

SYNOPSIS

The present Special Leave Petition is being preferred under Article 136 of the Constitution of India assailing the final Common Judgment and Order dated 15.05.2026 passed by the Hon'ble High Court of Madhya Pradesh at Indore in Writ Petition No.10497 of 2022 and Writ Petition No.10484 of 2022, whereby the Hon'ble High Court, while exercising writ jurisdiction under Article 226 in proceedings apparently framed as disputes concerning "right to worship" and regulation of access at the *Bhojshala–Kamal Maula Mosque Complex, Dhar*, proceeded to render extensive and determinative findings regarding the alleged religious character, historical identity and constitutional status of the disputed site and consequential worship rights, despite expressly observing that title was not being decided and religious character is determined.

The impugned judgment raises questions of constitutional significance such as;

- a) concerning the limits of writ jurisdiction in sensitive religious disputes; constitutional neutrality of State institutions in matters of competing faith claims;
- b) protection of minority worship rights under Articles 25 and 26;

- c) the evidentiary value of disputed archaeological material in judicial proceedings absent trial and cross-examination;
- d) interpretation of the Places of Worship (Special Provisions) Act, 1991;
- e) continuity of waqf rights and pre-Constitution legal arrangements; and
- f) the impermissibility of indirectly determining religious character and possessory consequences while formally disclaiming adjudication of title.

For ease of reference, the prayers sought before the Hon'ble High Court, issues framed and operative directions ultimately passed in the impugned judgment are tabulated hereinbelow:

W.P. No. 10497 of 2022, Prayers	Issues Framed, Para 97	Impugned Judgment Directions, <i>Para 211</i>
i) Issue an appropriate writ, order, direction or <u>declaration to the effect that only the members of the Hindu Community have fundamental right under Article 25 of the Constitution of India to</u>	[1] Whether the petitions filed by the Hindu Front WP No.10497/2022, WP No. 10484/2022 filed by Kuldeep Tiwari, WP No. 8986 /2026 filed by Salek Chand Jain on behalf of Jain community and WP No.6514/2013 filed by	[i] The disputed area of Bhojshala and Kamal Maula Mosque is held to be a protected monument under 1958 Act with effect from 18.3.1904. [ii] <u>the religious character of disputed area of the Bhojshala</u>

<u>perform Pooja and rituals at the place of Goddess Vagdevi/Maa Saraswati within the premises of ‘Saraswati Sadan’</u> commonly known as ‘Bhojshala’ situated at khasra land no. 604 (Old No. 313) within the city and District Dhar, State of Madhya Pradesh and the members of <u>Muslim community have no right to use any portion of the aforesaid property for any religious purposes</u> ; ii) Issue an appropriate writ, order or direction to the, Government of India to <u>create a Trust under the provisions of Trust Act, 1882 for the purposes of administration and management of the affairs of Bhojshala Temple and Sanskrit learning</u> within the property in question at Land No.604 situated at	Antar Singh are maintainable as Public Interest Litigation? [2] Whether the petitioners in these petitions have locus to maintain the present petition ? [3] Whether these petitions filed under Article 226 of the Constitution of India are maintainable in view of availability of alternative and efficacious remedy of Civil Suit and remedy under Waqf Act? [4] Whether the petitions are barred by doctrine of res-judicata and constructive res-judicata? [5] Whether the petitions are liable to be dismissed on the ground of delay and laches?	<u>Complex and Kamal Maula Mosque is held to be a Bhojshala with a temple of goddess Vagdevi (Saraswati).</u> [iii] The impugned order dated 7.4.2003 passed by the Director, ASI (paragraph 3 of the said order) <i>to the extent restricting right of Hindus to worship within the Bhojshala complex, in the property in question at land No.604 (Old No.313) and also permitting the prayer by the Muslim community are quashed.</i> [iv] The Government of India and the ASI <u>will take a decision for the purpose of administration and management of the affairs of the Bhojshala temple and Sanskrit learning</u> within the property in question at Land No.604 (Old No.313) situated at Dhar, District Dhar and the ASI will continue to have overall administration and management of the property in accordance
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Dhar town, District- Dhar and ASI be directed to continue to have overall administration and Management of the property in accordance with the provisions of 1958; iii) Issue an appropriate writ, order or direction to the Trust (created by the Govt. of India in terms of prayer number (i) to re-establish the idol/Pratima of Goddess Saraswati and make provision for Darshan, Pooja and Worship of Goddess Saraswati and make proper management of Sanskrit learning in consonance with the Bhojshala as originally established; iv) Issue an appropriate writ, order or <u>direction restraining the Respondents from allowing the Muslims to perform prayer or</u>	[6] Whether the reliefs claimed in the aforesaid petitions can be considered in the light of the provisions of Place of Worship Act, 1991? [7] Whether the reliefs claimed in the aforesaid petitions can be considered in view of the order passed by the Apex Court in the case of Ashwini Kumar Upadhyaya (supra) where the hearing of the matters involving issues of Place of Worship Act have been directed not to be entertained and if pending have been directed to be deferred?	with the provisions of the Act 1958. [v] The ASI shall have full supervisory control over the preservation, conservation and regulation of religious access. [vi] So far the relief claimed by the petitioners to bring back the Pratima of goddess Saraswati from London Museum, UK and re-establish same within the Bhojshala complex, the petitioners in WP No.10497/2022 and WP No.10484/2022 have already made number of representations to the Government of India, the Government of India may consider their representations to bring back the Pratima of goddess Saraswati from London Museum and re-establish the same within the complex. [vii] In order to <u>secure the religious rights of the Muslim</u> community and to <u>ensure complete justice</u> between the
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<u>worship in any manner within the temple</u> complex i.e. property in question at Land No.604 at City and District Dhar; v) Issue an appropriate writ, order or <u>direction quashing para of the order dated 07.04.2003</u> passed by Director, Archaeological Survey of India and also. Para 3 of the said order to the extent it restricts the right of Hindus to worship within Bhojshala complex i.e. the property in question at Land No.604 (old 313) in the city of District Dhar and direct that Hindus shall be permitted to :perform Pooja daily without any restriction; vi) Issue an appropriate writ, order or direction directing the Government of India to undertake every effort to bring back the Pratima of Goddess Saraswati from London		parties, <u>in case if the respondent No.8 submits an application for allotment of a suitable land within the Dhar district for the construction of a Mosque or a place for prayer</u>, the State Government may consider the said application in accordance with law for allotment of a suitable and permanent part of land in Dhar district to the Muslim community which may be represented either through the respondent No.8, appellant, interveners or a duly constituted Waqf body for the construction, administration of a mosque and associated religious facilities.
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Museum in United Kingdom and re-establish the same within the ‘Saraswati Sadan’/Bhojshala complex situated at Khasra land No.604 (Old No.313) within the city and District Dhar, State of Madhya Pradesh.		
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The Controversy

The present controversy emanates from writ proceedings instituted before the Hon’ble High Court concerning the Bhojshala–Kamal Maula Mosque Complex at Dhar, a centrally protected monument under the administration and regulatory supervision of the Archaeological Survey of India (“ASI”), historically governed through a long-standing and State-recognized regime of regulated and shared religious access, particularly under the order dated 07.04.2003 issued by the Director, ASI in exercise of powers traceable to the statutory framework governing protected monuments.

The said arrangement, evolved in the interest of preservation of the protected monument, maintenance of public order, communal harmony and accommodation of competing religious practices, regulated worship

and access of different communities, including Friday namaz by Muslim worshippers and specified worship rights of Hindus.

The writ petitioners, however, sought to unsettle the said long-standing administrative and constitutional equilibrium by challenging the validity of the arrangement and claiming, in substance, exclusive and superior worship rights over the disputed site, exclusion of Muslim religious practice and quashing of permissions permitting Friday namaz, thereby raising deeply contested issues concerning religious character, worship entitlement, historical identity, denominational claims and practical control over the disputed structure.

The Petitioners

The Petitioners herein are Muslim parties, worshippers, intervenors (***I.A. No. 1518 of 2026 in W.P. 10497 of 2022***) and persons directly affected by the impugned judgment, who have consistently participated in proceedings concerning the Bhojshala–Kamal Maula Mosque Complex and whose legally protected religious, constitutional and civil interests stand directly prejudiced by the impugned findings and operative directions and also a Plaintiffs in pending suit (***Civil Suit RCS (A) No.73/2026 titled Ayaz & Ors. v. Union of India & Ors., Ld. Civil Judge Senior Division, Dhar, Madhya Pradesh***). The Petitioners a worshippers/Namazi asserting long-standing religious use of the disputed structure as Kamal Maula

Mosque/Jama Masjid, including continued offering of Friday namaz, participation in proceedings before the Hon'ble High Court and assertion of rights flowing from historical usage, mosque recognition, waqf character, official records and long-standing State-regulated worship arrangements.

The issue of Res Judicata

The Petitioners specifically raised before the Hon'ble High Court that substantially similar issues concerning worship arrangements, access and legality of the ASI framework had already been litigated earlier and had attained finality. [*WP No.1295/1997 (Vimal Kumar v. State of M.P.)*; *WP No.4216/2003 (Quazi Zakaullah v. State of M.P.)*; and *WA No.784/2006*].

The Hon'ble High Court in *WP No.4216/2003* held as follows:

45. Thus, in my opinion writ petition is not the appropriate remedy to examine the fact that Bhojshala and Kamal Maula's Mosque is exclusively the Kamal Maula's Mosque and only Muslim community has the right not the Hindu community and consequently it cannot be held that condition no.3 in order P/II is bad in law and unconstitutional and change character of monument. For seeking such a relief 'and consequent quashment of the conditions and for restraining entry of the Hindu community as mentioned in order P/I dated 07.04.2003 investigation has to be made in properly constituted civil suit not in writ petition and nothing observed in this writ petition and finding given shall come in the way of petitioner to establish their exclusive rights over the monument which is owned by the Government of India. This court has made the observations or findings only with a view to examine

whether interference is required to be made in the writ petition or the civil suit is the remedy and no observations or finding recorded in this order shall come in the way of petitioner or any other person of either of the community to establish their rights in a Civil Court.”

The Infirmary

It is submitted that one of the most serious infirmities in the impugned judgment lies in its internal contradiction and self-defeating reasoning given by the Hon’ble Court. The Hon’ble High Court repeatedly observed that it was not adjudicating title to the disputed property, and expressly recorded that:

“In the present case, we are not deciding the title of the property of the disputed area”

Yet, the operative part of the judgment proceeds to hold:

“The religious character of disputed area of Bhojshala Complex and Kamal Maula Mosque is held to be a Bhojshala with temple of Goddess Vagdevi (Saraswati)”

The Hon’ble High Court could not simultaneously disclaim title adjudication while effectively rendering a declaration of religious character that prejudices and substantially determines core issues pending before competent *civil fora*. The finding therefore amounts to indirect adjudication of title and religious status under the guise of Article 226.

The dispute before the Hon'ble High Court was framed as one concerning worship regulation and challenge to the order dated 07.04.2003 passed by the ASI. However, the Hon'ble High Court has transformed the proceedings into a *de facto* historical-religious adjudication. It is submitted that though the Hon'ble High Court formally avoided language of title transfer or possession, the practical effect of the impugned judgment unmistakably confers *de facto* primacy and practical possessory advantage upon one rival religious claimant through impugned order.

Two Decades Old Mutually arranged Agreement Quashed

It is submitted that the order dated 07.04.2003 issued by the Director, Archaeological Survey of India represented a carefully calibrated and administratively evolved framework balancing: Friday namaz, Hindu worship, monument preservation, communal harmony and public order. The arrangement operated for nearly two decades and constituted a long-standing mechanism of coexistence repeatedly recognized by authorities. The Hon'ble High Court nevertheless quashed paragraph 3 of the said order to the extent it: restricted Hindu worship, and permitted Muslim prayer.

