

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**

((Petition under Article 32 of the Constitution of India read with  
Under Order XXXVIII of the Supreme Court Rules 2013)

**WRIT PETITION (CIVIL) NO.      OF 2020**

**IN THE MATTER OF:**

1. Vishwa Bhadra Pujari Purohit Mahasangh,  
A Registered Trust,  
Office at 64-H, Baba Hazara Bagh,  
Thakurganj Chowk, Lucknow-226003  
Through Founder Trustee/Chief Convener,  
Pujari Mauni Baba Mandir,  
Chandar Nagar Alambagh  
Lucknow, Uttar Pradesh.
2. Shyam Sunder Shukla  
S/o. Sri Surya Prasad Shukla  
R/o. Mauni Baba Ka Mandir,  
Chandar Nagar, Alambagh,  
Lucknow-226005  
Uttar Pradesh
3. Jitendra Singh  
S/o. Sri Yaduraj Singh  
R/o Gulab Singh Purwa,  
Veerpur Vishen,  
Thesil- Gonda  
District Gonda-271123  
Uttar Pradesh
4. Pankaj Kumar Verma  
S/o. Shi Mahadev Verma  
R/o. E-3/178 Vinay Khand-3,  
Gomti Nagar Lucknow-226010,  
Uttar Pradesh.

...Petitioners

-Versus-

Union of India  
Through its Secretary,  
Ministry of Law and Justice,  
4th Floor, A-Wing, Shastri Bhawan,  
New Delhi-110 001  
E-mail id – kg.thang@nic.in

...Respondent

**WRIT PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA PRAYING TO STRIKE  
DOWN SECTION 4 OF THE PLACES OF WORSHIP  
(SPECIAL PROVISION) ACT, 1991 (ACT NO. 42 OF 1991)  
AS ULTRA VIRUS TO ARTICLE 14, 15(1), 25, 26 AND  
29(1) OF THE CONSTITUTION OF INDIA.**

TO,  
THE HON'BLE THE CHIEF JUSTICE OF INDIA AND  
OTHER COMPANION JUSTICES OF THE HON'BLE  
SUPREME COURT OF INDIA;

HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED;

**MOST RESPECTFULLY SHEWETH;**

1. That the petitioners, followers of Sanatan Vedic Religion, commonly known as 'Hindu' Religion, are filling this petition under Article 32 of the Constitution of India challenging the Constitutional validity of Section 4 of The Places of Worship (Special Provisions) Act, 1991 (Parliament Act no. 42 of 1991) (herein after to refer to as 'Act 1991') on the touchstone of Article 14, 15, 25, 26 and 29(1) of the Constitution of India and also for violating the principles of secularism.

1.A That it is relevant to mention that the petitioner no 1 is a Trust, registered on 16.01.2013 at Ledger No. 4, Register No. 200 at pages 237 to 270 at Serial no. 32 in the office of Sub-Registrar Lucknow (U.P.). The aim and object of the Trust is to preserve and protect Vedic Culture and to teach the method of

worship and rituals to pujaris and purohits performing puja in Temples, Mutts and different religious places and also to those who are rendering their services in different capacities by performing rituals and other religious functions in public or at home according to Hindu Sastras. A true translated copy (from Hindi to English language) of bye-laws of the Trust registered on 16.01.2013 at Ledger No. 4, Register No. 200 at pages 237 to 270 at Serial no. 32 in the office of Sub-Registrar Lucknow (U.P.) is annexed hereto and marked as **ANNEXURE P-1**.(at pages\_\_\_\_\_ to \_\_\_\_\_ )

Petitioner No.2 is working as pujari at Mauni Baba Mandir Alambagh Lucknow. He is Sanatanist Hindu and Idol worshiper. He apart from performing religious function at temple also performs puja and other rituals in his day today life. He has been authorised by the trustees of the Trust by resolution dated 30.05.2020 to file this petition and to do pairvi of the case. A true copy of resolution dated 30.05.2020 passed by Trustee of the first Petitioner herein is annexed hereto and marked as **ANNEXURE P-2**(at pages to )

Petitioner No.3 is Sanatanist Hindu and Idol worshiper. He performs daily puja of Hindu deities. He is social worker.

Petitioner No.4 is Sanatanist Hindu and Idol worshiper. He performs daily puja of Hindu deities. He was enrolled with the Bar Council of U.P. and enrolment no. is 7362 of 2011. He is practising advocate at Lucknow Bench of the Allahabad High Court.

