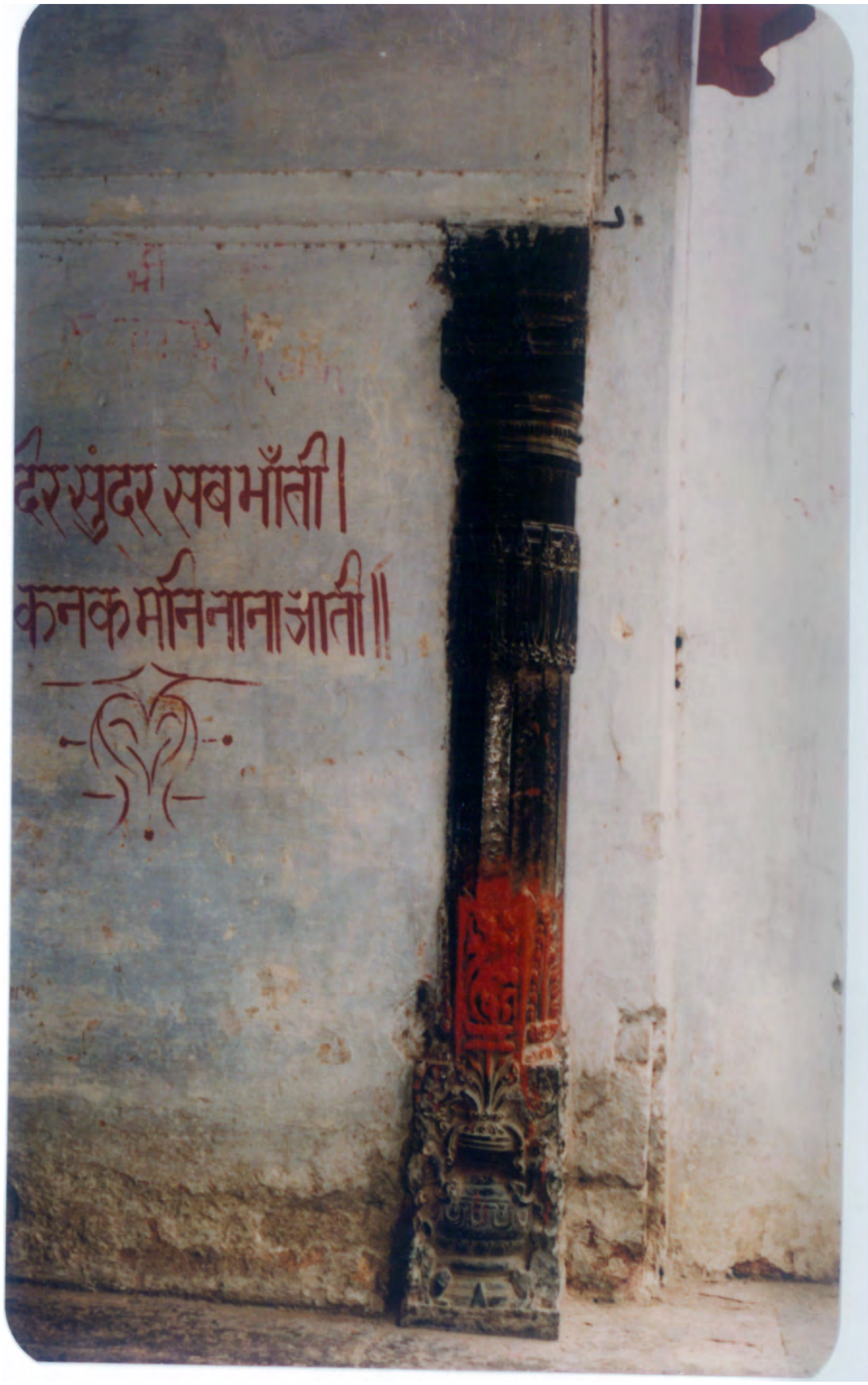
200C1/186

APPENDIX-5S

200C1/187

APPENDIX-5T

200C1/195



APPENDIX-5U

200C1/199

APPENDIX-5V

200C1/200

APPENDIX-5W

201C1/55

APPENDIX-5X

201C1/57

APPENDIX-5Y

201C1/76

APPENDIX-5Z

201C1/88

APPENDIX-5AA

201C1/91

APPENDIX-5 BB

201C1/103

APPENDIX-5CC

201C1/104

APPENDIX-5DD

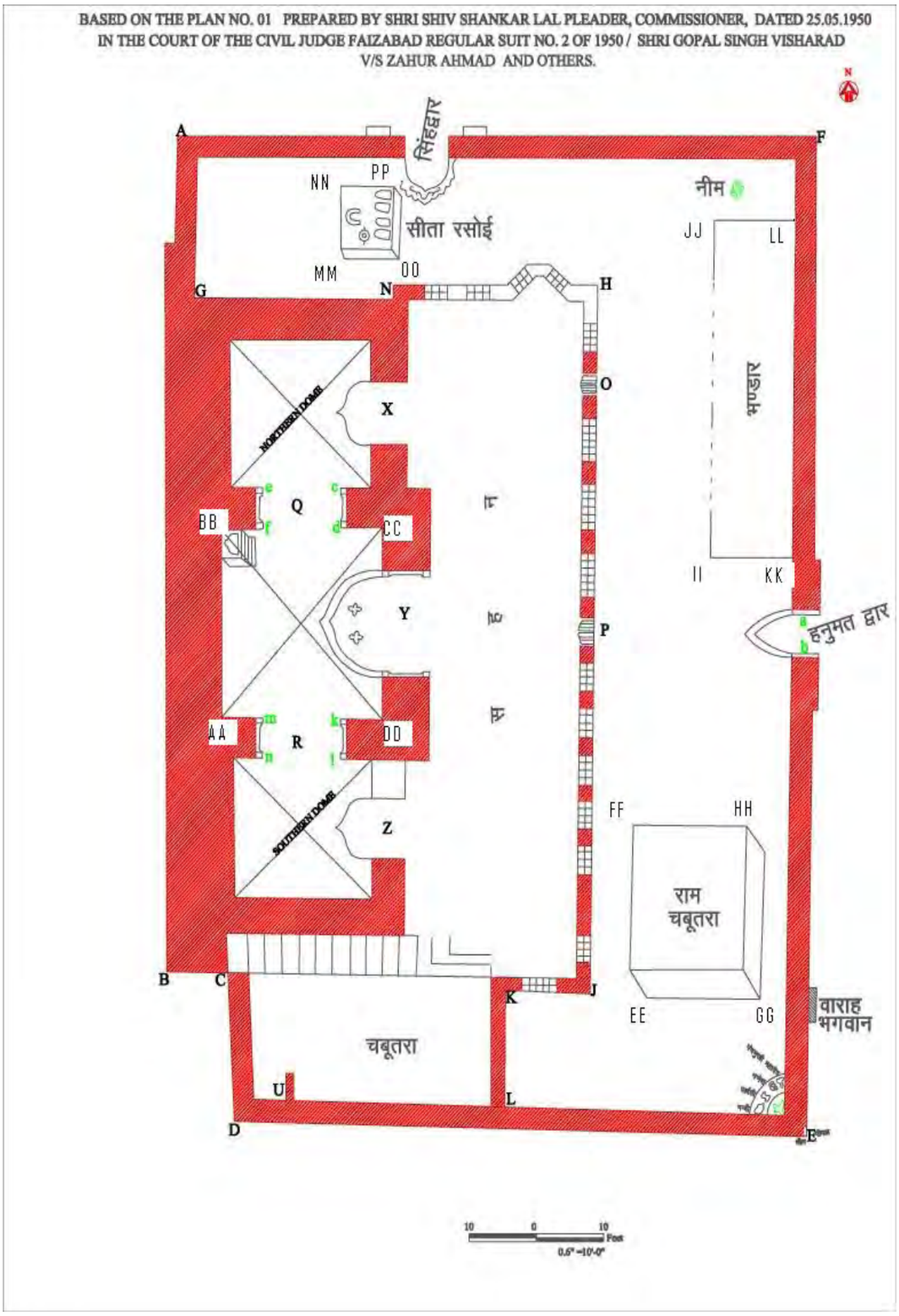
201C1/106

APPENDIX-6

A HISTORICAL SKETCH OF TAHSIL FYZABAD, ZILLAH FYZABAD
By P. CARNEGY (PUBLISHED IN 1887)

APPENDIX-7

Copy of site plan (Appendix 2) with marking by the Court



APPENDIX-8

General Index-Judgment

19.	Replication to W.S. of defendant no. 10 (Suit-3)	8.11.1991	27-28	35-39
20.	**O.O.S. No. 4 of 1989**		**29-70**	**39-104**
21.	Plaint (Suit-4)		33-35	41-47
22.	W.S. of defendant no. 1 (Suit-4)	12.3.1962	36	47-49
23.	Addl. W.S. of defendant no. 1 (Suit-4)	31.10.1962	37	49-51
24.	W.S. of defendant no. 2 (Suit-4)	25.1.1963	38	51