Invocation of Article 142 Power by the Writ Court

The Hon'ble High Court further directed/observed that in order to secure religious rights of the Muslim community and ensure “*complete justice*”, the State Government may consider allotment of suitable land in Dhar for

mosque construction upon an application being made. Such direction itself reveals that the Court recognized practical displacement consequences flowing from its own findings. The invocation of “complete justice” reflects impermissible exercise of a power constitutionally reserved to this Hon’ble Court under Article 142 and unavailable to High Courts exercising Article 226 jurisdiction.

Non-consideration and Non-application of mind on Petitioners Submissions

The impugned judgment fails to adequately engage with several foundational submissions raised by the Petitioners including:

- bar of res judicata;
- delay and laches;
- pending civil proceedings;
- limited scope of remand; effect of Ashwini Kumar Upadhyay proceedings (stay of suits/proceedings);
- constitutional neutrality; waqf status and Section 6 of the Waqf Act; Article 372 continuity of 1935 Ailan;
- inadmissibility and limited evidentiary value of ASI material; impropriety of determining religious character in writ proceedings.

The failure to engage with material submissions touching jurisdiction and constitutional maintainability itself vitiates the impugned judgment.

Exceptional Case Warranting Interference Under Article 136

The present matter constitutes an exceptional case warranting interference under Article 136 because the impugned judgment suffers cumulatively.

The impugned judgment suffers not from isolated legal error but from cumulative constitutional, statutory, evidentiary and jurisdictional infirmities, including:

(A) Jurisdictional

- a) determination of religious character in Article 226 proceedings;
- b) indirect adjudication of title-linked issues despite disclaimer;
- c) adjudication beyond pleadings and permissible scope of writ review.

(B) Constitutional Violations

- d) breach of Articles 14, 21, 25 and 26;
- e) misreading of Articles 372 and 395;
- f) erosion of constitutional secularism and fraternity;
- g) failure of institutional neutrality;

- h) impairment of minority worship rights.

(C) Statutory Errors

- i) misapplication of the Places of Worship Act, 1991 and erroneous reliance upon Section 4(3)(a);
- j) disregard of Waqf Act provisions including Section 6;
- k) improper use of monument preservation statutes to determine religion.

(D) Evidentiary Perversity

- l) selective reliance upon ASI material;
- m) no evidentiary proof or expert examination;
- n) disregard of mosque-related material including:
 - Arabic/Persian inscriptions,
 - mosque architecture,
 - Friday namaz continuity,
 - Kamal Maula Mosque nomenclature,
 - waqf-related recognition.

(E) Procedural Unreasonableness

- o) reopening settled issues despite prior litigation;

- p) disregard of *res judicata* objections;
- q) failure to consider delay and laches;
- r) prejudice to pending civil proceedings;
- s) disregard of pending proceedings before this Hon'ble Court.

The impugned judgment is assailed on, inter alia, constitutional, jurisdictional, statutory, historical, evidentiary and procedural grounds, the principal grounds whereof are set out hereinafter for consideration of this Hon'ble Court:

- a) the impugned judgment of the Hon'ble High Court is in grave violation of the fundamental rights guaranteed to the Petitioners and the Muslim community under Articles 14, 21, 25, and 26 of the Constitution of India. The right to practice, profess, and propagate religion, including the right to offer Namaz at a place of worship used for centuries, is an essential aspect of religious freedom, which has been arbitrarily curtailed by the impugned order;
- b) the impugned judgment is patently illegal and without jurisdiction as it has been passed in flagrant violation of the express prohibitions contained in Sections 3 and 4 of the Places of Worship (Special Provisions) Act, 1991;

- c) the Hon'ble High Court has acted in defiance of the binding precedent laid down by the Constitution Bench of this Hon'ble Court in the Ayodhya judgment (*M. Siddiq (D) Thr. LRs v. Mahant Suresh Das, (2019) 18 SCC 1*);
- d) the impugned judgment is based on a perverse appreciation of facts and law. The High Court has erroneously preferred disputed historical accounts and mythological beliefs over the official and consistent records of the Archaeological Survey of India (ASI), the statutory custodian of the monument. The ASI has, for decades, identified the monument as "Bhojshala and Kamal Maula Mosque," which is a clear acknowledgment of its composite character and usage;
- e) the High Court's order completely unsettles a long-standing, peaceful, and functional arrangement, established by administrative orders in 2003, which balanced the rights of both communities by allowing worship by Hindus on Tuesdays and Namaz by Muslims on Fridays. This arrangement has ensured peace and harmony for over two decades;
- f) the High Court failed to appreciate that centuries of continuous and uninterrupted use of a part of the structure as a mosque for offering Namaz had bestowed upon it the character of a mosque, which was its subsisting character on 15.08.1947, as recognized in law,

including in *Syed Mohd. Salie Labbai v. Mohd. Hanifa*, (1976) 4 *SCC 780*;

- g) the State and the ASI, having recognized and permitted the offering of Namaz at the site for decades, are bound by the principles of acquiescence and estoppel;
- h) the Hon'ble High Court erred in entertaining the original writ petition as a Public Interest Litigation (PIL) when its primary objective was to alter the religious character of a place of worship;
- i) the Hon'ble High Court, in exercising its extraordinary writ jurisdiction under Article 226 of the Constitution, impermissibly delved into highly contentious and complex questions of fact, historical evidence, and archaeological interpretations to determine the "original" character of the monument;

The Hon'ble High Court, however, vide its impugned final Common Judgment and Order dated 15.05.2026, erroneously allowed the petitions. The Hon'ble High Court, delving into a historical analysis, concluded that the structure was originally a temple and issued a slew of directions which have the effect of stopping the offering of Namaz and converting the mosque into a temple for exclusive use by the Hindu community.

Hence, the present special leave petition.

of records of the case in the Court below, against whose Final Judgment & Order, the special leave to appeal is sought in this petition.

5. GROUNDS:-

THE LEAVE TO APPEAL IS SOUGHT FOR ON THE FOLLOWING GROUNDS:

IMPUGNED JUDGMENT IS IN GRAVE VIOLATION OF THE FUNDAMENTAL RIGHTS GUARANTEED TO THE PETITIONERS

A. BECAUSE the impugned judgment of the Hon'ble High Court is in grave violation of the fundamental rights guaranteed to the Petitioners and the Muslim community under Articles 14, 21, 25, and 26 of the Constitution of India. The right to practice, profess, and propagate religion, including the right to offer Namaz at a place of worship used for centuries, is an essential aspect of religious freedom, which has been arbitrarily curtailed by the impugned order. [See: *Indian Young Lawyer Association and Ors. vs. State of Kerala and Ors. (2019) 11 SCC 1*]

B. BECAUSE the Articles 25 and 26 of the Constitution guarantee the freedom to profess, practice, and propagate religion, and for religious denominations to manage their own affairs in matters of religion. It is submitted that while the right to worship is not attached to any particular place, if a place has a "*particular significance for that religion*," access for worship is protected under Article 25, as held in *Ismail Faruqui v. Union of India, (1994) 6 SCC 360*.

C. BECAUSE the *Kamal Maula Mosque* is a place of particular significance for the Muslim community in Dhar, where they have been offering prayers for centuries. The impugned order, by completely extinguishing this right to worship and altering the character of the site, constitutes a direct and unreasonable infringement of the community's fundamental rights under Articles 25 and 26. In *Syed Mohd. Salie Labbai v. Mohd. Hanifa*, (1976) **4 SCC 780**, this Hon'ble Court recognized that long and continuous use of a place for offering prayers establishes its character as a mosque. It is submitted that it is an admitted position that the petitioners and Muslim community has been offering prayers at the Kamal Maula Mosque for centuries, a fact acknowledged by the ASI's official designation of the site as "Bhojshala and Kamal Maula Mosque" and the long-standing administrative arrangement for Friday prayers. This continuous usage has bestowed upon the site the character of a mosque, and the right to worship there is a vested fundamental right that cannot be extinguished by a judicial order based on a prohibited historical inquiry.

D. BECAUSE the High Court's directions, which effectively prevent the Muslim community including the Petitioners from offering Namaz at the Kamal Maula Mosque, constitute a direct and arbitrary violation of their fundamental rights to freedom of religion and to manage their own religious affairs.

E. BECAUSE the impugned judgment violates the Petitioners' Fundamental Rights by judicially restructuring long-standing worship arrangements, delegitimizing constitutionally protected Muslim religious practices, declaring the disputed structure to possess temple character and materially privileging one competing religious claim without civil adjudication, evidentiary due process or constitutionally permissible justification. The impugned findings particularly the declaration in paragraph 211(ii) that *“the religious character of disputed area of the Bhojshala Complex and Kamal Maula Mosque is held to be a Bhojshala with a temple of goddess Vagdevi (Saraswati)”* and the quashing of paragraph 3 of the ASI order dated 07.04.2003 permitting Friday namaz and regulating shared worship produce direct constitutional injury by impairing equality, dignity, religious freedom, denominational autonomy and equal citizenship of the Petitioners. [See: *Bijoe Emmanuel & Ors vs State of Kerala & Ors; 1986 (3) SCC 615*].

F. BECAUSE the Hon'ble High Court has failed to uphold the basic structure of the Constitution, particularly the principle of secularism, which mandates equal respect for all religions and protection of places of worship as they existed at the time of independence. The impugned judgement, by altering the religious character of the *Kamal Maula Mosque*, strikes at the very root of our Country's secular ethos, as affirmed in *S.R. Bommai v. Union of India, (1994) 3 SCC 1*.

G. BECAUSE the impugned judgment violates Article 14 by denying equal constitutional treatment to similarly situated competing worship claims and by judicially privileging one religious narrative over another without constitutionally permissible classification or objective criteria. The Hon'ble High Court accepted temple-side historical continuity, archaeological assertions and devotional claims as constitutionally legitimizing while treating Muslim worship practices carried on under State-recognized arrangements as subordinate, contingent or liable to displacement. Thus, such unequal constitutional solicitude violates the guarantee of equal protection and manifests arbitrariness in State action and judicial process.

H. BECAUSE the doctrine of equality under Article 14 prohibits arbitrariness and requires fairness, neutrality and equal treatment by constitutional institutions. The State neutrality toward religion forms part of the constitutional scheme and the State cannot identify itself with, favour or facilitate one religious community over another. The constitutional secularism, which forms part of the Basic Structure, obligates equal treatment toward all religions and forbids denominational preference by State institutions.

I. BECAUSE the impugned judgment violates Article 21 by impairing dignity, identity, security of religious existence and equal citizenship of the Petitioners through judicial delegitimization of historically recognized

worship practices without fair procedure, trial or evidentiary safeguards. The Article 21 protects not merely physical existence but dignity, identity, autonomy and meaningful participation in constitutional life. The impugned findings portraying one community's worship as historically illegitimate or subordinate and restructuring long-standing worship arrangements materially injure dignity and constitutional belonging.

J. BECAUSE Article 21 requires fairness in adjudicatory process by all Courts. The impugned judgment was rendered despite disputed facts, voluminous material, lack of evidentiary scrutiny, absence of expert cross-examination and extraordinary procedural haste, thereby violating substantive due process of law.

K. BECAUSE the impugned judgment, by disrupting a long-standing peaceful arrangement and creating a new point of conflict, undermines the constitutional duty of the State to maintain public order and promote communal harmony, thereby infringing upon the right to a peaceful existence guaranteed under Article 21.