1.B That the Petitioners feel that Hindus should take legal remedy to restore the temples and religious places which were destroyed, damaged, desecrated, during foreign rule and at the same very place the followers of another faith have raised their

religious construction and such action has to be remedied by the courts by applying appropriate law and Hindus should get justice from the tyranny of invaders. Since the impugned Act has taken away the right to approach the court and right to remedy has been completely locked, the petitioners feel their bounden duty to raise the issue under Article 32 of the Constitution of India as impugned Act is ultra virus to Article 14, 15, 25, 26 and 29(1) of the Constitution of India and also the against the principle of Secularism, held to be one of the basic feature of the Constitution of India.

Therefore, the Petitioners are personally aggrieved but they humbly state that considering the nature of the prayer made herein if this Hon'ble Court thinks that the matter concerns the public at large, this Hon'ble Court may kindly treat this petition as a Public interest Litigation by virtue of provisions contained in Order 38 Rule 12 (c) of the Supreme Court Rules 2013.

1C. That the Petitioners have come to know that Hon'ble Court in famous Ayodhya Case titled as Mohd. Siddiq Vs Mahant Suresh Das vide judgment dated 09.11.2019, reported in 2020 (1) SCC 1 has made observations on the Act 1991. It is relevant to mention that the validity of the impugned Act was not in issue and the Hon'ble Court has not decided the Constitutional Validity of the said Act. Since some observations have been made relating to the impugned Act, there is possibility that petitioners and similarly situated devotees may be deprived from raising issues regarding the validity of the Act 1991 in the High Courts and Civil Courts. Therefore petitioners are filling present petition.

2. **Brief of facts are as follows:-:-**
- 2.1 That the Parliament passed an Act known as The Places of Worship (Special Provisions) Act, 1991 (Parliament Act no. 42 of 1991) (for short 'Act 1991'). By the impugned Act Parliament has declare that the religious character of any place of worship as is existed at 15<sup>th</sup> August 1947 shall continue to be the same and as even barred the remedy by way of suit , appeal or other proceeding with respect to such matter in any Court , Tribunal or other Authority. This provision is a serious jolt on the right of Hindus to worship and profess their religion and to restore the religious places even through machinery of Court where deity is being worshiped and members of other faith have occupied those places taking advantage of pitiable condition of Hindus during Mugal and British Rule.
- 2.2 That it cannot be disputed that a sovereign can remedy the wrong/ injustice committed on the subjects during the rule of invader sovereign.
- 2.3 That in Indian context the sovereignty lies in the people who have given themselves to the Constitution. The Constitution of India applying the doctrine of separation of power has distributed sovereign functions in three organs of the State namely, Legislature, Executive and Judiciary and same has to be exercised by every branch within Constitutional parameters.
- 2.4 That Judiciary is one of the components of sovereign State power, which in a written Constitution like ours the Constitutional Courts have power and duty to protect the rights of the citizens by issuing prerogative Writs.

2.5 That the Parliament has enacted the impugned Act imposing injunction on the right of the public to claim right a place of worship vested in the deity. The term “Place of worship” has been defined in section 2 (c) of the Act to mean ‘a Temple a Mosque, Gurudwara, Church Monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called’.

2.6 That Section 4(1) of the impugned Act declares that the:-

‘religious character of a place of worship existing on the 15<sup>th</sup> day of August 1947 shall continue to be the same as it existed on that day’

Section 4(2) of the impugned Act provides that:-

‘If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any of worship, existing on the 15<sup>th</sup> day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority.

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1)”.

- 2.7 That within the ambit of “place of worship” as defined under sub-clause (c) to Section 2 Act 1991 only the Temple, Mosque, Church, Gurudwara etc. are to be protected which are erected/constructed in accordance with the personal law applicable to the person constructing/raising them, but the religious places erected/constructed in derogation of the mandates and tenets of Hindu law, Islam or any other personal law cannot be termed as a place of worship. Therefore, the provisions of the Central Act are ultra virus and unconstitutional to the extent it takes away the right to religion and worship of Hindus protected by Article 25 and 26 of the Constitution of India.
- 2.8 That the Parliament has transgressed its legislative power in enacting the Act 1991 as Parliament has no legislative competence to enact a law infringing the fundamental right guaranteed to citizens in view of the embargo created by Article 13 of the Constitution of India. The provisions of Act 1991 affects the right to religion of Hindu Community and snub the voice of devotees against the illegal and inhumane action committed in pre-independence period and the provisions of the said Act are in derogation to the fundamental rights guaranteed to the citizens by the Constitution.
- 2.9 That the sub-clause (1) of Article 13 of the Constitution of India lays down that ‘all laws enforce in the territory of India immediately before the enforcement of this constitution, in so far as they are inconsistent with the provisions of this part, shall , to the extent of such inconsistency, be void’. If in pre independent era any

Hindu structure was demolished, damaged or destroyed by any invader, such barbarian action becomes illegal and cannot continue after enforcement of the constitution of India.

