

SYNOPSIS

- I The petitioner is seeking review of the judgment dated 09.11.2019 in C.A. Nos.10866-67 and other connected appeals including C.A. No. 2894 of 2011 in which the petitioner was a party and now reported in M. Siddiq (D) thru. LRs Vs, Mahant Suresh Das & Ors. (2019)5 SCALE 1, to which reference is made.
- II. At the outset it must be stated that the purpose of this review is not to disturb the peace of this great Nation but in the spirit that any peace must be conducive to justice. In respect of this case Muslims has always maintained the peace but Muslims and their properties have been victim of violence and unfair treatment. This review is part of a quest for justice. The Judgment in Review erred in privileging peace over justice while not appreciating that there could be no peace without justice.
- III. In brief, some main points of review are:-
 - (i) The de jure, indeed de facto, effect of the direction in the judgment is to destroy the mosque if it still existed. Giving antecedent title to the Hindus, means that the site belonged to them in 1992. The judgment, thus takes advantage of the destruction of the mosque by in effect holding that, had the mosque not been destroyed in 1992, this judgment would have ordered it to be destroyed.
 - (ii) Title could not have been given to Hindu parties on the basis of exclusive possession of entire site which never existed at any point in time with the Hindus, since it is admitted that Muslims entered and prayed at the site till 16th December, 1949 and were later prevented from doing so because of the attachment while unfairly permitting Hindu worship following criminal trespass.
 - (iii) The title for the idol and area (swaymbhu) was claimed in law for the first time in 1989 and subject to limitation since the issue of title and possession was already before the court since 1950 (in the WS) and certainly since 1961. Notably the

claim to the area (swaymbhu) as juristic personality was not accepted.

- (iv) That the judgment erred in accepting the juristic personality of the idol entitled it to the middle dome of the courtyard after holding that the idol was illegally and forcibly put there. An idol, as deity, cannot be simultaneously illegally placed and legally valid to claim the title.
- (v) The Judgment in Review condones serious illegalities of destruction, criminal trespass and violation of rule of law including damaging the mosque and eventually destroying it.
- (vi) A waqf necessarily includes title which the Muslims claimed with possession at all times and the Hindu only had prescriptive rights to prayer. Indeed, since it is undisputed fact that Muslims were praying on the site till 16th December, 1949, and entered the Mosque through the outer courtyard, proves that the Hindus were never in exclusive possession.
- (vii) That the court erred in not considering that there was a dedication of the mosque which was self-evident from the inscriptions.
- (viii) That the judgment erred in holding that the waqf was not established by 'user' though continuous possession and prayer were shown at all times. It also wrongly assumed that prayers did not take place at mosque before 1857 but used 1857 onwards alone as relevant.
- (ix) One the conclusions in the judgment state that "*the allotment of land is necessary though on a balance of probability the evidence in respect of the claim of the Hindus to the composite whole of the disputed property stands on a better footing than the evidence adduced by the Muslims, the Muslims were dispossessed upon the desecration of the mosque on 22-23rd December 1949 which was ultimately destroyed on 6 December 1992. There was no abandonment of the mosque by the Muslims*"(pr 800). These findings are contradictory and contrary to law in that the court

- (a) accepts that the Muslims did not abandon the mosque
 - (b) accepts that the Muslims were illegally dispossessed
 - (c) that clear title did not vest in the Hindus and they had better evidence founded on illegality to the composite whole which was never in their exclusive possession.
- (x) The entire concept of restitution in the judgment is based on the unlawful destruction of the Muslim's place of worship which is accepted (pr. 801) and condoned contrary to all norms of restitutive justice.
 - (xi) There is a failure rather than a fulfillment of complete justice invoked in this case.
 - (xii) The ground of review of the judgment are (a) contrary to law, (b) self-contradictory (c) violation of complete justice that it invoked.
 - (xiii) There are a number of illegalities and inaccuracies which have been delineated in the Grounds of this petition.
- IV. This review is not seeking a review of the judgment on certain aspect which is delineated in the review petition.(see Para 4 at)