L. BECAUSE the impugned judgment violates Articles 25 and 26 by materially impairing long-standing Muslim worship practices recognized under State-regulated arrangements and by replacing a regime of coexistence with one of judicially sanctioned religious primacy. The Article 25 guarantees freedom of conscience and right to profess and practice religion while Article 26 protects management of religious affairs,

subject only to public order, morality and health. The Long-standing Friday namaz and recognized religious practice acquired constitutional protection and could not be curtailed merely on the basis of disputed archaeology or competing devotional claims. The quashing of the 07.04.2003 ASI arrangement and declaration of temple character materially impair Petitioners' religious exercise and effectively subordinate their worship rights to another community's historical claim.

M.BECAUSE the impugned judgment, read holistically, violates the integrated constitutional scheme of Articles 14, 21, 25 and 26 by dismantling a regime of regulated coexistence, judicially privileging one competing religious claim, impairing minority worship rights, denying equal constitutional solicitude and doing so through a process lacking evidentiary fairness and constitutional neutrality. The Constitution guarantees coexistence, equal citizenship, dignity, fairness and equal religious liberty not judicial endorsement of exclusivist historical narratives carrying possessory and exclusionary consequences.

THE IMPUGNED JUDGMENT VIOLATES THE BASIC STRUCTURE OF THE CONSTITUTION BY UNDERMINING SECULARISM

N. BECAUSE the Secularism is a basic feature of the Constitution, as held by the Supreme Court in *S.R. Bommai v. Union of India*, (1994) 3 SCC 1. The Constitution Bench in the *Ayodhya judgment (M. Siddiq (D) Thr. LRs v. Mahant Suresh Das*, (2019) 18 SCC 1) explicitly linked the 1991 Act to

the principle of secularism, calling it a legislative affirmation of the State's duty to preserve all places of worship. By ignoring this authoritative interpretation, the Hon'ble High Court has violated the principle of judicial discipline under Article 141 of the Constitution. [See: *Kesavananda Bharati v. State of Kerala (1973 4 SCC 225)*].

O. BECAUSE the impugned judgment violates the Basic Structure of the Constitution by substantially departing from the constitutional principles of secularism, rule of law, neutrality, equality before law, constitutional fraternity, all of which constitute foundational features of the constitutional order incapable of erosion through judicial interpretation or adjudicatory excess. The impugned judgment, by declaring the disputed religious character of the *Bhojshala Kamal Maula Mosque Complex*, dismantling a long-standing regime of regulated coexistence and materially privileging one competing religious narrative over another, transgresses the constitutional requirement that State institutions remain religiously neutral and institutionally even-handed in disputes involving competing faith claims.

P. BECAUSE the constitutional doctrine of secularism under the Indian Constitution is not passive indifference but principled neutrality, equal respect and non-identification of the State with any particular faith tradition. By substantially accepting and legitimizing one community's historical, archaeological and theological narrative while weakening

constitutionally protected worship rights of another community, the impugned judgment erodes the secular constitutional balance and thereby offends a Basic Structure limitation recognized by this Hon'ble Court.

Q. BECAUSE the impugned judgment violates the Basic Structure principle of rule of law by effectively conferring substantive civil, religious and possessory consequences through writ proceedings without jurisdiction, trial, evidentiary safeguards or due process recognized by law. The Hon'ble High Court repeatedly observed that title was not being adjudicated and yet rendered a conclusive finding concerning religious character, historical legitimacy and practical primacy over the disputed site. It is submitted that such adjudication amounts to exercise of power beyond constitutionally permissible limits and undermines the rule of law, which requires disputes affecting civil and constitutional rights to be resolved according to established legal procedure and evidentiary standards.

R. BECAUSE the impugned judgment materially undermines the constitutional value of fraternity forming part of the constitutional structure by destabilizing a long-standing arrangement of peaceful coexistence and judicially legitimizing exclusivist historical claims carrying adverse consequences for one religious community.

S. BECAUSE the Hon'ble High Court's decision to alter the status of a centuries-old mosque based on a historical claim by one community directly attacks the secular fabric of the nation. It privileges one religion

over another and disrupts a state of peaceful co-existence that was in place for years.

MAINTAINABILITY AND ADMISSIBILITY OF THE PUBLIC INTEREST LITIGATION RELATED TO DETERMINATION OF RELIGIOUS CHARACTER OF BHOJSHALA KAMAL MAULA MOSQUE COMPLEX

T. BECAUSE the Hon’ble High Court erred in entertaining the original writ petitions as a Public Interest Litigation (PIL) when its primary objective was to alter the religious character of a place of worship, a matter explicitly barred by the Places of Worship (Special Provisions) Act, 1991. It is submitted that such a petition, seeking to disturb a settled religious status, cannot be deemed to be in public interest and ought to have been dismissed on the ground of maintainability.

U. BECAUSE the Hon’ble High Court gravely erred in entertaining and adjudicating a Public Interest Litigation seeking determination of the religious character, historical identity and competing worship rights concerning a disputed temple–mosque structure, despite settled constitutional jurisprudence that PIL jurisdiction is neither designed nor intended for adjudication of adversarial religious disputes involving competing civil, proprietary, denominational and constitutional claims. The writ petition, though couched in the language of “right to worship” and public interest, in substance sought declaration of temple character,

restoration of alleged Hindu religious primacy, restructuring of worship arrangements, quashing of Muslim prayer rights and consequential alteration of the legal and religious status of the disputed monument. Such reliefs are inherently adversarial, sectarian and exclusionary in character and therefore incapable of adjudication through the liberalized standing principles governing PIL jurisdiction.

V. BECAUSE public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often,

they are actuated by a desire to win notoriety or cheap popularity. [See: **Dr.**

B. Singh vs Union of India & Ors; 2004 (3) SCC 363].

W.In Black's Law Dictionary (6th Edition) meaning of 'public interest' is given as follows:

“Public interest-- Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government”.

X. The Advanced Law Lexicon has defined 'Public Interest Litigation' as under:-

"The expression 'PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected."

Y. This Hon'ble Court in **Subhash Kumar v. State of Bihar and Ors., 1991**

(1) SCC 598 it was held that public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity.

Personal interest cannot be imposed through the process of the Court in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their

fundamental rights on account of their incapacity, poverty or ignorance of law.

Z. BECAUSE the impugned writ proceedings were fundamentally non-maintainable in Public Interest Litigation jurisdiction inasmuch as the reliefs claimed by the writ petitioners were not directed toward vindication of a public cause, protection of disadvantaged groups or enforcement of constitutional accountability but were, in substance, sectarian, denominational and exclusionary in character seeking declaration of temple character, restoration of alleged temple rights, exclusion of Muslim worshippers, restructuring of access and conferment of exclusive religious primacy over a disputed religious structure. The liberal rules of standing evolved in PIL jurisprudence cannot be converted into a constitutional mechanism for vindication of competing proprietary and religious claims between communities over a disputed religious site. [See: *Guruvayur Devaswom Managing Commit. & Anr. v C.K. Rajan & Others*, 2003 (7) SCC 546].

AA. BECAUSE the Hon'ble High Court gravely erred in entertaining writ petitions seeking declaration of religious identity under the guise of "right to worship" despite admitted existence of deeply contested questions concerning title, possession, waqf status, historical identity, dedication, legal character, competing worship rights and possessory consequences. Such questions necessarily required adjudication by a competent civil court

upon pleadings, framing of issues, oral and documentary evidence, proof of historical material, expert examination and cross-examination and were wholly incapable of determination in summary writ proceedings under Article 226. [See: *Arya Vyas Sabha CTC. v. The Commissioner of Hindu Charitable and Religious institutions and Endowments, Hyderabad and another*, AIR 1976 SC 475].

BB. BECAUSE the Hon’ble High Court committed a serious jurisdictional error in permitting litigants to bypass ordinary civil remedies and evidentiary safeguards by clothing title-related and possessory disputes in the language of “**public interest**” and “**right to worship.**” The writ petitioners substantially sought reliefs including declaration of temple character, restoration of idols, quashing of Muslim worship arrangements, conferment of exclusive religious access and restructuring of management of the disputed site. These reliefs are declaratory, proprietary and exclusionary in nature and could not legally be entertained in PIL proceedings.

CC. BECAUSE the Hon’ble High Court failed to appreciate that a petition styled as a PIL ceases to retain its public character where the relief sought substantially advances the religious, denominational or ideological interests of one community against another. The proceedings before the Hon’ble High Court were adversarial in nature involving competing temple and mosque claims and therefore attracted strict scrutiny regarding

maintainability and could not be entertained under the relaxed standing principles applicable to public interest litigation.

DD. BECAUSE the Hon'ble High Court failed to appreciate that no private individual, trust, association or religiously affiliated body can maintain proceedings seeking declaration of exclusive rights over a disputed religious site in the absence of demonstrable legal standing. It is apt to mention that mere devotional affinity, ideological commitment, religious sentiment or historical belief cannot substitute the legal requirements of standing in disputes carrying serious civil and constitutional consequences.

EE. BECAUSE the Hon'ble High Court failed to insist upon strict compliance with mandatory disclosure requirements governing PIL jurisdiction, particularly where proceedings concerned a communally sensitive religious dispute. The petitioners were obligated to disclose with utmost candour their institutional affiliations, organizational objectives, representative authority, litigation history, funding sources, beneficial interests and relationship with any trusts, religious organizations or bodies supporting temple restoration claims. Thus, failure to undertake such scrutiny vitiates the exercise of PIL jurisdiction itself.

FF. BECAUSE the cumulative effect of the impugned judgment is to transform PIL jurisdiction into an alternate forum for adjudication of disputed religious property claims and conferment of de facto religious

primacy while bypassing the safeguards of civil adjudication. Such an approach, if sustained, would seriously undermine constitutional discipline governing judicial review and encourage litigants across the country to evade civil proceedings by reframing title-related disputes as “right to worship” petitions under Article 226.

DUBIOUS AND QUESTIONABLE LOCUS OF THE ORIGINAL WRIT PETITIONERS

GG. BECAUSE the Hon’ble High Court failed to decide the threshold issue of locus standi of the writ petitioners before entering into adjudication on merits. It is submitted that persons claiming to espouse the cause of temple restoration or asserting rights on behalf of an indeterminate body of devotees or the “Hindu community” could not maintain proceedings seeking sweeping declaratory reliefs absent proof of legal injury, representative authority, denominational standing or statutory entitlement to litigate on behalf of such community.

HH. In *State of Uttaranchal vs Balwant Singh Chaufal & Ors, 2010 (3) SCC 402*, this Hon’ble Court held as follow:

“In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives.

Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busy bodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations”.

II. BECAUSE the Hon’ble High Court failed to appreciate that the original writ petitioners lacked the necessary locus standi to seek a declaration and injunction that would directly impact the religious rights of the Muslim community and challenge a long-standing administrative arrangement. The issue involved a specific religious site with established usage, not a matter of general public grievance warranting PIL intervention.

JJ. In *Ashok Kumar Pandey vs. State of W.B.*, (2004) 3 SCC, this Hon’ble Court held as under:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before

we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration."

**PETITIONERS IN WRIT PETITION NO. 10497 OF 2022
[RECORDED IN IMPGUNED ORDER]**

KK. The credential of the Petitioners is reproduced as mentioned in Petition/

Impugned Order herein:

"1. The Petitioner No.1 is a registered Trust in the name and style —Hindu Front for Justice having Registration No.976/2021, Lucknow. The scope of working of the Trust is within whole of India and abroad. This petition is being filed by founding Trustee Ms. Ranjana Agnihotri to and on behalf of the Trust. The aim and object of the Trust is to abide and cherish the noble and great ideals enshrined in Vedas, Shastras, Upanishads, Ramayana and various Hindu scriptures and to achieve the goal of the Trust to approach the Court for redressal of grievances of the Hindu community. The Trust is committed for restoration of places of worship through procedure of law which were damaged/destroyed during pre- independence era. The Trust/office bearers have

knocked the doors of the Court espousing the cause of the members of the society. This case is one of the issues haunting the heart and mind of the members of the Trust and crores of Hindus in India and abroad. The trust has passed a resolution on 20.02.2022 to file the Writ Petition raising the issue of Bhojshala in the interest of the community and the Nation and they have authorized the founding trustee Ms. Ranjana Agnihotri to file this petition on behalf of the Trust. The copy of the Trust Deed registration No.976/18.12.2021 registered in the office of Sub-Registrar, Lucknow, U.P.