- 2.10 That the provisions of sub-section (1) to Section 4 of Act 1991 declaring that 'the religious character of a place of worship existing on the 15<sup>th</sup> of August 1947 shall continue to be the same as it existed on that day', infringes the right to religion guaranteed by Article 25 of the Constitution of India and the same is also unreasonable, irrational and illogical and also hit by Article 14 of the Constitution. The Parliament has no legislative competence to fix 15<sup>th</sup> August 1947 as cut off date. The impugned provision is void by virtue of the provisions contained in sub-clause (2) to Article 13 of the Constitution.
- 2.11 That sub-section (1) to Section 4 of Act 1991 restricts the right of citizens to secure and protect the cultural heritage of religious importance and in performance of religious rights by Hindus guaranteed and protected by Article 25 of the Constitution of India. It is a historical fact that in the year 1192 the invader Mohammad Gori after defeating the king of the country Prithviraj Chauhan established the rule governed by Islamic Law and such period of foreign rule continued up to 15<sup>th</sup> August 1947, therefore, any cut off date could be the date on which India was conquered by invader, namely, Mohammad Gori and all the places of worship of Hindus as were existing on the said date have to be restored in the same position with the same glory to provide the members of Hindu community the solace and

opportunity to resume/regain their religious places with all rights.

2.12 That every citizen of a nation after its independence has a right to restore its past glory and to nullify the spots and signs of slavery and atrocities committed and continuing and all the actions offending religious sentiments of the countrymen. Every citizen has a duty to make every endeavour to get back the past glory of the nation and the parliament cannot curtail such a right and cannot enact a law which legalizes barbarian inhumane action committed by the invaders. The Parliament is required to respect the international law and particularly to those declarations to which India is a signatory. It is matter of record that in several declarations of United Nations Organization (UNO) has declared that after independence the citizens of the country have a right to restore the demolished/damaged religious structures and to remove the signs of atrocities committed during the rule of any invader.

2.13 That after the invasion of Mohammad Gori from the year 1192 constantly India remained under slavery till independence i.e. for more than 700 years and during this period a number of atrocities which cannot be expressed in words were committed including the demolition of Hindu places of worship/temples. The parliament has no legislative competence to legalize all those actions in view of the provisions contained in sub-clause (1) of Article 13 of the Constitution of India all the previous action offending right to religion guaranteed by Article 25 of the Constitution became void and nonest with the enforcement of the Constitution of India. Therefore, the impugned

provision of Act 1991 is ultra virus to the provisions of the Constitution and is void by virtue of sub-clause (2) to Article 13 of the Constitution of India.

- 2.14 That Hindu Law was a 'law in force' at the commencement of the Constitution by virtue of Article 372(1) of the Constitution of India.
- 2.15 That Hindus have fundamental right under Article 25 of the Constitution of India to profess, practise and propagate their religion as provided in Vedas, Shasthras, Upnishads, Smrities and religious scriptures subject to public order morality and health.
- 2.16 That Article 13(2) of the Constitution of India prohibits the State from making any law which takes away or abridges the rights of the citizens conferred by part -III of the Constitution of India and any law made in contravention to fundamental rights of the citizens is void.
- 2.17 That in view of the embargo created by the Constitution the Parliament has no power to enact any law in derogation of the personal law of Hindus in force at the commencement of the Constitution or curtail such right in violation of the rights conferred in Article 25 and 26 of the Constitution of India.
- 2.18 That any order oral or written, bye-law, rule, regulation or notification issued by any Ruler, King, Authority or Person in-charge of the affairs or any direct or indirect action curtailing the right of Hindus to worship, profess and manage their temple and religious property have become void and non-est by virtue of injunction created by Article 13(1) of the Constitution of India.