IN THE SUPREME COURT OF INDIA
[REVIEW JURISDICTION]
REVIEW PETITION (C) No. OF 2019
(Under Article 137 of the Constitution of India)
IN
CIVIL APPEAL No. 2894 OF 2011

IN THE MATTER OF:-

POSITION OF THE PARTIES

		IN THE APPEAL	IN THIS PETITION
1.	Maulana Mufti Hasbullah alias Badshah Saheb, aged about 50 years, son of late Maulana Faizullah, R/o 101, Madani Manzil, Mughalpura, Faizabad (U.P.)	Respondent No.24A	Petitioner
Versus			
1.	Mahant Suresh Das Chela Sri Param Hans Ram Chander Das, resident of Digambar Akhara, Ayodhya City, District Faizabad, State of UP.	Respondent No.1	Contesting Respondent No.1
2.	Nirmohi Akhara situate in Mohalla Ram Ghat, through present Mahant Dinendra Das, resident of Nirmohi Akhara, Mohalla Ram Ghat, City Ayodhya, District Faizabad, U.P.	Respondent No.2	Contesting Respondent No.2
3.	The State of U.P. thr. Chief Secretary to the State Govt. U.P.	Respondent No.4	Contesting Respondent No.3
4.	The Collector, Faizabad Collectrate Compound Faizabad, U.P.	Respondent No.5	Contesting Respondent No.4
5.	The City Magistrate, Faizabad, Collectrate Compound Faizabad,	Respondent No.6	Contesting Respondent

	U.P.		No.5
6.	The Superintendent of Police, S.P. Office Faizabad, Dist. Faizabad, UP.	Respondent No.7	Contesting Respondent No.6
7.	President, All India Hindu Maha Sabha, (Pradeshik Sabha), Read Road, New Delhi.	Respondent No.9	Contesting Respondent No.7
8.	President Arya Maha Samaj (Dewan Hall) Baldan Bhawan, Shradhanand Bazar, Delhi.	Respondent No.10	Contesting Respondent No.8
9.	President, All India Sanatan Dharam Sabha, Dhaula Kuan, New Delhi.	Respondent No.11	Contesting Respondent No.9
10.	Dharam Das alleged Chela Baba Abhiram Das, Resident of Hanuman Garhi, Ayodhya, Faizabad (U.P.).	Respondent No.12	Contesting Respondent No.10
11.	Sri Pundrik Misra, son of Raj Narain Misra, Resident of Balrampur Sarai, Rakabganj, Faizabad, U.P.	Respondent No.13	Contesting Respondent No.11
12.	Ramesh Chandra Tripathi, aged about 73 years, son of Sri Parsh Rama Tripathi, Resident of village Bhagwan Patti, Pargana Mijhaura, Tahsil Akbarpur, District Ambedkar Nagar (U.P.).	Respondent No.15	Contesting Respondent No.12
13.	Madan Mohan Gupta, convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samti, E-7/45, Bangla T.T. Nagar, Bhopal (M. P.)	Respondent No.18	Contesting Respondent No.13
14.	Umesh Chandra Pandey, son of Sri R.S. Pandey, Resident of Ranupalli, Ayodhya, District Faizabad (U.P.).	Respondent No.19	Contesting Respondent No.14
15.	U.P. Sunni Central Waqf Board, 3-A, Mall Avenue, Lucknow (U.P.) through its Chief Executive Officer.	Respondent No.20	Proforma Respondent No.15
16.	Misbahuddin, son of late Ziauddin,	Respondent	Proforma