25.	Replication to W.S. of defendants no. 1 & 2 (Suit-4)	11.9.1963	39	51-52
26.	W.S. of defendants no. 3 & 4 (Suit-4)	22/24.8.1962	40-43	52-58
27.	Addl. W.S. of defendants no. 3 & 4 (Suit-4)	25.1.1963	44	58
28.	II Addl. W.S. of defendants no. 3 & 4 (Suit-4)	28/29.11.1963	45	59
29.	III Addl. W.S. of defendant no. 3 (Suit-4)	21.8.1995	46-47	59-61
30.	Replication to W.S. of defendants no. 3 & 4 (Suit-4)	11.9.1963	48	61-62
31.	Application of Defendants no. 5 to 8 (Suit-4)	21.4.1962/ 28.5.1962	49	62-63
32.	W.S. of defendant no. 9 (Suit-4)	27/28.7.1962	50	63
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35.	Supplementary replication to amended W.S. of defendant no. 10 (Suit-4)	27.11/3.12.1991	55	67

36.	Addl. W.S. of defendant no. 10 (Suit-4)	12.9.1995	56	67-70
37.	W.S. of defendants no. 13 & 14 (Suit-4)	20.7.1968	57-58	70-73
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39.	Addl. W.S. of defendant no. 13 (Suit-4)	29.8.1995	63	90
40.	Addl. W.S. of defendant no. 17 (Suit-4)	14.9.1995	64	90-91
41.	W.S. of defendant no. 18 (Suit-4)	18/19.7.1969	65	91
42.	W.S. of defendant no. 20 (Suit-4)	5.11.1989	66-69	91-103
43.	Addl. W.S. of defendant no. 20 (Suit-4)	17.10.1995	70	103-104
44.	**O.O.S. No. 5 of 1989**	**1.7.1989**	**71-104**	**104-149**
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46.	Plaint (Suit-5)	1.7.1989	73-83	106-120
47.	W.S. of defendant no. 3 (Suit-5)	14.8.1989	84	120-122
48.	Addl. W.S. of defendant no. 3 (Suit-5)	20.4.1992	85	122-123
49.	II Addl. W.S. of defendant no. 3 (Suit-5)	13.5.1994	86	123-124
50.	W.S. of defendant no. 4 (Suit-5)	26/29.8.1989	87-93	124-139
51.	W.S. of defendant no. 5 (Suit-5)	14/21.8.1989	94	139-141
52.	Addl. W.S. of defendants no. 4 & 5 (Suit-5)	22.8.1995	95	141-142
53.	W.S. of defendant no. 6 (Suit-5)	21/22/8/1989	96	142