- 2.19 That under Hindu law the property once vested in Deity continue to be Deity's property if any construction over the temple or the place of Hindu worship belonging to Deity has been interfered with at any point of time the same stood revived with the arm given by sub-clause (1) of Article 13 of the Constitution and the citizens have a right to protect their ancient monuments and places of worship and parliament cannot restrict such right, therefore, the provisions of sub-clause (1) of Section 4 of Act 1991 is ultra virus and void and cannot be applied in this case.
- 2.20 That the status of mosque can be given only to such structures which have been constructed according to tenets of Islam and all the mosques constructed against the provisions contained in Islamic law cannot be termed as mosque. The Muslims cannot assert any right in respect of any piece of land claiming to be mosque unless the same has been constructed according to Islamic law.
- 2.21 That the mosque can be constructed only over Wakf property. No Wakf can be created by any Muslim, may be Ruler of the time, in respect of the temple land or any religious property belonging to any other religion.
- 2.22 That any mosque constructed over the land belonging the deity or any property under ownership of deity, can be a mosque in the eyes of law having no legal sanction. Such mosque if any constructed was only with the intention to trample the religious place of Hindus and to show the might of Islam to feel the Hindu Public that they have been conquered but nevertheless such construction can be construed as a 'Mosque'.

- 2.23 That mosque constructed at the religious site/ temple land are only ornamental fulfilling the desire of the then Ruler but having no impact on the continuity of religious rights of Hindu devotees.
- 2.24 That the mosque constructed at the temple land cannot be a mosque, not only for the reason that such construction is against Islamic law, but also on the ground that the property once vested in deity continues to be deities property and the right of deity and devotees is never lost howsoever long illegal construction continues on such property. The right to restore back the religious property is unfettered and continuing wrong may be stopped by resorting to judicial remedy.
- 2.25 That Islamic Rule came in India by way of invasion and those invaders during their rule destroyed a number of Hindu temples and religious places to show the might of Islam to feel the Hindu community that they have been conquered and are being ruled and have to follow the dictum of the Ruler. The Hindus, the natives of the country, had to suffer atleast from 1192 to 1947. The question is as to whether even after independence Hindus cannot seek judicial remedy to undo the historical blunder through process of court to establish that law is mightier than sword. Therefore, Section 4 of the impugned Act is liable to be struck down.
- 2.26 That in the same manner no temple can have legal sanction unless same was established according to Hindu Law and deity was consecrated according to established principles of Hindu Dharm.

- 2.27 The property once vested in Deity continues to be the Deity's property irrespective of the fact that any person has taken illegal possession of the same. Deity, being always a minor, can always sue for restoration of possession and assert the right of worship of its worshippers.
- 2.28 That Hindu Law clearly prescribes that an idol never dies and the property once vested in it shall continue Its property and even King cannot take over the property belonging to deity. According to Katyayana, "Temple property is never lost even if it is enjoyed by strangers for hundreds of years" (P.V.Kane Volume III page 327-328); even the king cannot deprive temples of their properties. Timelessness, thus, abounding in the Hindu Deity, there cannot be any question of the Deity losing its rights by lapse of time. Jurisprudentially also, there seems to be no essential impediment in a provision which protects the property rights of disabled persons, like a Deity, to remain outside the vicissitudes of human frailties for ensuring permanent sustenance to it and therefore to keep it out of reach of human beings, including the King. Every law is designed to serve some social purpose; the vesting of rights in Deity, which serve the social purpose indicated above since ancient times, is quite in order to serve social good."
- 2.29 That In Ramareddy Vs. Ranga 2549 (1925 ILR 49 Mad 543) it is held that managers and even purchasers from them for consideration could never hold the endowed properties adversely to the Deity and there could be never adverse possession leading to acquisition of title in such cases.

- 2.30 That the Idol/Deity which is an embodiment of Supreme God and is a Juristic Person, represents the 'Infinite – the Timeless' cannot be confined by the shackles of Time. Brihadaranakya Upanishad (referred to in Mulla's Principles of Hindu Law at page 8) lays down: Om Purnamadah, purnamidam, purnatpurnamudachyate; purnasayapurnamadaya, purnamevavasisyate (Translated in English- 'That is Full, this is Full. From the Full does the Full proceed. After the coming of the Full from the Full, the Full alone remains' )– at page (v) of Brihadaranyaka Upanishad by Krishnanand, published by the Divine Life Society, P.O. Shivananada Nagar, District Tehri-Garhwal UP- 1984 Edn.
- 2.31 That in case of Mahant Ram Saroop Das Ji Vs. S.P.Sahi, Special Officer-incharge of Hindu Religious Trusts, 1959 SC 951 (para10), it recognised that "a Deity is immortal and it is difficult to visualise that a Hindu private debutter will fail. Even if the Idol gets broken, or is lost or is stolen, another image may be consecrated, and it cannot be said that the original object has ceased to exist".
- 2.32 That in case of Idol of Thakurji Govind Deoji Maharaj Jaipur Vs. Board of Revenue Rajasthan, Jaipur, AIR 1965 SC 906 (para 7), it has been laid down:
- " An Idol which a juridical person is not subject to death, because the Hindu concept is that the Idol lives forever"
- 2.33 That the impugned Act violates the concept of the Hindu law that 'Temple property is never lost even if is enjoyed by strangers for hundreds of years; even the king cannot deprive temples of their properties. The Idol/deity which is