2. The Petitioner No.2 Ms. Ranjana Agnihotri is the founding Trustee of the Petitioner Trust. She is a practicing Advocate at Lucknow Bench of Allahabad High Court. She is a social worker as well. She has been an Advocate in the famous Ayodhya Case for Shri Ram Janmabhoomi. She is also actively involved for restoration of the religious and cultural places of Hindus which are pride for the country as well.

3. The Petitioner No.3 Ashish Goyal is the President of District Unit

Dhar of the Trust. He is a graduate in Science (Mathematics). He is engaged in business at District Dhar. He is also doing a number of social works. He is an active member of Bharatiya Janata Party. He is associated with a number of organisations namely, Akhil Bharatiya Vidyarthi Parishad, Hindu Jagran Manch, Vishwa Samvad Kendra, etc. He is actively working for the re-establishment of Pratima of Goddess Vagdevi at Bhojshala Temple.

4. The Petitioner No.4 Ashish Janak is having a degree of LLB. He is engaged in business. He is involved in doing work for public good and is a social worker. He is associated with Bharatiya Janata Yuva Morcha, Seva Bharti, Sahkaar Bharti, Farmers Union etc. He is active member of Bharatiya Janata Party.

5. The Petitioner No.5 Mohit Garg is having degree of LLM and has obtained a degree of MBA from United Kingdom. He is the Director of Betul Law College and Radha Krishan Degree College, Betul. He is associated with a number of social organizations and is actively involved in social service by providing education and financial assistance to the needy. He is actively associated with Bharatiya Janata Party.

6. The Petitioner No.6 Jitender Singh Vishen is an agriculturist and a social worker. He is founder trustee of

Vishwa Vedic Sanatan Sangh. He is committed to espouse the cause of cultural heritage of India and to work for securing the right to religion available to Hindus in Article 25 and 26 of the Constitution of India. He is involved in social service in a number of ways. He is working for inter caste marriages amongst Hindus and to prevent inter faith marriages. He is committed to work to eradicate the caste system | developing in India due to political reasons.

7. The Petitioner No.7 Sunil Saraswat is a journalist and a social worker. He had worked in Hindi Dainik Bhaskar. Since 2008 he is running his own printing press and is doing the business of constructing houses. He has been involved in number of agitations concerning the public cause. He is District Vice President of Bharatiya Janata Party District Ratlam.

PETITIONERS IN WRIT PETITION NO. 10484 OF 2022

“The Petitioner No.1 Kuldeep Tiwari is a teacher by profession and is a social worker. He is President of a society registered under Societies Registration Act under the name & style ‘Jan Udghosh Seva Sansthan’ (registration No.184/ 1-182156/ Lucknow). He is actively working against dowry and caste system. He is committed to work to preserve and protect the religious and cultural heritage of the country and also to make an effort to restore/renovate the temples and places of cultural heritage. The Petitioner is follower of Sanatan Dharma and is an idol worshipper. He is worshipper of Goddess Saraswati.

The Petitioner No.2 Dr. Har Prasad Tiwari- is a teacher by profession, Editor-in-chief Brahma Satta Patrika published from Jabalpur (M.P.) and a social worker. He is actively working that the Government of India should maintain the National Register of Citizens in the interest of unity and integrity of the nation. He is fighting for the liberation of Bhojshala and is filing the petition asserting his rights and rights of his community to worship within the Bhojshala complex and to restore the glory of the past. He is worshipper of Goddess Saraswati”.

LL. BECAUSE the Hon’ble High Court gravely erred in entertaining the writ petitions without conducting threshold scrutiny of maintainability,

locus standi, credentials and bona fides of the petitioners, despite the pleadings themselves disclosing circumstances that demanded heightened judicial caution under settled PIL jurisprudence. The lead petitioner, namely Hindu Front for Justice, is admittedly a trust registered only on 18.12.2021/05.12.2021 (Registration No.976/2021, Lucknow), barely a few months before institution of the present writ petition, and expressly pleaded that one of its central objectives was “*restoration of places of worship*” allegedly damaged or destroyed in the pre-independence period and espousal of grievances of the “Hindu community”. Such pleadings themselves disclosed a pre-determined denominational and restorationist agenda directly aligned with the relief sought in the writ petition, namely declaration of temple character, expansion of Hindu worship rights and displacement of Muslim worship arrangements.

MM. BECAUSE the Hon’ble High Court failed to appreciate that the timing of registration of the trust, proximity to filing of proceedings and absence of any material demonstrating prior social work, public service, charitable engagement or genuine public interest activity raised serious questions concerning whether the trust was constituted substantially for prosecuting the present litigation and despite specific objections, no documentary material evidencing prior public causes, institutional work or representative standing was produced.

NN. **BECAUSE** the Hon'ble High Court failed to scrutinize the declared objectives of the petitioner trust which themselves disclosed a sectarian, ideological and constitutionally questionable character inconsistent with genuine public interest litigation. The Trust Deed expressly records objectives including:

- *establishing “Bharat as a Vedic Sanatan Hindu Nation”;*
- *preventing Hindu men and women from marrying followers of other faiths;*
- *ensuring no Hindu converts to any non-Hindu religion;*
- *securing electoral and institutional advancement of Hindu candidates;*
- *restoration of places of worship allegedly damaged in pre-independence times.*

OO. **BECAUSE** the objectives reveal that the trust was not a neutral public-spirited institution seeking vindication of constitutional values but an ideologically committed organization pursuing denominational and sectarian aims. In a constitution committed to secularism and equal citizenship, an organization expressly committed to establishment of a **“Hindu Nation”** and advancement of one religious constituency required the highest degree of scrutiny before being permitted to invoke PIL jurisdiction in proceedings directly affecting another religious community's constitutionally protected worship rights. The Hon'ble High Court failed to appreciate that the stated objective of transforming “Bharat” into a “*Vedic Sanatan Hindu Nation*” prima facie runs contrary to the

secular constitutional identity of India recognized as part of the Basic Structure and therefore rendered strict scrutiny of bona fides indispensable.

PP. BECAUSE the writ petitioners failed to satisfy mandatory disclosure obligations applicable to PIL proceedings and the Hon'ble High Court wholly failed to examine the same. No material was produced demonstrating:

- (a) prior work of the trust;*
- (b) representative authority to espouse rights of “crores of Hindus”;*
- (c) authorization from any legally recognized religious denomination;*
- (d) documentary proof of institutional presence or functioning at Dhar;*
- (e) proof of constituency represented;*
- (f) funding structure and institutional activity;*
- (g) material establishing a direct relationship with worship at the disputed site.*

The assertion that the trust represented grievances of the “**Hindu community**” was accepted without inquiry despite settled law requiring strict scrutiny of credentials in PIL matters.

QQ. BECAUSE among multiple petitioners, only one petitioner was stated to be from District Dhar and even such petitioner failed to place any document establishing appointment, office-bearing position, authorization or legally cognizable relationship with the petitioner trust or any legal entitlement to represent devotees at Bhojshala. The remaining

petitioners were individuals from outside the district, politically affiliated persons, social activists or persons professing ideological commitment to temple restoration causes. The mere religious sentiment, ideological affinity or political association cannot constitute legal standing in proceedings carrying serious civil and constitutional consequences affecting another religious community. The Hon'ble High Court failed to appreciate that a person cannot seek sweeping declaratory and exclusionary relief concerning a disputed religious structure merely by professing devotional attachment or ideological concern. [See: *Surendra Pratap Singhv. State of Madhya Pradesh and others, AIR 2018 Madhya Pradesh 186*]

RR. BECAUSE the pleadings themselves disclosed overt political affiliations and ideological alignment of several petitioners, including association with political parties and organizations committed related to Hindu religion and religious restoration causes, thereby requiring heightened judicial caution regarding bona fides and motive. The writ petitioners included persons associated with political organizations, religious groups and temple restoration campaigns, yet the Hon'ble High Court failed to determine whether the proceedings constituted sectarian litigation disguised as PIL.

SS. BECAUSE the Hon'ble High Court failed to apply settled PIL jurisprudence mandating rigorous scrutiny of credentials, bona fides and

locus before entertaining proceedings affecting communally sensitive constitutional questions. The impugned judgment proceeds as though any person professing religious belief, ideological commitment or emotional concern may invoke Article 226 to seek declaration of temple character and exclusionary consequences affecting another community. [See: *Ashok Kumar Pandey vs The State of West Bengal, 2004 (3) SCC 349*].

THE HON'BLE HIGH COURT ERRED IN LAW IN UNDERTAKING DETERMINATION OF THE "RELIGIOUS CHARACTER", "TRUE IDENTITY" AND "HISTORICAL NATURE" OF THE DISPUTED BHOJSHALA-KAMAL MAULA MOSQUE COMPLEX IN EXERCISE OF WRIT JURISDICTION UNDER ARTICLE 226

TT. BECAUSE the Hon'ble High Court, in exercising its extraordinary writ jurisdiction under Article 226 of the Constitution, impermissibly delved into highly contentious and complex questions of fact, historical evidence, and archaeological interpretations to determine the "original" character of the monument. It is submitted that such factual inquiry, requiring detailed examination of evidence and expert testimonies, is beyond the scope of summary proceedings in writ jurisdiction and should have been relegated to a civil court. [See: *D.L.F Housing Construction (P) LTD v. Delhi Municipal Corpn. and others (1976) 3 SCC 160; Municipal Corporation, Aurangabad Through its Commissioner v. State of Maharashtra and Another, (2015) 16 SCC 689; P.R. Murlidharanand Others v. Swami*

Dharmanand Theertha Padar and Others, (2006).4 SCC 501; State of Rajasthan v. Bhawani Singh and: Others reported in 1993 Supp (1) SCC 306].

UU. **BECAUSE** the impugned proceedings constituted an impermissible attempt to secure through writ jurisdiction what could not legally be achieved through ordinary civil litigation. The original Petitioners by seeking determination of temple character, quashing of Muslim worship arrangements and conferment of religious primacy without institution of a civil suit, the writ petitioners effectively attempted to evade the procedural discipline of civil law, including pleadings, limitation, proof, evidence, cross-examination and burden of proof.[See: *Union of India v. Ghaus, AIR 1961 SC 1526; Bokaro v. State of Bihar AIR 1963 SC 516, Gunovant v. Municipal Committee AIR 1976 SC 802, Indu Bhushan V. State of U.P. (1979) U.J.S.C. 620]*.

VV. **BECAUSE** the Hon'ble High Court gravely erred in law in entertaining and adjudicating the writ petitions despite pendency of *Civil Suit RCS (A) No.73/2026 titled Ayaz & Ors. v. Union of India & Ors.* instituted before the Court of Civil Judge Senior Division, Dhar, Madhya Pradesh, by the Petitioners herein, involving substantially similar and overlapping issues concerning religious character, worship rights, legal status, competing claims, access and consequential reliefs concerning the *Bhojshala–Kamal Maula Mosque Complex*. The pendency of the said suit clearly

demonstrated that such issues required adjudication through ordinary civil jurisdiction and not writ proceedings. [See: *Amar Singh v. State of Rajasthan AIR 1955 SC 504; N.S.E. Works v. Union of India AIR 1981 SC 124*].