- | | | | |
|-----|---|----------------------|---------------------------------|
| | Resident of Mohalla Angoori Bagh,
Faizabad City, Faizabad (U.P.). | No.21 | Respondent
No.16 |
| 17. | Maulana Ashhad Rshidi S/o
Maulana Rishid Uddin R/o
Committee of Jammiat Ulema-i-hind
(Uttar Pradesh), Subhash Marg,
Ahata, Shuakti Ali, Rakab Ganj,
Lucknow, U.P.
Also R/o Madasa Shahi, Shahi
Masjid, Mand Chown, Mooradabad,
U.P. | Respondent
No.22 | Proforma
Respondent
No.17 |
| 18 | Maulana Mahfoozurahman, S/o
Maulana Wakiluddin, Resident of
Village Madarpur, Pergana & Tahsil
Tanda, District Faizabad. (U.P.). | Respondent
No.23 | Proforma
Respondent
No.18 |
| 19 | Mohammad Hashim (D), Through
LR
Mohammad Iqbal Ansari S/o Late
Mohammad Hashim 4/318, Kotia,
Ayodhya, District- Faizabad, U.P. | Appellant | Proforma
Respondent
No.19 |
| 20. | Faiz Ahmad, Aged about 31 years,
Son of Late Mr Anwar Ahmad R/o
Mohalla Rakab Ganj, Faizabad City,
Dist. Faizabad, (U.P) | Respondent
No.24B | Proforma
Respondent
No.20 |
| 21. | Farooq Ahmad, son of late Sri
Zahoor Ahmad, Resident of Mohalla
Naugazi Qabar, Ayodhya City,
Ayodhya, District Faizabad State of
(U.P.). | Respondent
No. 25 | Proforma
Respondent
No.21 |

PETITION UNDER ARTICLE 137 OF THE CONSTITUTION OF INDIA READ WITH ORDER XLVII OF SUPREME COURT RULES, 2013, SEEKING REVIEW OF JUDGMENT DATED

09.11.2019 IN THE PRESENT CIVIL APPEAL AND OTHER
CONNECTED APPEALS.

To,

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

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:-

1. That the instant petition seeks review of judgment dated 09.11.2019 of the Hon'ble Court in the present Civil Appeal and other connected appeals based on errors apparent on the face of the record which has resulted in grave miscarriage of justice and hence requires reconsideration.

The Review Petitioner is filing printed copy of Judgment dated 09.11.2019 passed in CA 10866-67 of 2010 and other connected appeals including C.A. No. 2894 of 2011 in which the petitioner was a party and now reported in M. Siddiq (D) thru. LRs Vs, Mahant Suresh Das & Ors. (2019)5 SCALE 1, to which reference is made and the same is marked as **Annexure P-1** [See separate printed volume in SCALE].

2. That for the sake of brevity, not all the facts and averments in the petition in the present Civil Appeal are reiterated herein but they may be taken as part and parcel of the present petition.
3. The Applicant/Petitioner herein was brought on record, in place of Original Plaintiff No 9 in Suit 4 (OOS 4) of 1961 and has been appearing in the court as well as been participating in the inspection of the premises with the observers appointed to keep a watch on status quo at the site. Apart from the said facts that the

Petitioner/Applicant has remained party to these proceedings, he is resident of Ayodhya and the Suit is a representative Suit/litigation hence the points/error raised in the present Review Petition be treated as issue of the community at large in the representative capacity of the Muslim Community at large.

4. Findings in the Judgment which are not the subject matter of the present Review Petition

At the outset, it is pertinent to note that this Petition is being file to challenge the errors apparent in the Judgment and hence, the following findings in the Judgment are *not* subject matter of the present Review Petition as the same are not being challenged:-

- a. The Places of Worship (Special Provisions) Act, 1993 in intrinsically related to the obligations of a secular state. It reflects the commitment of India to the equality of all religions. [@Para 83]
- b. *Historical wrongs cannot be remedied by the people taking the law in their own hands.* [@Para 83]
- c. The adjudication of civil claims over private property must remain within the domain of the secular (values) if the commitment to constitutional values is to be upheld. [@ Para 204]
- d. Plaintiff No. 2 in Suit 5 does not have juristic personality. [@ Para 205]
- e. Deity is not a perpetual minor for the purposes of limitation. [@Para 425]
- f. Suit 3 is barred by limitation. [@ Para 255]
- g. The documentary evidence relied on by Nirmohi Akhara does not establish its possession of the inner courtyard and the structure of the mosque within it, being the subject of Suit 3; [@ Para 306]
- h. Contrary to the claims of Nirmohi Akhara, documentary evidence establishes the existence of the structure of the mosque between 1934 and 1949; [@ Para 306]