	Hindus and demolition of temple			
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96.	DW 1/2 Krishna Chandra Singh	28.07.2003	334-335	360-367
97.	DW 1/3 Dr. Sahdev Prasad Dubey	04.08.2003	336-338	367-378
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99.	DW 2/1-2 Ram Saran Srivastava	20.01.2005	343-349	391-398
100.	DW 2/1-3 Mahant Ram Vilas Das Vaidanti	16.02.2005	350-354	398-419
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102.	DW 3/2 Raja Ram Pandey	22.09.2003	360-363	430-437
103.	D/W 3/3 Satya Narayan Tripathi	30.10.2003	364-367	437-445
104.	D/W 3/4 Shiv Saran Das	14.11.2003	368-370	445-447
105.	D/W 3/5 Raghunath Prasad Pandey	18.11.2003	371-372	447-458
106.	D/W 3/6 Sita Ram Yadav	06.01.2004	373-375	458-464
107.	D/W 3/7 Mahant Ramji Das	30.01.2004	376-377	464-474
108.	D/W 3/8 Pt. Shyam Sundar Mishra	30.01.2004	378-380	474-482
109.	D/W 3/9 Ram Ashrey Yadav	22.03.2004	381-384	482-494
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118.	D/W 3/19 Ram Milan Singh	12.10.2004	417-419	546-554
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121.	D/W 17/1 Ramesh Chandra Tripathi	09.05.2005	430-433	578-585
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126.	OPW 2 Deoki Nandan Agarwal	16-20.06.2001	450-451	614-615
127.	OPW 4 Sri Harihar Prasad Tewari	06.08.2002	452-453	615-620
128.	OPW 5 Ramnath Mishra alias Banarasi Panda	6/7.08.2002	454-455	620-629
129.	OPW 6 Hausila Prasad Tripathi	13.08.2002	456-457	629-638
130.	OPW 7 Ram Surat Tiwari	19.09.2002	458-459	637-646
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135.	PW 13 Suresh Chandra Mishra	13.07.1998	470-471	660-663
136.	PW 15 Sushil Srivastava	15.04.1999	472-473	663-666

137.	PW 16 Prof. Suraj Bhan	22.02.2000	474-478	666-686
138.	PW 18 Suvira Jaiswal	19.02.2001	479-480	686-688
139.	PW 20 Prof. Shirin Musavi	24.07.2001	481-483	688-694
140.	PW 24 Prof. Dhaneshwar Mandal	25.02.2002	484-487	694-705
141.	PW 27 Prof. Dr. Shereen F. Ratnagar	08.04.2002	488-503	705-716
142.	PW 28 Sita Ram Roy	22/23.04.2002	504-511	716-725
143.	OPW 3 Dr. S.P. Gupta	28.06.2001	512-514	725-757
144.	OPW 9 Dr. Thakur Prasad Verma	31.10.2001	515-518	757-767
145.	OPW 11 Satish Chandra Mittal	25.11.2002	519-524	767-780
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151.	PW 30 Dr. R.C. Thakran	07.11.2005	536-537	806-830
152.	PW 31 Dr. Ashok Datta	20.01.2006	538-540	830-839
153.	PW 32 Dr. Supriya Verma	27.03.2006	541-545	839-843
154.	OPW 17 Dr. R. Nagaswamy	17.08.2006	546-547	843-850
155.	OPW 18 Arun Kumar Sharma	28.08.2006	548-555	850-855
156.	OPW 19 Sri Rakesh Datta Trivedi	03.10.2006	556-557	855-859
157.	DW 6/1-1 Hazi Mahmood Ahmad	29.08.2005	558-559	859-860
158.	DW 6/1-2 Mohd. Abid	12.09.2005	560-562	860-863
159.	DW 20/5 Jayanti Prasad Srivastava	15.01.2007	563-568	863-869