an embodiment of supreme God and is a juristic person, represents the 'Infinite- the timeless' cannot be confined by the shackles of time.'

2.34 That the impugned Act according to Vedas, Purans, Upnishads and other sources of Hindu Law it is recognised principle that once deity property will continue to deity property and nobody's possession will be valid.

2.35 That section 4 of the impugned Act is discriminatory as Parliament while enacting the Act has excluded the property in dispute at Ayodhya for which Hindu have been fighting for restoration of temple, massive public agitation was taken up and same was affecting political scenario of the country whereas for other religious places remedy has been barred. There is no nexus with the object sought to be achieved by excluding Ayodhya Dispute. All similarly situated shrines and religious places of Hindus have been excluded from judicial scrutiny without any basis. Therefore, impugned Act being discriminatory is violative of Article 14 of the Constitution of India.

2.36 That the Hon'ble Court has finally decided the Ayodhya dispute vide judgment dated 09.11.2019. The Hon'ble Court found substance in the claim of Hindus and now a new temple is going to be constructed after about 500 years of demolition of temple complex. In case the Ayodhya case would not have been decided, the Hindu devotees would have been denied justice. Therefore any restriction on right to approach the Civil or High Court is against the basic principle of rule of law necessary component of a welfare State.

- 2.37 That section 107 of waqf Act 1995 provides that:- Nothing contained in the Limitation Act, 1963 shall apply to 'any suit for possession of immovable property comprised in any Waqf or for possession of any interest in such property'.
- 2.38 That the impugned Act discriminates Hindus with the members of Muslim Community in the matter of restoring possession of places of worship denying equality before the law guaranteed under Article 14 of the Constitution of India.
- 2.39 That the impugned Act validates the illegal and barbarous action of invaders restricting the right of Hindus to claim possession of the property whereas similarly situated Muslims can claim possession under Waqf Act as no limitation runs for them.
- 2.40 That in violation of equality clause embodied in Article 14 of the Constitution as similarly situated members of Muslims community can take back a Waqf property without there being any period of limitation and as such the Act discriminates Hindus with similarly situated members of other community and the impugned Act is against the principle of Secularism as accepted by the Constitution of India.
- 2.41 That the impugned Act infringes right of worship of Hindus guaranteed by Article 25 of the Constitution of India and deprives the right of Hindu Community under Article 26 of the Constitution of India from maintaining and managing the religious properties belonging to deity usurped by members of other community.

- 2.42 That the impugned Act takes away the remedy of Hindus to take back the places of worship and property attached thereto through Court which originally belong to a deity, and worship is being continuously performed thereat by devotees in number of ways.
- 2.43 That the impugned Act deprives the members of Hindu community to take back their place of worship connected with the cultural and religious heritage of mother of India. It is noteworthy that Hindu Devotees are paying homage to their ancient religious places and continuously worshipping even though physical possession wholly or partly have been taken by member of another faith only to trample the cultural Heritage of Hindus.
- 2.44 That the impugned Act takes away the right and remedy both of deity and worshiper whereas parliament cannot take away the power of the Constitutionals Courts. The Parliament cannot take away the right of civil court to entertain suits without creating any alternative forum.
- 2.45 That the impugned Act takes away the remedy of a devotee to get back possession of religious places originally belonging to any sect and/or religious denomination.
- 2.46 That the impugned Act has barred the right and remedy against encroachment made on religious property of Hindus exercising might of power by followers of another faith. The result is that Hindu devotees cannot raise their grievance by instituting any suit in civil court or invoking the jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India against high handiness of ultras and will not be able to restore back the religious

character of Hindu Endowments, Temples, Mautts etc from hoodlums if they had encroached upon such property before 15<sup>th</sup> August 1947 and such illegal and barbarian act will continue in perpetuity.