WW. BECAUSE the Hon'ble High Court fundamentally misconceived the scope of Article 226 jurisdiction by converting constitutional judicial review into a substitute for full-fledged civil adjudication. The writ jurisdiction exists for enforcement of legal rights and judicial review of executive or statutory action and is not designed to adjudicate intensely disputed historical, theological, archaeological and proprietary controversies involving competing religious communities. [See: *Subhash Jain v. Rajeshwari Shivam reported in 2021 (20) SCC 454*].

XX. BECAUSE the Hon'ble High Court committed a manifest jurisdictional error in holding that the proceedings merely concerned “right to worship” while simultaneously rendering findings concerning temple character, historical destruction, mosque legitimacy, original structure, religious identity and competing claims of worship. Once the Court entered into inquiry concerning the “true nature” or “real character” of the disputed monument, the proceedings necessarily transcended regulation of worship and entered the field of civil adjudication concerning title-related rights.

YY. BECAUSE the Hon'ble High Court, while formally disclaiming adjudication of title, effectively rendered findings amounting to indirect

declaration of the disputed structure as a Hindu temple and substantially delegitimized competing Muslim worship claims. The repeated reliance upon alleged temple remains, temple destruction narratives, archaeological findings, historical continuity of Hindu worship and recommendations concerning temple restoration unmistakably amount in substance to adjudication of religious identity carrying direct proprietary and possessory consequences.

ZZ. BECAUSE the contemporaneous revenue records, Government records, official entries and other documentary material available on record consistently reflect and recognize the disputed property as “**Kamal Maula Mosque**” and not as a temple. The status and description of the property in official governmental documentation, including revenue entries, materially support the Petitioners’ case that the site stood recognized and administered as a mosque and/or a site of Muslim worship. These documents, at the very least, raise serious and disputed questions concerning title, legal character, possession, religious identity and historical usage, thereby rendering summary adjudication under Article 226 of the Constitution wholly impermissible. [See: *Jai Singh v. Union of India* AIR 1977 SC 898; *Union of India v. Verma*, AIR 1957 SC 882; *Burmah Construction Co. v. State of Orissa* AIR 1962 SC 1320; *State of Rajasthan v. Bhawani* (1993) Supp. (I) SCC 306].

AAA. BECAUSE a plain and meaningful reading of the reliefs claimed in the writ petitions demonstrates that the petitioners therein, though couching their case in the language of “right to worship”, in substance sought reliefs having direct proprietary, declaratory and possessory consequences, including alteration of the legal and religious status of the disputed property, restructuring of worship arrangements, extinguishment of competing worship claims and effective change in control and incidents of ownership over the disputed structure. It is a matter of record that such reliefs are, in substance and effect, reliefs akin to declaration of title, possessory entitlement, permanent injunction and restructuring of legal rights over immovable property.

BBB. BECAUSE it is a settled principle of constitutional and civil jurisprudence that reliefs involving declaration of title, adjudication of ownership, possessory rights, competing claims over immovable property, permanent injunction and determination of disputed religious character cannot be adjudicated in proceedings under Article 226 of the Constitution, particularly where the controversy necessitates exhaustive appreciation of documentary and oral evidence, examination of historical and revenue records, adjudication of rival claims, proof of historical usage, expert testimony and detailed evidentiary scrutiny. Such disputes necessarily fall within the domain of competent civil courts exercising ordinary jurisdiction upon pleadings, framing of issues, production of evidence,

examination and cross-examination of witnesses and adjudication in accordance with settled evidentiary standards.

CCC. BECAUSE in the present case, the writ petition itself disclosed serious disputes concerning ownership, title, revenue status, religious character, historical usage, waqf status and competing rights of worship, all of which required detailed trial and evidentiary adjudication. The Hon'ble High Court therefore acted beyond jurisdiction in entering upon determination of issues which, by their very nature, were incapable of adjudication in writ proceedings under Article 226 of the Constitution of India.

THE HIGH COURT'S JUDGMENT IS A NULLITY FOR VIOLATING THE EXPRESS JURISDICTIONAL BAR OF THE PLACES OF WORSHIP ACT, 1991

DDD. BECAUSE the impugned judgment is patently illegal and without jurisdiction as it has been passed in flagrant violation of the express prohibitions contained in Sections 3 and 4 of the Places of Worship (Special Provisions) Act, 1991. The High Court has fundamentally misconstrued the scope and purpose of the Act, which was to bar the jurisdiction of courts from entertaining any suit or proceeding which seeks to alter the religious character of a place of worship from what it was on 15.08.1947.

EEE. BECAUSE the Hon'ble High Court acted without jurisdiction by entertaining a writ petition that sought to alter the religious character of a place of worship, a proceeding that is expressly and absolutely barred by

the Places of Worship (Special Provisions) Act, 1991. The resultant judgment is, therefore, void ab initio. Section 3 of the Places of Worship (Special Provisions) Act, 1991, bars the conversion of any place of worship. Section 4(1) declares that the religious character of a place of worship as it existed on August 15, 1947, shall remain the same. Section 4(2) mandates the abatement of any pending suit or legal proceeding concerning the conversion of the religious character of a place of worship and bars the institution of any new proceedings.

FFF. BECAUSE the Hon'ble High Court has acted in defiance of the binding precedent laid down by the Constitution Bench of this Hon'ble Court in the Ayodhya judgment *M. Siddiq (D) Thr. LRs v. Mahant Suresh Das, (2019) 18 SCC 1*. This Hon'ble Court had declared that the 1991 Act imposes a non-derogable obligation towards enforcing our commitment to secularism and that the law is a legislative intervention which preserves non-retrogression as an essential feature of our secular values. The impugned judgment completely negates this constitutional mandate.

GGG. BECAUSE the Hon'ble High Court has committed a grave jurisdictional error by undertaking an exercise to determine the "original" religious character of the monument, an inquiry which is precisely what the 1991 Act was enacted to prevent. The legislative intent was to put a final stop to historical claims and counter-claims that threaten social harmony. The crucial and only relevant fact was the religious character of the site as it

existed on 15.08.1947, which undisputedly included its use as the Kamal Maula Mosque.

HHH. BECAUSE the Hon'ble High Court erred in law by granting reliefs that are tantamount to converting a place of worship, a relief which is expressly barred by Section 4(2) of the Places of Worship Act, 1991, which mandates the abatement of any pending suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship.

III. BECAUSE the original writ petitions (No. 10497 and 10484 of 2022) were filed with the explicit aim of converting the Kamal Maula Mosque, a place where Muslims have offered Namaz for centuries and which was in existence on August 15, 1947, into a temple. This is precisely the category of legal proceeding that the 1991 Act was designed to prohibit. The High Court was statutorily obligated to dismiss the petitions at the threshold rather than adjudicating on their merits.

JJJ. BECAUSE the Hon'ble High Court has wrongly applied the exception provided under Section 4(3)(a) of the Places of Worship (Special Provisions) Act, 1991. It is submitted that the Kamal Maula Mosque is indeed an ancient and historical monument covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the exception in Section 4(3)(a) merely clarifies that the 1991 Act does not interfere with the management, protection, or maintenance of such monuments by the ASI. It does not, however, grant any court the power to

alter the religious character of such a monument as it existed on 15.08.1947, which is the core mandate of Sections 3 and 4(1) of the 1991 Act. The High Court's interpretation that Section 4(3)(a) allows for a re-determination of religious character is a fundamental misreading of the statute and defeats its very purpose.

KKK. BECAUSE the Hon'ble High Court erred in law by holding that the exception for ancient monuments under Section 4(3)(a) of the 1991 Act allows for the alteration of a monument's religious character. This interpretation is perverse and defeats the entire object of the Act. Section 4(3)(a) of the Places of Worship (Special Provisions) Act, 1991, read with the Ancient Monuments and Archaeological Sites and Remains Act, 1958.(view judgement) The exception merely clarifies that the 1991 Act does not affect the ASI's powers of protection, preservation, and maintenance; it does not override the primary legislative mandate in Sections 3 and 4(1) to freeze the religious character of the monument as it existed on 15.08.1947.

LLL. BECAUSE the Kamal Maula Mosque is an ancient monument protected by the ASI. However, this status only pertains to its upkeep and management. The High Court incorrectly used this exception as a gateway to conduct a prohibited inquiry into the monument's pre-1947 character, thereby creating a loophole that nullifies the core purpose of the statute.

[See: *Rajeev Mankotia v Secretary to the President of India and others*
AIR 1997 SC 2766]

MISAPPLICATION AND SELECTIVE RELIANCE ON SIDDIQ (D) THR. LRS V. MAHANT SURESH DAS, (2019) 18 SCC 1 (AYODHYA JUDGMENT)

MMM. BECAUSE the Hon’ble High Court gravely erred in mechanically invoking and substantially relying upon principles emerging from the *Ayodhya judgment* despite the entirely distinct constitutional, factual and procedural matrix governing the present proceedings. The State of Madhya Pradesh and supporting parties repeatedly sought to analogize the present dispute with Ayodhya and the impugned judgment substantially adopts such reasoning. The Hon’ble High Court failed to appreciate that the Ayodhya litigation arose from fully contested title suits involving exhaustive pleadings, oral evidence, cross-examination, documentary proof and decades-long civil adjudication. In the present case, no title suit has been tried, no evidence recorded and no adversarial evidentiary safeguards followed.

NNN. BECAUSE the Hon’ble High Court ignored the foundational principle reiterated in Ayodhya Judgment that legal rights must ultimately be adjudicated upon legal evidence and settled principles of law and not merely upon faith, historical sentiment or grievance. Even in Ayodhya case, this Hon’ble Court repeatedly clarified that belief and faith alone do not

establish legal entitlement. In the present case, however, disputed historical narratives, continuity of belief and archaeological conjecture were elevated into determinative constitutional conclusions without civil adjudication.

OOO. BECAUSE the Hon’ble High Court failed to appreciate that even in **Ayodhya case** archaeological findings were subjected to extensive evidentiary scrutiny, challenge, expert testimony and adversarial examination over several years. In the present case, however, the ASI survey was relied upon in substance without cross-examination, proof of methodology, rebuttal expert evidence or adversarial evidentiary testing. The High Court therefore selectively borrowed temple-side reasoning from Ayodhya while abandoning its evidentiary discipline.

PPP. BECAUSE the Hon’ble High Court fundamentally ignored the critical distinction that Ayodhya involved adjudication of title suits under ordinary civil jurisdiction whereas the present proceedings arise from PILs and writ petitions ostensibly concerning *“right to worship.”* Despite this distinction, the Hon’ble Court transformed Article 226 proceedings into a constitutional substitute for title adjudication and historical inquiry, thereby bypassing safeguards inherent in civil adjudication.

**ERRONEOUS INVALIDATION OF THE 1935 AILAN:
MISAPPLICATION OF ARTICLES 13, 372 & 395 OF THE
CONSTITUTION**

QQQ. BECAUSE the Hon'ble High Court gravely erred in law in holding that the *Ailan* dated 24.08.1935 issued by the Dhar State recognizing the disputed site as Kamal Maula Mosque lacked legal validity and stood constitutionally unenforceable by reason of Articles 13 and 372 of the Constitution of India. The impugned reasoning suffers from patent constitutional and jurisprudential error inasmuch as it fundamentally misunderstands the operation of constitutional continuity provisions governing pre-Constitution laws, orders, usages and executive arrangements.

RRR. BECAUSE the Hon'ble High Court proceeded on an erroneous premise that the *Ailan* dated 24.08.1935 was incapable of surviving constitutional transition because the Government of India Act, 1935 had not yet come into force and because the ruler of Dhar State allegedly lacked competence once the monument stood protected under the Ancient Monuments Preservation Act, 1904. The legal validity of a pre-Constitution instrument issued by a princely State does not depend upon the commencement of the Government of India Act, 1935, particularly where the instrument emanated from the sovereign authority governing the princely territory and continued to regulate local rights, worship and administration. [See: *The Edward Mills Co. Ltd., Beawar and Ors. Vs. The State of Ajmer and Anr., 1955 SCR (1) 735*].