- i. Documentary evidence in regard to the presence and use of the mosque until December 1949 is supported by the letter of the Superintendent of Police, Faizabad dated 29 November 1949 specifically, referring to the attempts which were being made to surround the mosque so as to lead the Muslims to abandon it.[@ Para 306]
- j. The ASI Report- Expert opinion has to be analysed and evaluated by the court and cannot be conclusive. [@ Para 487]
- k. Vishnu Hari Inscription were not recovered from the disputed site. The inscription cannot be the basis to conclude that the Vishnu Hari temple which is referred to in the inscription was a temple which existed at the very site of the demolished structure. [@Para 548]
- l. Traveller's Account-Findings that such an account cannot meet the rigorous standards of acceptable evidence as well as the more relaxed standard of a preponderance of probabilities which govern civil trials. [@ Para 576]
- m. Travellogues and gazetteers contain loose fragments of forgotten history. The evidentiary value to be ascribed to their contents necessarily depends upon the context and is subject to a careful evaluation of their contents. [@Para 594]
- n. The ASI reports stated that it could not be concluded that a temple/or structure was destroyed to construct the mosque.
- o. The determination of title was not obviously within the remit of ASI. [@Para 512]
- p. Statements contained in a text of history or in a gazetteer cannot conclude the issue of title. [@Para 590]
- q. The mere existence of a structure underneath the disputed property cannot lead to a legally enforceable claim to title today. Subsequent to the construction of the ancient structure in the twelfth century, there exists an intervening period of four hundred years and prior to the construction of the mosque. [@Para 648]

- r. This Court cannot entertain or enforce rights to the disputed property based solely on the existence of an underlying temple dating to the twelfth century. [@Para 649]
 - s. There was no abandonment of the structure of the mosque or cessation of namaz. [@ Para 721]
 - t. No evidence that the pre-existing structure was demolished to construct the Babri Mosque. [@ Para 788 II]
 - u. A finding on title cannot be based on archaeological findings. [@ Para 788 III]
 - v. When there is a dispute regarding the title and possession between the parties, historical accounts (i.e. the accounts of travellers and gazetteers) cannot be regarded as conclusive. The accounts of travellers and gazetteers must be read with caution. [@ Para 591, 594, 788 IV]
 - w. The acts of the Hindu parties in 1934 (damaging the domes of the Babri Masjid), 1949 (desecrating the Babri Masjid) and 1992 (demolition of the Babri Masjid) constituted a serious violation of the rule of law. [@ Para 302, 306, 788 XV, XVI, XVII, 799]
 - x. And many other observations and findings which support the case of Suit No 4.
5. The ground below will draw support from the findings above, which are undisputed.

INVOKING REVIEW JURISDICTION OF THIS HON'BLE COURT

6. That by invoking jurisdiction of this Hon'ble Court in the present Review to reconsider the grave injustice to a community in a title suit. Hence the Petitioner is seeking a review of the judgment on the following grounds:

GROUND S

- A BECAUSE, the de jure, indeed de facto, effect of the direction in the judgment is to destroy the mosque if it still existed.

Giving antecedent title to the Hindus, means that the site belonged to them in 1992. The judgment, thus takes advantage of the destruction of the mosque in effectively holding that had the mosque not been destroyed in 1992, this judgment would have ordered it to be destroyed.

- B BECAUSE, title could not have been given to Hindu parties on the basis of exclusive possession of entire site which never existed at any point in time with the Hindus since it is admitted that Muslims entered and prayed at the site till December, 1949 and later prevented from doing so because of the attachment while unfairly permitting Hindu worship following criminal trespass.
- C BECAUSE, the title for the idol and area (swambhu) was claimed in law for the first time in 1989 and subject to limitation since the issue of title and possession was already before the court since 1950 (in the WS) and certainly since 1961. Notably the claim to the area as juristic personality was not accepted.
- D BECAUSE, the judgment erred in accepting the juristic personality of the idol entitled it to the 3 domed structure and the courtyard while holding that the idol was illegally and forcibly put there. An idol as deity cannot be simultaneously illegally placed and legally valid to claim the title.
- E BECAUSE, the judgment under Review condones serious illegalities of destruction, criminal trespass and violation of rule of law including damaging the mosque and eventually destroying it.
- F BECAUSE, a waqf necessarily includes title which the Muslims claimed with possession at all times and the Hindu only had prescriptive rights to prayer. Indeed, since it is undisputed Muslims were praying on the site till 16th December, 1949, and entered the Mosque through the outer courtyard, proves that the Hindus were never in exclusive possession.