- 2.47 That the Parliament has transgressed its legislative power in barring remedy of judicial review which is basic feature of the Constitution. In the following cases Supreme Court has reiterated that remedy of judicial review cannot be taken away. From the catena of decisions of this Hon'ble Court it is well established that right to judicial remedy by filing any suit or proceeding in a competent court cannot be barred by the State and the power of Constitutional Courts under Article 32 and 226 Constitution of India cannot be taken away and such denial has been held to be violative of basic feature of the Constitution and beyond legislative power of parliament.
- 2.48 That according to Article 51-A (f) falling in Part –IV A under Fundamental Duties, it shall be the duty of every Citizen of India “to value and preserve the rich heritage of our composite culture.”
- 2.49 That every Citizen has Fundamental duties to preserve cultural heritage of the Nation.
- 2.50 That every citizen under Article 29 (1) of the Constitution of India has fundamental right to preserve its distinct, language, script or culture. These elements are found in ancient religious structure and same is part of religious and cultural heritage of India. The impugned Act violates the right conferred under Article 29(1) of the Constitution of India.

- 2.51 That Citizens of India apart from having fundamental right to worship all the ancient places of worship and administer the same, have fundamental duty to preserve and protect the cultural heritage of the country and for that purpose such right and duty can be asserted through Court of law to get justice.
- 2.52 That Section 4 of the impugned Act is a serious jolt on the cultural and religious heritage of India.
- 2.53 That it is relevant to mention that invaders during 1192 to 1947 have damaged, destroyed and desecrated Hindu Temples and religious places depicting Indian cultural from North to South, East to West constructed hundreds of year ago and they have occupied the same under Military power and some monuments are still lying in dilapidated condition.
- 2.54 That the Parliament by the impugned Act has destroyed the Hindu law relating to deity as the deity and its property is never lost and devotees has right to sue a wrongdoer for restoration of temple and status of deity.
- 2.55 That the crux of the matter in every case would be as to whether the any Hindu religious structure was initially in existence over which the members of another faith have raised construction or such encroachers are utilizing the Temple and the property for the use of their religion.
- 2.56 That it cannot be disputed that at the temple site of Hindus no construction of another faith can be constructed and such construction does not yield any right and equity in favour of the usurper.

- 2.57 That according to Hindu law the property once vested will continue to be deity's property. According to Muslim law on creation of waqf the property vests in 'Allah'.
- 2.58 That the pertinent question is as to whether a Waqf can be created over a deity property and such property can be assumed to be a waqf by user.
- 2.59 That the Question is as to whether Hindu law will be applicable to the properties which have been encroached upon during invaders Rule or even after independence the ghost of slavery will continue to haunt the sentiments of Hindu public and they should consider themselves remedy less or helpless to remedy the wrong through legal process even after enforcement of Constitution.
- 2.60 That after independence the subjects depressed and oppressed during slave period have a right to establish through legal means their right to worship and send a message to everybody that it is the power of pen not the sword, is mighty and will prevail.
- 2.61 That as a matter of reference it is submitted that in the recent past Talibanis demolished Budhha Statue following the line of their predecessor invaders coming from Turkistan, Mongolia through Afghanistan to India during Medieval Age.
- 2.62 That it is relevant to mention that in 1990 and thereafter in Kashmir Valley in free India hundreds of temples in existence since before 15<sup>th</sup> August 1947 have been demolished/ destroyed by ultras and unsocial elements in connivance with Terrorist Organizations.
- 2.63 That the question is as to whether applying the places of worship Act the Central Government will be able to

maintain the status of those temples with all glory as was on 15<sup>th</sup> August 1947 in Kashmir Valley.

- 2.64 That the impugned Act has been enacted for maintaining public order. “Public order” is a State subject falling in List II item 1 of seventh schedule of the Constitution of India. The Parliament has no legislative competence to legislate of State subject.
- 2.65 The impugned Act also violates the principles of secularism and State cannot interfere in the religious matters of a community.
- 2.66 That in the garb of concept of secular State in justice cannot be done with the cultural and religious history of the country and it will be height of injustice if in the name of secularism the rights of Hindus are junked.
- 2.67 That in a Nation’s history ancient religious and cultural heritage plays a vital role to make propose Nation. We cannot say a good by to our old ethos and cultural legacy.
- 2.68 That every nation has a cultural and religious legacy and its subjects are bound to glorify the same and they have every right to be proud of their religious and cultural heritage.
- 2.69 That principle of secularism as acceptable in Indian context reflect in Article 14 and 15 of the Constitution of India, according to which, the State shall not deny any person equality before the law or equal protection of the law and that sate will not make any discrimination only on the basis of creed, caste, religion or place of birth.
- 2.70 That on the touch stone of the principle of the secularism read with Article 14 and 15 of the Constitution of India it is very clear that state cannot show its inclination or hostile

attitude towards any religion, may be majority or minority community.