SSS. BECAUSE the Hon'ble High Court further gravely misdirected itself in invoking Article 13 to invalidate the *Ailan*. Article 13 operates against laws inconsistent with Fundamental Rights after commencement of the Constitution and cannot be invoked to retrospectively extinguish a pre-existing religious or administrative arrangement merely because a constitutional court disagrees with its historical basis. The *Ailan* recognizing mosque usage and regulating worship is not inconsistent with Articles 14, 21, 25 or 26; rather, it advances constitutional protection of religious practice and equal treatment by recognizing an existing place of worship and associated religious rights. The Hon'ble High Court failed to identify any specific Fundamental Right violated by continuation of the *Ailan* and instead treated Article 13 as a generalized power of historical invalidation an approach wholly alien to constitutional doctrine.

TTT. BECAUSE the impugned judgment ignores the plain constitutional mandate of Article 372, which expressly provides for continuance in force of all laws in force immediately before commencement of the Constitution until altered, repealed or amended by competent authority. The expression “**laws in force**” under Article 372 has consistently received broad and purposive interpretation and includes pre-existing legal instruments, notifications, regulations, executive arrangements and local governance measures having normative operation within former princely territories. The *Ailan* dated 24.08.1935, which governed recognition and regulation of

worship at the disputed site, therefore continued to survive unless expressly superseded or rendered unconstitutional by direct inconsistency with Fundamental Rights neither of which has been demonstrated.

UUU. BECAUSE the Hon’ble High Court further failed to appreciate the effect of Article 395, which repealed the Government of India Act, 1935 and Indian Independence Act, 1947 but did not extinguish existing municipal laws, administrative instruments, local arrangements or rights preserved under Article 372.

VVV. BECAUSE the subsequent historical and governmental conduct unmistakably demonstrates continued legal recognition of the *Ailan* and mosque-related religious rights, including: (i) continued recognition of Friday namaz and Muslim worship; (ii) State and ASI arrangements regulating mosque usage; (iii) official nomenclature of “Bhojshala and Kamal Maula Mosque” in notifications and records; and (iv) administrative continuance of shared worship arrangements for decades and such uninterrupted official recognition strongly reinforces continuity and legal acceptance of the 1935 arrangement.

FAILURE TO CONSIDER CONTINUING WAQF STATUS, STATUTORY FINALITY UNDER WAQF LAW & LEGAL BAR

WWW. BECAUSE the Hon’ble High Court gravely erred in law in failing to appreciate that the disputed property, namely *Kamal Maula Mosque/Jama Masjid*, constituted a permanent and irrevocable Waqf under Muslim law

and stood continuously recognized as a religious endowment dedicated for mosque purposes, thereby attracting the statutory scheme governing Waqf properties and excluding collateral adjudication of its religious and legal status through writ proceedings.

XXX. BECAUSE under settled principles of Mohammedan law, once a property is validly dedicated as Waqf for religious, pious or charitable purposes, ownership permanently vests in Almighty God and the property ceases to remain capable of secular appropriation or ordinary proprietary treatment. The principle “*once a Waqf, always a Waqf*” has consistently governed Islamic endowments and has repeatedly been recognized in Indian jurisprudence.

YYY. BECAUSE the Hon’ble High Court failed to appreciate that the disputed structure had continuously functioned as *Kamal Maula Mosque/Jama Masjid* for centuries and was historically recognized as such, including through State notifications, official nomenclature, the 1935 *Ailan*, continued Friday namaz, mosque inscriptions and subsequent Waqf recognition. The legal consequence under Muslim law remained that once permanently dedicated and used as mosque property, the endowment acquired irrevocable Waqf character incapable of extinguishment except in accordance with law.

ZZZ. BECAUSE the statutory framework governing Waqf properties materially reinforces continuity and legal recognition of such status. The Mussalman

Waqf Validating Act, 1913, Mussalman Waqf Act, 1923, Mussalman Waqf Validating Act, 1930, followed by the Waqf Act, 1954 and presently the Waqf Act, 1995, recognized and regulated Muslim endowments and imposed statutory obligations for survey, notification and administration of Waqf properties.

AAAA. BECAUSE under sections 4 and 5 of the Waqf Act, 1954 (substantially continued in the Waqf Act, 1995), a statutory survey of Waqf was required and publication of notified Waqf properties in the Official Gazette followed upon such survey. The legislative scheme confers legal significance and presumptive validity upon such notified status. The section 6 of the Waqf Act, 1954 (and Section 6 of the Waqf Act, 1995) further provides a specific adjudicatory mechanism for disputes regarding whether a property specified as Waqf in the published list is or is not Waqf property, requiring such challenge to be instituted before the competent forum within the prescribed statutory framework. The existence of a special statutory mechanism excludes collateral adjudication of Waqf status through generalized constitutional proceedings.

BBBB. BECAUSE the Hon'ble High Court therefore gravely erred in indirectly negating mosque and Waqf character by declaring the religious character of the disputed site to be a Bhojshala/temple while entirely bypassing the statutory consequences flowing from notified Waqf status and without recourse to the adjudicatory mechanism prescribed under Section 6. A writ

court exercising jurisdiction under Article 226 could not, in substance, nullify or disregard notified Waqf status through collateral reasoning founded upon disputed archaeological material and historical reconstruction.

CCCC. BECAUSE the Hon'ble High Court failed to appreciate that protection of the monument under the Ancient Monuments Preservation Act, 1904 and later under conservation statutes was regulatory and preservation in character and never divested ownership, extinguished Waqf status or displaced mosque-related legal rights. The archaeological conservation cannot legally erase or supersede religious dedication recognized under substantive Waqf law. Thus, the impugned judgment therefore stands vitiated by failure to consider the statutory finality, legal consequences and jurisdictional bar embedded in the Waqf enactments and by impermissibly undertaking a collateral adjudication of Waqf character contrary to Sections 4, 5 and 6 of the Waqf statutory framework.

BAR OF RES JUDICATA, CONSTRUCTIVE RES JUDICATA & FINALITY OF LITIGATION

DDDD. BECAUSE the impugned writ proceedings were barred by the principles of *res judicata*, constructive *res judicata* and finality of litigation inasmuch as the very order dated 07.04.2003 passed by the Director, Archaeological Survey of India, governing worship arrangements and access at the Bhojshala–Kamal Maula Mosque Complex, had already been subjected to

judicial scrutiny before the Hon'ble High Court of Madhya Pradesh in *W.P. No.4216/2003 (Quazi Zakaullah & Ors. v. State of M.P. & Ors.)*, wherein the challenge stood rejected by a detailed and reasoned judgment dated 18.09.2003. It was held:

“34. As none of the breach of the fundamental right under Article 25 of the Constitution of India has been established as both the communities have been offering their prayers for the last 50 years and rights of the Muslims have not been curtailed. It is not this Court to deny right to the Hindu community by giving a finding that the structure to be a mosque in a writ petition which is exactly the averments made in the writ petition that structure is a Kamal Maula's Mosque, hence, the character of monument is going to be changed if Hindus are allowed entry on Tuesday. When Hindus are performing Pooja/celebrating for the last 50 years on Basant Panchami day, in my opinion, structure is not going to be changed by regulated entry of Hindus on Tuesday. Even otherwise structure is a monument under the Act of 1958 and is property of the Govt. of India which has not been disputed. Its “character” has been questioned; thus, it is not for this Court to determine the dispute questions of fact in order to give a finding as to character of stricter that structure is a mosque. Consequently, Hindus have no right to offer the prayer in the structure, that is the function of a Civil Court not of the writ Court in a writ petition. The determination of the question which community has the exclusive right. It is the Muslims community which has the exclusive right or the Hindu community, when the same depends upon investigation of complicated questions of act on taking evidence, Court may not enter into the question of facts in a writ petition even for enforcement of fundamental right...

36. ...In my opinion, it is not for a writ court to determine whether structure is a temple or a mosque or educational institution. It is for the civil Court to determine this fact and in my opinion this court cannot quash the condition no. 3 until and unless this court finds on facts that structure is a mosque and as claimed by Hindus is not a Bhojshala a temple which required investigation into evidence, historical facts...

41. In the instant case rights of Muslim community have not been infringed in any manner, they are allowed to offer the prayer as before on Fridays and this Court cannot determine the character of the monument as "mosque" as Hindus have also been performing Pooja on Basant Panchami day for the last more than 50 years, right from beginning there was a dispute as to monument being "Bhojshala", an educational institution, temple of Sarawati or mosque of "Kamal Maula's" which is a matter of history, Structure was in ruinous condition for 193 year still 1925 and was not used for any religious oblation for 193 years and it has been recorded as Bhojshala and Kamal Maulas Mosque and is being used by both communities, thus, it is not for this Court to adjudicate on the question of fact and to declare or treat it as a mosque and to give the exclusive right to the Muslims in a writ petition or to Hindus it being Bhojshala a temple of Maa Saraswati and Educational INSTITUTION. Particularly when both the communities have agreed to the recourse of entry on Tuesday of Hindu, agreement P/38 was entered into in 1995, petitioner Qazi Zakaullah is also one of the signatory to the agreement beside other eminent persons of Dhar.

45. Thus, in my opinion writ petition is not the appropriate remedy to examine the fact that Bhojshala and Kamal Maula's Mosque is exclusively the Kamal Maula's Mosque and only Muslim community has the right not the Hindu community and consequently it cannot be held that condition no.3 in order P/II is bad in law and unconstitutional and change character of monument. For seeking such a relief 'and consequent

quashment of the conditions and for restraining entry of the Hindu community as mentioned in order P/1 dated 07.04.2003 investigation has to be made in properly constituted civil suit not in writ petition and nothing observed in this writ petition and finding given shall come in the way of petitioner to establish their exclusive rights over the monument which is owned by the Government of India. This court has made the observations or findings only with a view to examine whether interference is required to be made in the writ petition or the civil suit is the remedy and no observations or finding recorded in this order shall come in the way of petitioner or any other person of either of the community to establish their rights in a Civil Court."

EEEE. The issues concerning regulation of worship, access, competing claims and legality of the arrangement had thus already attained judicial determination and could not be indirectly reopened through fresh writ proceedings framed in altered language of "right to worship" or "religious character". It is further material that against the judgment dated 18.09.2003, ***Writ Appeal No.784/2006*** remains pending before the Hon'ble High Court at Jabalpur and admittedly no stay of operation of the judgment dated 18.09.2003 has been granted. In absence of any stay, the judgment in ***W.P. No.4216/2003*** continued to operate and bind the field and could not be rendered nugatory through collateral writ proceedings before another Bench.

FFFF. BECAUSE similar issues concerning the disputed structure and worship arrangements had also been considered in ***W.P. No.1295/1997 (Vimal Kumar v. State of M.P. & Ors.)***, thereby demonstrating repeated judicial engagement and finality concerning the underlying controversy. The

Hon'ble High Court failed to appreciate that successive litigation framed through modified prayers or altered constitutional language cannot defeat settled principles of finality where the underlying controversy, subject matter and legal consequences substantially overlap.

GGGG. BECAUSE the impugned judgment, by reopening settled issues concerning worship arrangements and legality of the 07.04.2003 ASI order despite prior adjudication attaining operative finality, violates settled principles of judicial discipline, certainty in law and finality of litigation and therefore stands vitiated. [See: *M. Nagabushana v. State of Karnataka and others*, (2011) 3 SCC 408; *Subramanyam Swami v. State of Tamil Nadu*, (2014) 5 SCC 75].