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162.	PW11 Mohd. Burhanuddin	16.09.1997	572-574	876-880
163.	PW 19 Maulana Atiq Ahmed	21.05.2001	575-577	880-885
164.	PW 22 Mohd. Khalid Nadvi	9/10.01.2002	578-579	885-887
165.	PW 25 Sibte Mohammad Naqvi	05/6.03.2002	580	887
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170.	OPW 15 Dr. M.N. Katti	31.03.2003	591-592	909-911
171.	**(G) Artifacts in debris**		**593-595**	**911-915**
172.	OPW 14 Dr. Rakesh Tiwari	07.02.2003	593-595	911-915
173.	**(H) Commissioner/ Survey Report**		**596-599**	**915-921**
174.	PW 17 Zafar Ali Siddiqui	20.10.2000	596-597	915-919
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128.	C. Mohammad Yunus Vs. Syed Unnissa and Ors. AIR 1961 SC 808	1272/1423, 2409/2432
129.	C. Natrajan Vs. Ashim Bai and others JT 2007 (12) SC 295= AIR 2008 SC 363	2164/2198, 2216/2221, 2282/2271
130.	Cassomally Vs. Carrimbhoy (1911) 36 Bom. 214	923/1194
131.	CEAT Ltd. Vs. Anand Abasaheb Hawaldar & Ors. 2006 (3) SCC 56	3769/3799
132.	Cement Corpn. Of India Ltd. Vs. Purya (2004) 8 SCC 270	3046/2866
133.	Chairman & M.D., N.T.P.C. Ltd. Vs. M/s Reshmi Construction Builders & Contractors AIR 2004 SC 1330	2162/2196, 2276/2268
134.	Chandan Mull Indra Kumar & Others Vs. Chiman Lal Girdhar Das AIR 1940 PC 3	3757/3794
135.	Chandra Vs Narpat Singh 1906 (29) All 184 (PC)	3549/3566

136.	Chandu Lal Vs. Khalilur Rahman, AIR 1950 P.C. 17	917/1190
137.	Chedha Singh and others Vs. Additional Civil Judge, Moradabad and others, 1996 Supp. AWC 189	1149/1358
138.	Chhote Khan & others Vs. Mal Khan & others AIR 1954 SC 575	1397/1559, 2872/2750
139.	Chhutkao Vs. Gambhir Mal AIR 1931 Oudh 45	3263/3141
140.	Chief Conservator of Forests, Government of Andhra Pradesh Vs. Collector and others, AIR 2003 SC 1805	1233/1406
141.	Chitar Mal Vs. Panchu Lal AIR 1926 All.392	1938/2020, 2611/2556, 2663/2584, 2664/2584, 2665/2585, 2673/2589, 2674/2590, 2680/2593
142.	Collector of Masulipatam Vs. C. Vencata Narainapah 8 MIA 500, 525	4442/5011
143.	Collector, Gorakhpur Vs. Palakdhari ILR (1899) 12 All 1 at page 43	3544/3564
144.	Commissioner For Hindu Religious and Charitable Endowments, Mysore Vs. Ratnavarma Heggade, AIR 1977, SC 1848	1707/1837, 1830/1929
145.	Commissioner of Central Excise Vs. Shree Baidyanath Ayurved Bhawan Ltd. JT 2009 (6) SC 29	893/1182, 909/1188
146.	Commissioner of Customs, Mumbai Vs. M/s. Virgo Steels, Bombay and another AIR 2002 SC 1745	635/977
147.	Commissioner of Endowments and others Vs. Vittal Rao and others (2005) 4 SCC 120	960/1216
148.	Commissioner of Income-tax Vs. Sri Ramakrishna Deo AIR 1959 SC 239	1399/1560
149.	Commissioner of Police & others Vs. Acharya Jagadishwarananda Avadhuta & another (2004) 12 SCC 770	3501/3495, 4417/4998
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151.	Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282	713/1023, 726/1029, 732/1033, 736/1034, 744/1039, 1709/1842, 3500/3494
152.	Cook Vs. Sprigg 1899 AC 572	4442/5011
153.	Coral Indira Gonsalves Vs. Joseph Prabhakar Iswariah AIR 1953 Mad. 858	3580/3581
154.	D. N. Venkatarayappa & Anr. Vs. State of Karnataka & Ors. 1997 (7) SCC 567	2774/2668, 2907/2769, 2908/2769
155.	Dalbir Singh & others Vs. State of Punjab AIR 1962 SC 1106	3501/3495
156.	Dalmia Dadri Cement Co. Ltd. Vs. Commissioner of Income-tax AIR 1958 SC 816	4446/5012
157.	Damodar Das Vs. Adhikari Lakhan Das (1909-10) 37 IA 147	1807/1909, 1809/1911, 1938/2019, 1942/2027, 2663/2584, 2668/2586, 2678/2591, 2680/2593, 2709/2608
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161.	Darshan Lal Vs. Dr. R.E.S. Dalliwall & another AIR 1952 Alld. 825	3500/3493
162.	Darshan Singh Vs. Gujjar Singh (2002) 2 SCC 62	2880/2753
163.	Dasami Sahu Vs. Param Shameshwar Uma Bhairabeshwar Bam Lingshar and Chitranjan Mukerji (1929) A.L.J.R. 473	2855/2734
164.	Dattagiri Vs. Dattatrya (1904) 27 Bom 236	964/1219, 3270/3146
165.	Deewan Singh and others Vs. Rajendra Pd. Ardevi and others AIR 2007 SC 767	846/1153, 1044/1272