- 2.71 That impugned violates the principle of secularism as same has been made to curb right of Hindus for liberation of cultural and religious places damaged/ destroyed before 15<sup>th</sup> August 1947 even through process of Court.
- 2.72 That it is relevant to mention that at International level a number of conventions has taken place to consider the cultural and religious property of the subjects destroyed or damaged during war. In this regard following Conventions may be referred to:-
- i. Fourth Geneva Convention 1949 reinforced the protection of 'Places of worship which constitute the cultural or spiritual heritage of peoples ,
  - ii. Statutes of the United Nations and the UNESCO,
  - iii. The Hague Convention for the Protection of Cultural Property in the event of Armed conflict (1954),
  - iv. The World Heritage Convention (1972),
  - v. The Convention for the Protection of the Architectural Heritage of Europe (1985),
  - vi. The European Convention on the Protection of the Archaeological Heritage (1969; revised in 1992),
  - vii. The European Landscape Convention (2000) and the European Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).
- 2.73 That Article 51(c) provides that the State shall endeavour to 'foster respect for International law and treaty obligation in the dealing of organised people with one another.'

2.74 That keeping in view the facts, the constitutional provisions, historical and religious heritage of the country, right of Hindus to restore their religious places by process of law, the sentiments attached of a large number of majority community with old temples and the development emerged at International level in different conventions, section 4 of the impugned Act is wholly unconstitutional and is liable to be struck down.

**3. QUESTIONS OF LAW:**

The following substantial questions of law arise for consideration of this Hon'ble court

- 3.1 Whether Parliament has power to enact any law closing the doors for judicial review?
- 3.2 Whether by section 4 of Places of Worship (Special Provisions) Act 1991, Parliament having no power or jurisdiction has barred right and remedy of Hindus against encroachment made on their religious places exercising might of power by followers of another faith?
- 3.3 Whether the Parliament by making provision in section 4 of the impugned Act has transgressed its legislative power in barring remedy of judicial review, the basic feature of the Constitution, available to an aggrieved person against the wrong committed by encroachers?
- 3.4 Whether Hindu law is a 'law in force' within the meaning of Article 372(1) of the Constitution of India at the commencement of the Constitution?
- 3.5 Whether the section 4 of the impugned Act is ultra virus to Article 14, 15(1), 25, 26 and 29 of the Constitution of

India and same is void under Article 13(2) of the Constitution of India?

- 3.6 Whether any order, Rule, Regulation, Custom and Usage having the force of law running counter to Article 25 and 26 of the Constitution of India at the commencement of the Constitution of India have become void by virtue of Article 13(1) of the Constitution of India?
- 3.7 Whether the construction of any religious structure at the religious place of deity under any Order oral or written passed by any Ruler before 15<sup>th</sup> August 1947 has become void and nonest by virtue of the injunction embodied in Article 13(1) of the Constitution of India.?
- 3.8 Whether any construction made over the religious site of any Hindu temple by followers of another faith does not confer any right or power to them?
- 3.9 Whether Hindu law that deity is immortal and never dies and property once vested in the deity continues to the deity property is protected by Article 25 of the Constitution of India?
- 3.10 Whether Parliament has no power or jurisdiction to negate Hindu Law protected by Article 25 of the Constitution of India and cannot interfere with rights of Hindus as enshrined in Vedas, Shartras , Upnishads, Smrities and other scripture having the force of law?
- 3.11 Whether the citizens of country have fundamental right and duty as well to protect religious and cultural heritage?

- 3.12 Whether section 4 of impugned Act violates the fundamental rights of Hindus conferred by Article 14, 15(1), 25 , 26 and 29 (1) of the Constitution of India?
- 3.13 Whether impugned Act curtails the right of Hindus to claim possession of their religious and cultural properties whereas for waqf properties there is no law of limitation for claiming possession?
- 3.14 Whether the impugned Act is discriminatory in so for the Ayodhya dispute was excluded from the ambit of the Act and there is no intelligible criteria to keep out other religious property from judicial purview?
- 3.15 Whether by the impugned Act Hindus have been discriminated before law in violation of provisions contained in Article 14 and 15(1) of the Constitution of India?
- 3.16 Whether impugned Act violates the principle of secularism as same has been made to curb right of Hindus for liberation of cultural and religious places damaged/ destroyed before 15<sup>th</sup> August 1947 even through process of Court?