ISSUES RELATED TO ASI SURVEY REPORT

HHHH. BECAUSE the impugned judgment suffers from manifest perversity, selective appreciation of material and constitutional non-neutrality inasmuch as, despite the ASI survey material and contemporaneous records themselves reflecting substantial evidence of Muslim religious presence, mosque usage, Islamic inscriptions and institutional recognition of the site as “Kamal Maula Mosque”, the Hon'ble High Court proceeded to declare the religious character of the disputed area as a Bhojshala/temple, while selectively elevating one category of archaeological material and disregarding equally material evidence pointing toward Islamic religious continuity and mosque identity.

III. BECAUSE the ASI material, as recorded and summarized in the impugned judgment, itself documents the existence of Arabic and Persian inscriptions associated with Islamic religious practice and mosque usage, including references to Islamic creed, invocations, attributes of God, Persian religious texts and inscriptions connected with the Kamal Maula Mosque and Tomb. The impugned judgment records that 56 Arabic and Persian inscriptions and 43 ink-written inscriptions were studied, several containing Islamic religious expressions and devotional formulations, thereby evidencing historical Islamic occupation, religious usage and continuity at the disputed site. Such material was neither incidental nor extraneous but formed part of the very archaeological corpus relied upon by the Court.

JJJJ. BECAUSE the material referred to in the impugned judgment also records a Persian inscription referring to construction of the mosque during the Khilji period, and acknowledges that the monument continued to be treated and protected under the nomenclature “**Bhojshala and Kamal Maula Mosque**”, thereby reflecting long-standing institutional and archaeological recognition of mosque identity and Muslim association with the structure. The Court could not selectively treat temple-related inscriptions or sculptural material as probative while simultaneously discounting Islamic inscriptions and mosque-related epigraphic evidence without furnishing any principled basis.

KKKK.BECAUSE the earliest archaeological and documentary references, as noticed in the impugned judgment itself, also refer to architectural features associated with mosque usage, including a mihrab, pulpit, courtyard configuration and structural features ordinarily associated with congregational Islamic prayer spaces, and record that the structure was described historically as Kamal Maula Masjid. The existence of such features, particularly a mihrab being an architectural element specifically connected with Islamic worship and qibla orientation constituted material evidence of mosque usage and Muslim religious association, which the Hon'ble High Court failed to consider in a fair and balanced manner.

LLLL.BECAUSE the Hon'ble High Court adopted a constitutionally impermissible and evidentially selective methodology whereby temple iconography, sculptural remnants and reused architectural fragments were treated as determinative of present-day religious character, while Islamic inscriptions, mosque architectural indicators, Muslim worship continuity, ASI nomenclature, mosque notifications, waqf references and centuries of recognized namaz were either minimized or insufficiently weighed. Such selective evidentiary treatment renders the impugned findings arbitrary, internally inconsistent and violative of constitutional neutrality expected of courts in communally sensitive disputes.

MMMM.BECAUSE the Hon'ble High Court gravely erred in law in treating the ASI survey report as substantive and determinative material for

adjudicating disputed constitutional, civil and religious claims in writ proceedings despite absence of proof in accordance with law. The ASI report, at the highest, constitutes an expert opinion or investigative material incapable of attaining conclusive evidentiary status unless subjected to judicial scrutiny through examination of authors, challenge to methodology, testing of conclusions and adversarial adjudication. Reliance upon such untested material to determine issues affecting religious freedom and communal relations is contrary to settled principles governing proof and procedural fairness.

NNNN. BECAUSE the Hon'ble High Court failed to appreciate that the ASI survey was not conducted within a full evidentiary trial governed by the Code of Civil Procedure and Indian Evidence Act and therefore could not substitute adjudication by a competent civil court. No issues were framed, no evidentiary burden was determined, no witnesses were examined and no procedural safeguards ordinarily applicable to determination of disputed civil and religious rights were followed.

OOOO. BECAUSE the Hon'ble High Court committed a manifest error in elevating archaeological inference into judicial proof of religious identity and constitutional entitlement. The existence of archaeological layers, reused structural material, inscriptions or earlier architectural phases does not by itself legally establish exclusive temple character nor extinguish subsequent religious usage developed over centuries. Archaeological

interpretation cannot automatically determine legal rights under Articles 25 and 26 of the Constitution.

PPPP. BECAUSE the Hon’ble High Court erred in law in relying upon disputed archaeological conclusions without examination of the authors or experts responsible for preparation of the ASI report. The Petitioners were denied an effective opportunity to challenge methodology, assumptions, excavation standards, interpretative framework, scientific processes and conclusions forming the basis of the report. Findings affecting constitutional rights rendered on the basis of such untested material are vitiated in law.

QQQQ. BECAUSE the Hon’ble High Court gravely erred in selectively relying upon portions of the ASI survey favourable to one religious narrative while failing to appreciate that the report itself reflects multiple structural phases and layered historical evolution. Even assuming *arguendo* the existence of earlier non-Islamic structural elements, such findings at best establish historical complexity and not exclusivist religious identity.

RRRR. BECAUSE the Hon’ble High Court improperly treated observations concerning “pre-existing structures,” “architectural members,” “inscriptions,” “basalt remains,” “pillars” and “earlier phases” as legally determinative of present worship rights and constitutional claims. Ancient monuments across India commonly reflect layered construction, reuse of material and overlapping civilizational histories and such archaeological

features cannot by themselves justify displacement of constitutionally protected worship practices.

SSSS. BECAUSE the Hon’ble High Court failed to appreciate that the ASI report itself was disputed and objections thereto formed part of the proceedings. Once substantial objections existed regarding interpretation, methodology and conclusions, it was wholly unsafe to treat the report as corroborative proof of exclusivist temple claims in summary writ proceedings.

TTTT. BECAUSE the Hon’ble High Court gravely erred in reversing the burden of proof by relying upon archaeological observations to cast doubt upon long-standing Muslim worship rights. The burden lay squarely upon the writ petitioners to establish extinguishment or illegality of Muslim worship and could not be discharged merely through disputed archaeological interpretation.

UUUU. BECAUSE the Hon’ble High Court misconstrued Section 16 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 by effectively holding that ASI possesses authority or obligation to ascertain the “true religious character” or “original nature” of a disputed monument. The statute is fundamentally a preservation and conservation enactment and does not authorize adjudication concerning title, exclusive ownership, theological legitimacy or historical religious supremacy.

VVVV. BECAUSE the cumulative reliance placed upon the ASI survey effectively converted disputed archaeological material into the foundation of

constitutional adjudication without trial, without admissible evidence, without expert examination and without procedural safeguards ordinarily required for adjudication of civil and religious rights, thereby vitiating the impugned judgment in its entirety.

WWWW. BECAUSE at the highest, the ASI survey material discloses a layered, historically complex and archaeologically composite structure reflecting multiple phases of occupation, adaptation and religious usage over time. The same could not, in law, justify a judicial declaration extinguishing or subordinating Muslim religious association with the structure or conclusively determining present religious character, particularly in writ proceedings devoid of trial, cross-examination or evidentiary scrutiny. Archaeological plurality cannot be judicially transformed into exclusivist religious entitlement.

XXXX. BECAUSE the impugned judgment therefore stands vitiated by selective appreciation of archaeological material, unequal evidentiary treatment, failure of constitutional neutrality and perversity in drawing exclusionary conclusions from material which, even on its face, reflected competing and layered religious histories.

MISINTERPRETATION OF THE ANCIENT MONUMENTS PRESERVATION ACT, 1904 AND THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958

YYYY. BECAUSE the Hon’ble High Court gravely erred in law in fundamentally misconstruing the statutory scheme of the Ancient Monuments Preservation Act, 1904 and the Ancient Monuments and Archaeological Sites and Remains Act, 1958 by proceeding upon an assumption that archaeological protection or State supervision empowered constitutional courts or the Archaeological Survey of India to determine the “true” religious character of the disputed monument, alter long-standing worship arrangements or indirectly extinguish pre-existing mosque-related rights and Muslim worship practices. The statutory framework of both enactments is conservational and regulatory in character and not adjudicatory of title, religious identity or denominational primacy.

ZZZZ. BECAUSE under Section 4 of the Ancient Monuments Preservation Act, 1904, the State at highest assumes guardianship, conservation and protective supervision over a protected monument by purchase, lease, gift, bequest or guardianship agreement. Section 4(4) expressly preserves the owner’s estate, right, title and interest and stipulates that acceptance of guardianship by the Commissioner does not divest the owner of legal rights except as expressly provided. Thus, the statutory assumption of guardianship never resulted in extinguishment of pre-existing proprietary, possessory or religious interests associated with the monument. The Hon’ble High Court failed to appreciate that archaeological protection is legally distinct from adjudication of title or religious character.

AAAAA. BECAUSE section 13 of the 1904 Act, far from authorizing alteration of worship patterns or determination of theological authenticity, positively protects monuments periodically used for religious worship and obligates the State to preserve such places from desecration, pollution or interference inconsistent with their existing religious usage. The statutory mandate is protective and status quo preserving in nature. The provision recognizes continuing worship by communities and requires due protection of monuments used for religious observance according to prevailing religious usage. Consequently, if the disputed site stood periodically and historically used for namaz and Muslim religious worship as repeatedly recognized in State notifications, ASI arrangements and administrative records the statutory obligation was to preserve such usage rather than judicially diminish or extinguish it.

BBBBB.BECAUSE the historical record noticed before the Hon'ble High Court, including the 1935 Dhar State Gazette, materially indicates official recognition of the site as Kamal Maula Mosque and acknowledgment of Muslim worship and management rights. Whether described administratively as regulated management, recognition of usage or restoration of religious exercise, the State conduct clearly reflects acknowledgment of existing mosque-related religious practice rather than extinguishment thereof. The Hon'ble High Court therefore gravely erred in law in failing to accord legal consequence to such historical administrative

recognition and instead proceeding upon a theory of exclusive temple identity.

CCCCC. BECAUSE under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the role of the ASI is confined to protection, conservation, maintenance and regulation of protected monuments and not adjudication of competing religious identity, title, theological legitimacy or “original” religious character. Neither the 1958 Act nor any rule framed thereunder authorizes ASI to determine whether a structure is “truly” a temple or mosque or to facilitate judicial restructuring of worship rights on the basis of archaeological inference. The impugned judgment therefore proceeds upon a statutory jurisdiction wholly unknown to the legislative scheme.

DDDDD. BECAUSE the impugned reasoning effectively converts heritage conservation statutes into instruments for reopening historical religious disputes and judicially restructuring contemporary worship rights, a consequence wholly inconsistent with the statutory text, constitutional secularism and legislative purpose. The archaeological protection cannot legally become a mechanism for extinguishment of long-standing constitutionally protected worship practices or conferment of denominational primacy.

**MISINTERPRETATION OF INTERIM ORDER DATED 12.12.2024
PASSED BY THIS HON'BLE COURT IN *ASHWINI KUMAR UPADHYAY
V. UNION OF INDIA* [W.P.(C) NO.1246/2020]**

EEEEEE. BECAUSE the Hon'ble High Court gravely erred in law in entertaining, adjudicating and finally deciding writ petitions substantially seeking determination of religious character and competing worship claims despite the interim order dated 12.12.2024 passed by this Hon'ble Court in *Ashwini Kumar Upadhyay v. Union of India [W.P.(C) No.1246/2020]*, whereby this Hon'ble Court directed that though fresh suits may be filed, no suits would be registered and no proceedings shall be undertaken therein and that in pending matters no court shall pass effective interim or final orders, including orders directing surveys, till further orders. The constitutional purpose underlying the said order was preservation of status quo and judicial restraint in disputes concerning places of worship pending consideration by this Hon'ble Court. The impugned judgment defeats both the spirit and substance of the said order. The extract is reproduced herein below:

“The primary issue, that arises for consideration, is with regard to Sections 3 and 4 of the 1991 Act and its contours, as well as the width and expanse of the said provisions.