166.	Deo Kuer and another Vs. Sheo Prasad Singh and others, AIR 1966 SC 359	2163/2197, 2261/2259, 2262/2259
167.	Deo Narain Chowdhury Vs. C.R.H. Webb (1990) 28 Cal. 86	2429/2440
168.	Deoki Nandan Vs. Murlidhar & Ors. AIR 1957 SC 133=1956 (1) SCR 756	1701/1821, 1707/1837, 1762/1872, 1820/1917, 2661/2583, 2733/2635
169.	Des Raj and others vs. Bhagat Ram(Dead) by LRs. And others 2007 (3) SCALE 371	2851/2733
170.	Deutsch Asiatische Bank Vs. Hiralal Burdhan & Sons 1918 (47) I.C. 122	2652/2579
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173.	Dharamarajan & Ors. Vs. Valliammal & Ors., 2008 (2) SCC 741	2774/2668, 2928/2791
174.	Dharani Kanta Lahiri Vs. Gabar Ali Khan, (1913) 18 I.C. 17	2207/2217
175.	Dhian Singh Sobha Singh Vs. Union of India AIR 1958 SC 274	633/975, 653/985, 657/987
176.	Dhirendra Nath Gorai and Sabal Chandra Shaw and others Vs. Sudhir Chandra Ghosh and others AIR 1964 SC 1300	635/976
177.	Dinomoni Chowdhrani & Brojo Mohini Chowdhrani 29 IA 24 (PC)	2239/2240, 2777/2669, 3072/2883
178.	Director of Endowments, Govt. of Hyderabad Vs. Akram Ali AIR 1956 SC 60	4450/5013
179.	District Basic Education Officer and another Vs. Dhananjai Kumar Shukla and another (2008) 3 SCC 481= AIR 2008 SCW 1224	2291/2273, 3330/3285
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181.	Doulat Koer Vs. Rameshwari Koeri alias Dulin Saheba (1899) ILR 26 Cal. 635	2241/2240