- G BECAUSE, the court erred in not considering that there was a dedication of the mosque which was self evident from the inscriptions also.
- H BECAUSE, the judgment erred in holding that the waqf was not established by user though continuous possession and prayer were shown at all times. It also wrongly assumed that prayers did not take place at mosque before 1857 but used 1857 onwards alone as relevant.
- I BECAUSE, one the conclusions in the judgment states that “the allotment of land is necessary though on a balance of probability the evidence in respect of the claim of the Hindus to the composite whole of the disputed property stands on better footing than the evidence adduced by the Muslims, the Muslims were dispossessed upon the desecration of the mosque on 22-23 December 1949 which was ultimately destroyed on 6 December 1992. There was no abandonment of the mosque by the Muslims”(para 721, 800). These findings are contradictory and contrary to law in as much as the court
- (a accepts that the Muslims did not abandon the mosque
 - (b) accepts that the Muslims were illegally dispossessed
 - (c) ignores that title did not vest in the Hindus and they had evidence founded on illegality to the composite whole which was never in their exclusive possession.
- J BECAUSE, no conclusion can be reached on the balance of probabilities that the Muslims did not pray between 1528-1856 since the site was always under Mughal and later Navab rule.
- K BECAUSE, entire concept of restitution in the judgment is based on the unlawful destruction of the Muslim place of

worship which is accepted (para 801) and condoned contrary to all norms of restitutive justice.

L BECAUSE, the judgment under Review erred in allotting alternate land of 5 acres to the Sunni Waqf Board under Article 142 even though the same was not pleaded for. Further allotment of such land at some undefined place, which is not in accordance with the direction of Dr. Ismail Faruqui case and awarding the entire disputed land to the Hindus, shows that exercise under Article 142 did not meet the test of complete justice. [Para 800-801]. Further no order to restore the stones and other articles of the building to the Muslims was given.

M BECAUSE, there is a failure rather than a fulfillment of complete justice invoked in this case.

N BECAUSE, there are a number of illegalities and inaccuracies which have been delineated in the Grounds of this petition.

O BECAUSE, the grounds of review of the judgment under Review are (a) contrary to law, (b) self-contradictory (c) violative of the complete justice that was invoked.

P BECAUSE, the ASI concluded that it could not be established that a mosque was built after destroying a temple/structure (pr. 511). Since the task assigned to the ASI by the High Court on 5th March 2003 was:

"whether there was any temple/structure which was demolished and Mosque was constructed on the site".

no further reliance could be placed on the ASI Report since it was held that the ASI excavations could not be the basis of title (pr.788 III).

Q BECAUSE, having taken the view that historical travellers' accounts *"cannot be regarded as being conclusive on the issue of title which has necessitated adjudication in this case"* and *"historical accounts cannot be conclusive"* and 'gazetteers may provide to the court a glimpse on the matter of public history, history itself is a matter of divisive contestation' (pr.592-4), the court has conclusively relied on travelers, Tieffenthaler and Montgomery Martin (pr 788 (iv), to dislodge both the existence and stronger claim of the mosque, for a period prior to 1857, which was in any event not a starting point for legal investigation of possession and title.

R BECAUSE, to conclude that on a preponderance of probability the Muslims were not able to show possession, or title before 1857 is misleading and incorrect and contrary to record because (a) this earlier period was according to the Court not relevant to determining title (b) during 1528 – 1857 and earlier, Ayodhya was governed by Muslim rulers, (c) Hindus were not able to show prayer for that period other than unreliable travelers' stories and East India Company Gazetteers, (d) The idols were in the outer courtyard after 1857 (pr 741) and never in the inner

courtyard except by criminal trespass on 22-23 December 1949.