*As the matter is sub judice before this Court, **we deem it appropriate to direct that, though fresh suits may be filed, no suits would be registered and no proceedings shall be undertaken therein till further orders of this Court.***

Further, in the pending suits, no Court will pass any effective interim orders or final orders, including orders directing

surveys, etc., till the next date of hearing/further orders of this Court.

FFFFF. BECAUSE the Hon’ble High Court fundamentally misconstrued the interim order dated 12.12.2024 by adopting an unduly narrow and technical interpretation that the embargo applied only to formally instituted civil suits and not to writ petitions or PIL proceedings. The substance of the dispute before the Hon’ble High Court directly concerned religious character, historical identity, worship rights and competing religious claims concerning a place of worship.

THE IMPUGNED ORDER HAS DISTURBED THE LONG-STANDING ADMINISTRATIVE AND CONSTITUTIONAL EQUILIBRIUM GOVERNING ACCESS AND WORSHIP

GGGGG. BECAUSE the High Court's order completely unsettles a long-standing, peaceful, and functional arrangement, established by administrative orders in 2003, which balanced the rights of both communities by allowing worship by Hindus on Tuesdays and Namaz by Muslims on Fridays. This arrangement has ensured peace and harmony for over two decades. The impugned judgment, by disrupting this status quo, creates a new point of conflict and poses a significant threat to public order and communal amity.

HHHHH. BECAUSE the Hon’ble High Court gravely erred in law in disturbing a long-standing administrative and constitutional equilibrium governing access and worship at the Bhojshala–Kamal Maula Mosque Complex which had evolved over decades through State arrangements and

regulation by the Archaeological Survey of India in the interest of public order, communal harmony and peaceful coexistence. The regulated framework permitting specified worship by different communities constituted a carefully balanced accommodation aimed at preserving peace in a communally sensitive setting and could not have been displaced through summary writ adjudication founded upon disputed historical and archaeological assertions.

IIII. BECAUSE the Hon'ble High Court committed a serious constitutional error in quashing or substantially undermining long-standing arrangements governing Friday namaz and regulated worship despite admitted existence of peaceful coexistence under such arrangements for decades.

JJJJ. BECAUSE the impugned judgment risks reopening settled and sensitive disputes concerning monuments, temples, mosques and layered religious structures throughout the country by legitimizing a framework under which parties may seek determination of religious character through writ petitions based upon archaeological claims and historical narratives. This approach fundamentally threatens constitutional stability and secular equilibrium.

DELAY, LACHES & ACQUIESCENCE

KKKKK. BECAUSE the writ petitions suffered from gross delay, laches and acquiescence and ought to have been rejected at threshold inasmuch as the challenge substantially sought reopening of long-standing worship arrangements, historical claims and the order dated 07.04.2003 passed by

the Archaeological Survey of India after an unexplained delay of nearly two decades.

LLLLL. In *Siddiq (D) Thr. LRS V. Mahant Suresh Das, (2019) 18 SCC 1*, it was held:

“978....Human history is testament to the rise and fall of rulers and regimes. The law cannot be used as a device to reach back in time and provide a legal remedy to every person who disagrees with the course which history has taken. The courts of today cannot take cognisance of historical rights and wrongs unless it is shown that their legal consequences are enforceable in the present. Thus, before this Court embarks on a lengthy historical enquiry, it is important to consider the extent to which acts done and rights accrued under previous legal regimes have legal consequences today under our present laws.

997. This Court cannot entertain claims that stem from the actions of the Mughal rulers against Hindu places of worship in a court of law today. For any person who seeks solace or recourse against the actions of any number of ancient rulers, the law is not the answer. Our history is replete with actions that have been judged to be morally incorrect and even today are liable to trigger vociferous ideological debate. However, the adoption of the Constitution marks a watershed moment where we, the people of India, departed from the determination of rights and liabilities on the basis of our ideology, our religion, the colour of our skin, or the century when our ancestors arrived at these lands, and submitted to the rule of law. Under our rule of law, this court can adjudicate upon private property claims that were expressly or impliedly recognised by the British sovereign and subsequently not interfered with upon Indian independence. With respect to the disputed property, it is evident that the British Sovereign recognised and permitted the existence of both Hindu and Muslim communities at the disputed property upon the annexation of Oudh in 1856. This culminated with the construction of the railing in order to maintain law and order between the two communities. The acts of the parties subsequent to the annexation of Oudh in 1856 form the continued basis of the legal rights of the parties in the present suits and it is these acts that this Court must evaluate to decide the present dispute”.

MMMMM. BECAUSE the writ petitioners failed to furnish any cogent explanation whatsoever for such prolonged inaction or justify invocation of extraordinary jurisdiction after permitting the impugned arrangement to operate uninterrupted for almost two decades. During this period, the regulated framework governing worship at the Bhojshala–Kamal Maula Mosque Complex stood repeatedly acted upon, recognized and accepted by State authorities, ASI and rival communities, thereby crystallizing settled legal and constitutional expectations.

NNNNN. BECAUSE the impugned proceedings sought to unsettle a settled position recognized through State and ASI arrangements and repeatedly acted upon over years, without any satisfactory explanation for prolonged inaction.

OOOOO. BECAUSE the Hon’ble High Court failed to appreciate that Article 226 jurisdiction is discretionary, equitable and governed by settled principles of delay and laches, particularly where stale claims seek to unsettle long-standing administrative arrangements affecting public order, communal harmony and competing religious rights. Thus, permitting challenge to a decades-old arrangement in a communally sensitive dispute, absent continuing legal injury or subsisting enforceable right, amounts to impermissible reopening of settled issues and undermines certainty, finality and constitutional stability. [See: *Ashwini Kumar Upadhyaya v. Union of India*, (2023) 8 SCC 402]

**IMPERMISSIBLE JUDICIAL DIRECTION FOR ALLOTMENT OF
ALTERNATIVE LAND BEYOND PLEADINGS AND JURISDICTION**

PPPPP. BECAUSE the Hon’ble High Court gravely erred in law and acted wholly beyond jurisdiction in issuing a direction/observation that, in order to secure religious rights of the Muslim community and ensure “complete justice”, the State Government may consider allotment of suitable land within District Dhar for construction of a mosque or place of prayer upon an application being made by Respondent No.8, intervenors or a Waqf body. The impugned direction is constitutionally unsustainable, alien to the scope of writ proceedings and dehors pleadings, reliefs and jurisdiction.

QQQQQ. BECAUSE no party sought allotment of alternative land, no foundational pleadings were laid, no legal right to compensatory or substitute land was asserted and no issue concerning rehabilitation, acquisition, extinguishment or compulsory deprivation of mosque property ever arose for adjudication. In absence of pleadings, evidence or adversarial adjudication, the Hon’ble High Court could not have form of new substantive relief.

RRRRR. BECAUSE the invocation of the expression “complete justice” is itself legally impermissible inasmuch as such plenary constitutional power inheres exclusively in this Hon’ble Court under Article 142 of the Constitution of India and not in the High Court exercising jurisdiction under Article 226. The Hon’ble High Court, while expressly disclaiming

adjudication of title, effectively proceeded upon an assumption that Muslim worship stood displaced and consequently fashioned compensatory relief resembling judicial rehabilitation, despite no lawful adjudication extinguishing mosque rights or possessory claims having occurred. Such direction is internally contradictory and constitutionally unsustainable.

SSSSS. BECAUSE the impugned direction also reveals the practical consequence of the judgment itself, namely that the Hon'ble High Court understood its own findings as materially impairing or displacing Muslim worship rights at the disputed structure. The impugned order having effectively altered the constitutional and practical equilibrium at the site, the Hon'ble Court sought to mitigate consequences through extra-legal judicial balancing by suggesting alternative land allotment also. This itself demonstrates that the impugned findings concerning religious character and worship rights carry exclusionary and possessory consequences despite repeated observations that title was not being decided.

6. GROUNDS FOR INTERIM RELIEF:

- a) **BECAUSE** the Petitioners have made out a case for grant of interim protection inasmuch as the impugned judgment, if permitted to operate during pendency of the present Special Leave Petition, would irreversibly alter the constitutional, legal and practical status governing worship,

access and religious equilibrium at the Bhojshala–Kamal Maula Mosque Complex and render the present proceedings substantially infructuous;

- b) **BECAUSE** the impugned judgment does not merely regulate administrative arrangements but fundamentally restructures the legal and religious position of the disputed site by: (i) declaring the religious character of the disputed area as a Bhojshala with a temple of Goddess Vagdevi (Saraswati); (ii) quashing the long-standing ASI order dated 07.04.2003 regulating worship and permitting Friday namaz; (iii) materially privileging one competing religious claim over another; and (iv) unsettling a regime of regulated coexistence maintained over decades in the interest of communal harmony and public order;
- c) **BECAUSE** unless interim protection is granted permitting continuation of Friday namaz in accordance with the arrangement embodied in the order dated 07.04.2003 passed by Respondent No. 2, the Petitioners and Muslim worshippers would suffer immediate, grave and irreparable prejudice through disruption of long-standing religious practice and impairment of constitutionally protected worship rights existing for decades under a regulated framework of coexistence. The maintenance of the pre-existing arrangement alone would preserve communal equilibrium, constitutional neutrality and the subject matter of the present proceedings during pendency of adjudication and prevent creation of an irreversible *fait accompli*;

- d) **THE** Petitioners have a strong prima facie case, and the balance of convenience is overwhelmingly in their favour. The impugned judgment is in direct contravention of the Places of Worship Act, 1991, and the binding judgment of the Constitution Bench of this Hon'ble Court in the *Ayodhya Judgement*;
- e) **IT** is submitted that if the operation of the impugned judgment is not stayed, it will result in irreparable injury and prejudice to the Petitioners and the Muslim community. Their centuries-old right to worship at the Kamal Maula Mosque will be extinguished, leading to grave injustice;
- f) **THE** implementation of the impugned judgment will disrupt the communal harmony and peace that has prevailed in the area for decades due to the existing arrangement. It is in the interest of justice and public order that the status quo ante, as it existed prior to the impugned judgment, be restored and maintained during the pendency of the present petition;
- g) **THE** balance of convenience overwhelmingly lies in favour of maintaining the pre-existing position as regulated under the ASI arrangement dated 07.04.2003 and related administrative framework, which had governed the site peacefully for decades and ensured coexistence between rival communities. Maintenance of status quo during pendency of proceedings alone would preserve constitutional equilibrium, public order, fraternity and equal treatment while avoiding

irreversible consequences flowing from implementation of contested findings concerning religious character and worship rights;

- h) **THE** Petitioners will suffer grave and irreparable prejudice if interim protection is declined inasmuch as the impugned judgment carries immediate exclusionary, possessory and symbolic consequences affecting Articles 14, 21, 25 and 26 rights, whereas no comparable prejudice would be caused by preservation of the long-standing arrangement already in operation for years;
- i) **THE** present case also raises substantial questions concerning limits of writ jurisdiction, maintainability of PIL in religious disputes, neutrality of the State and ASI, evidentiary value of archaeological material, interpretation of the Places of Worship Act, applicability of *res judicata*, constitutional secularism and minority worship rights, thereby constituting an overwhelming prima facie case warranting protection pending final adjudication.

7. MAIN PRAYER:

IT IS, THEREFORE, MOST RESPECTFULLY PRAYED THAT THIS HON'BLE COURT MAY BE PLEASED TO:

- a) **GRANT** Special Leave to Appeal against the common impugned Final Judgment and Order dated 15.05.2026 in Writ Petition No. 10497 of 2022 and Writ Petition No. 10484 of 2022 passed by the High Court of Madhya Pradesh at Indore; and