182.	Dr. M. Ismail Faruqui etc. Vs. Union of India and others 1994 (6) SCC 360=AIR 1995 SC 605	5/15, 83/119, 190/184, 191/184, 268/285, 846/1152, 1259/1416, 1708/1841, 2301/2292, 2600/2691, 2609/2555, 2616/2561, 2723/2615 2736/2636, 2870/2650, 3244/3131, 3502/3495, 3585/3583, 4049/4409, 4457/5015, 4566/5081
183.	Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumari Sharma & Ors. AIR 1996 SC 869	2774/2667, 2889/2758, 2909/2772
184.	Draupadi Devi & Ors. Vs. Union of India & Ors. (2004) 11 SCC 425	2162/2197, 2418/2434, 3382/3309, 3383/3309, 3385/3310
185.	Dukham Ram Vs. Ram Nanda Singh, AIR 1961 Pat. 425	2262/2258
186.	Durgah Committee, Ajmer Vs. Syed Hussain Ali AIR 1961 SC 1402	1860/1960, 1864/1963
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188.	Dwijendra Narain Roy Vs. Joges Chandra De, AIR 1924 Cal 600	2411/2433, 2712/2610
189.	Dyke Vs. Walford 5 Moore PC 434 = 496-13 ER 557 (580	4439/5010
190.	Ejas Ali Qidwai & Ors. Vs. Special Manager, Court of Wards, Balrampur Estate & Ors. AIR 1935 Privy Council 53	2774/2667, 2894/2759
191.	Ellappa Naicken Vs. K.Lakshmana Naicken & others AIR (36) 1949 Madras 71	2264/2259
192.	Emperor Vs. Bhaskar Balwant Bhopatkar, (1906) ILR 30 Bom 421	1219/1400, 1222/1402
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197.	Faqruddin Vs. Tajuddin 2008 (8) SCC 12	3253/3135, 3271/3147, 3302/3238, 3303/3244
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199.	Forest Range Officer & others Vs. P. Mohammed Ali & others AIR 1994 SC 120	3563/3575, 3583/3582
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201.	Fulbati Kumari Vs. Maheshwari Prasad Singh AIR 1923 Patna 453	1394/1558
202.	G.L. Vijan Vs. K. Shankar. 2006 (13) SCC 136	3759/3794
203.	Gangu Bai Vs. Soni 1942 Nagpur Law Journal 99	2223/2232
204.	Ganpat Vs. Returning Officer (1975) 1 SCC 589	1851/1946
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207.	Gedela Satchidananda Murthy Vs. Dy. Commr., Endowments Deptt., A.P. & Ors. (2007) 5 SCC 677	1700/1820, 1707/1834, 1866/1964
208.	Ghanshyam Dass Vs. Dominion of India 1984 (3) SCC 46	637/977, 638/978, 656/986, 657/987, 661/988, 664/991
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210.	Giyana Sambandha Pandara Sannadhi Vs. Kandasami Tambiran 1887 ILR Vol. 10 Madras 375	683/1000, 685/1003
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216.	Gopal Krishnaji Ketkar Vs. Mahomed Jaffar Hussein AIR 1954 SC 5	1396/1559
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245.	Hari Chand Vs. Daulat Ram, AIR 1987 SC 94	2774/2667, 2921/2777
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250.	Harihor Misra Vs. Narhari Setti Sitaramiah AIR 1966 Orissa 121	3760/3795
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259.	Humayun Begam Vs. Shah Mohammad Khan, AIR 1943 PC 94	2262/2257
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267.	Ishtiyaq Husain Abbas Husain Vs. Zafrul Islam Afzal Husain and others AIR 1969 Alld. 161	642/979
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269.	Ishwari Prasad Misra Vs. Mohammad Isa AIR 1963 SC 1728	3574/3579
270.	J. Jaya Lalitha Vs. Union of India & another AIR 1999 SC 1912	2122/2178
271.	Jafar Ali Khan & Ors. Vs. Nasimannessa Bibi AIR 1937 Cal 500	2166/2199, 2399/2425
272.	Jagadamba Chowdhurani Vs. Dakhina Mohan (1886) 13 Cal 308	2399/2425
273.	Jagadindra Nath Vs. Hemanta Kumari, 31 Ind App 203 at p.210	1776/1883, 1822/1919, 2663/2584, 2668/2586, 2669/2587, 2676/2590, 2677/2591, 2680/2593, 2681/2594, 2707/2607, 2708/2608, 2711/2609, 2712/2610 4515/5057
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335.	Kuarmani Singha Vs. Wasif Ali Murza 1915(28) I.C. 818	2652/2579
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342.	Lachhmi Sewak Sahu vs. Ram Rup Sahu & Ors. AIR 1944 PC 24	2282/2271
343.	Lakshmana Pillai and another Vs. Appalwar Alwar Ayyangar and another AIR 1923 Madras 246	845/1152, 1031/1265
344.	Lal Chand Vs. Radha Kishan, AIR 1977 SC 789=1977(2) SCC 88	840/1150, 902/1184, 1008/1247
345.	Lala Shiam Lal Vs. Mohamad Ali Asghar Husain AIR 1935 All 174	2442/2446, 2448/2450
346.	Lalji Sahib Vs. Munshi Lal, AIR 1943 All 340	916/1190