S BECAUSE, accepting that the railing put by the British for purpose of defining title, it is incongruous and wholly incorrect to assume that Hindus, who stood at the "railing" looking at empty space in the middle dome of the inner courtyard (where there was no idol) with their backs to the idols in the outer courtyard, could claim possession or title — even if we assume without conceding that they were looking longingly at empty space. Such looks of longing and offers of flowers at the railing, if any, cannot establish either physical possession or title. Given that the grants to Muslim for the upkeep of mosques were continued, and the judgment of 1886 confirming Muslim title with only prescriptive rights of prayer to the Hindus, it is clear that the Court was wrong in holding "(there was a lack of adequate evidence to establish that there was exclusive or unimpeded use of the inner courtyard after 1858 (pr.742). Indeed there was no adequate evidence of unimpeded use or title by Hindus.

T BECAUSE, Waqf by user for times immemorial means the past generation or two from the determining event. It had been conclusively established that between 1934 — 1949, the Muslims had possession and performed prayer. There is nothing to suggest that from 1857 to 1934 that prayer was not performed or that Muslims were out of possession.

- U BECAUSE, the observation (at pr.745) that the evidence adduced does not demonstrate that the entire disputed property was utilized by the Muslims for public worship. “ignores that the mosque existed physically and as a living entity, grants were given and it was accepted both *de facto* and *de jure* that Muslims were in possession according to the judgment of 1886 which gave only a prescriptive right to Hindus. Thereafter the Hindu accepted this not claiming title till Suit No 5 in 1989.
- V BECAUSE, the argument based on parikrama was to confer juristic personality on Plaintiff No. 2 in Suit No 5 (pr.163) and is otherwise irrelevant. Performing parikrama outside the disputed site can hardly be proof of possession and title.
- W BECAUSE, although the judgment claims that title had to be based on secular grounds and values (pr.204, 205, 788 (iv),) the emphasis on prayer and belief in the judgment shows that it was entirely based on Hindu faith and prayer, and condoned unpardonable illegalities in fact and law.
- X BECAUSE, the Court wrongly rejected the correct, translation of the letter by Syed Mohammad Khatib (the Moazzin) of 30 November 1858 as an admission of the symbol of Janmasthan had been there and hundreds of years and Hindus did puja, as "*contrived*" (pr.683). In fact the translation "and not the contrary position" was correct. In any event, this statement is hardly an admission.

Y BECAUSE, it is astonishing that (at pr. 773) the Court found the above statement to establish the following conclusion (at pr.773)

"All the evidence indicates that a reasonable inference based on a preponderance of probabilities can be made that there was a continuance of faith and belief of the Hindus that the "garb-Grih" was the place of birth of Lord Ram both prior to an after the construction of the wall."

This shows that the Court simply acted on and reinforced belief.

Z BECAUSE, the possession of the Plaintiff No.1 of the whole site (without conceding partial possession or title) was only by criminal trespass on 22/23rd December, 1949.

AA BECAUSE, during arguments the Court itself suggested 'lost grant' could be invoked for the Hindus. The Muslims correctly invoked this doctrine in their favour which, in fact, actually applied to the Muslims. Though this was a pure question of law to be applied to the facts. However the Court's view although this invocation of the doctrine of last grant was to be rejected because was applying a pure question of law this was not in the pleadings. The court wrongly rejected application of this doctrine on the basis that this question of law was not in the pleadings.

7 The present petitioner has not filed any other Review petition seeking review of the judgment dated 09.11.2019. The present petition is being filed bonafide and in the interest of justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Allow the Review of judgment dated 09.11.2019 delivered by this Hon'ble Court in Civil Appeal No. 2894 of 2010 by allowing the present Review Petition;
- b) pass such other order or orders as this Hon'ble Court deems just and proper in the facts and circumstances of the case.

**AND FOR THESE ACTS OF KINDNESS YOUR PETITIONERS
AS IN DUTY BOUND SHALL EVERPRAY.**

Settled By:
Dr Rajeev Dhavan, Senior Advocate
Mr Zafaryab Jilani, Senior Advocate

Drawn & Filed by
[M R Shamshad]
Advocate for the Petitioner

DRAWN ON: 04.12.2019
FILED ON: 06.12.2019
New Delhi