347.	Lalmani Devi & others Vs. Jagdish Tiwary & others AIR 2005 Pat. 51	3039/2862
348.	Lalta Prasad Vs. Emperor 5 IC 355	3569/3577
349.	Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah (2001) 3 SCC 530	3046/2866
350.	Laxman Siddappa Naik vs. Kattimani Chandappa Jampanna and others AIR 1968 SC 929	1403/1560
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355.	M.T.W. Tenzing Namgyal and others Vs. Motilal Lakhotia and others 2003 (5) SCC 1	843/1151, 846/1153, 1020/1256
356.	M.V.S. Manikyala Vs. Narashimahwami AIR 1966 SC 470	2420/2436
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358.	M/s Hulas Rai Baij Nath Vs. Firm K.B. Bass and co. AIR 1968 SC 111	845/1152, 1028/1263, 1031/1265
359.	M/s Kamakshi Builders Vs. M/s Ambedkar Educational Society and others AIR 2007 SC 2191	2777/2669, 2990/2827
360.	M/s Karam Chand Ganga Prasad & another Vs. Union of India & others 1970 (3) SCC 694	3040/2864
361.	M/s Radhasoami Satsang, Saomi Bagh, Agra Vs. Commissioner of Income Tax 1992 (1) SCC 659	734/1034
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369.	Mahant Harnam Singh Vs. Gurdial Singh and another, AIR 1967 SC 1415	958/1214
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372.	Mahanth Ram Charan Das. Vs. Naurangi Lal (1933) L.R. 60 I.A. 124	2652/2580, 2709/2608
373.	Maharaja Jagadindra Nath Roy Bahadur V. Rani Hemanta Kumari Debi (1904) 1 A.L.J.R.585	2855/2734 2856/2735
374.	Maharaja Sir Kesho Prasad Singh Bahadur Vs. Bahuria Mt. Bhagjogna Kuer and others AIR 1937 Privy Council 69	2774/2667, 2922/2779, 2950/2806
375.	Maharana Futtehsangji Vs. Dessai Kullianraiji, (1873) LR 1 IA 34	2180/2207
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384.	Maqbul Ahmad Vs. Onkar Pratap Narain Singh, AIR 1935 PC 85	2289/2273, 2432/2440
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420.	Mt. Titli Vs. Alfred Robert Jones AIR 1934 All. 273	3571/3577, 3588/3585
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422.	Mukkammal Vs. Kalimuthu Pillay 15 Ind Cas 852 (Mad)	1031/1265, 1036/1269
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502.	Purna Chandra Bysack Vs. Gopal Lal Sett & Ors. 1908 (VIII) Calcutta Law Journal 369	1842/1938
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