**4. DECLARATION:**

It is most respectfully submitted that the Petitioners further declare that they have not filed any other petition before any court or in this Hon'ble Court in respect of the subject matter of this petition.

**5:- GROUND:**

The writ petition is being preferred on the following grounds:

- A) Because the Parliament has transgressed its legislative power in enacting the Act 1991 as Parliament has no legislative competence to enact a law infringing the fundamental right guaranteed to citizens in view of the embargo created by Article 13 of the Constitution of India. The provisions of Act 1991 affects the right to religion of Hindu Community and snub the voice of devotees against the illegal and inhumane action committed in pre-independence period and the provisions of the said Act are in derogation to the fundamental rights guaranteed to the citizens by the Constitution.
- B) Because within the ambit of “place of worship” as defined under sub-clause (c) to Section 2 Act 1991 only the Temple, Mosque, Church, Gurudwara etc. are to be protected which are erected/constructed in accordance with the personal law applicable to the person constructing/raising them, but the religious places erected/constructed in derogation of the mandates and tenets of Hindu law, Islam or any other personal law cannot be termed as a place of worship. Therefore, the provisions of the Central Act are ultra virus and unconstitutional to the extent it takes away the right to religion and worship of Hindus protected by Article 25 and 26 of the Constitution of India
- C) Because the Parliament has no legislative competence to fix 15<sup>th</sup> August 1947 as cut off date. The impugned provision is void by virtue of the provisions contained in sub-clause (2) to Article 13 of the Constitution.

- D) Because the Hindu Law was a 'law in force' at the commencement of the Constitution by virtue of Article 372(1) of the Constitution of India
- E) Because the Hindus have fundamental right under Article 25 of the Constitution of India to profess, practise and propagate their religion as provided in Vedas, Shasthras, Upnishads, Smrities and religious scriptures subject to public order morality and health
- F) Because Article 13(2) of the Constitution of India prohibits the State from making any law which takes away or abridges the rights of the citizens conferred by part -III of the Constitution of India and any law made in contravention to fundamental rights of the citizens is void.
- G) Because in view of the embargo created by the Constitution the Parliament has no power to enact any law in derogation of the personal law of Hindus in force at the commencement of the Constitution or curtail such right in violation of the rights conferred in Article 25 and 26 of the Constitution of India.
- H) Because any order oral or written, bye-law, rule, regulation or notification issued by any Ruler, King, Authority or Person in-charge of the affairs or any direct or indirect action curtailing the right of Hindus to worship, profess and manage their temple and religious property have become void and non-est by virtue of injunction created by Article 13(1) of the Constitution of India.
- I) Because the status of mosque can be given only to such structures which have been constructed according to tenets

of Islam and all the mosques constructed against the provisions contained in Islamic law cannot be termed as mosque. The Muslims cannot assert any right in respect of any piece of land claiming to be mosque unless the same has been constructed according to Islamic law.

- J) Because the property once vested in Deity continues to be the Deity's property irrespective of the fact that any person has taken illegal possession of the same. Deity, being always a minor, can always sue for restoration of possession and assert the right of worship of its worshippers.
- K) Because the impugned Act violates the concept of the Hindu law that 'Temple property is never lost even if is enjoyed by strangers for hundreds of years; even the king cannot deprive temples of their properties. The Idol/deity which is an embodiment of supreme God and is a juristic person, represents the 'Infinite- the timeless' cannot be confined by the shackles of time
- L) Because the section 4 of the impugned Act is discriminatory as Parliament while enacting the Act has excluded the property in dispute at Ayodhya for which Hindu have been fighting for restoration of temple, massive public agitation was taken up and same was affecting political scenario of the country whereas for other religious places remedy has been barred. There is no nexus with the object sought to be achieved by excluding Ayodhya Dispute. All similarly situated shrines and religious places of Hindus have been excluded from judicial scrutiny without any basis. Therefore, impugned

Act being discriminatory is violative of Article 14 of the Constitution of India.

- M) Because the impugned Act takes away the remedy of Hindus to take back the places of worship and property attached thereto through Court which originally belong to a deity, and worship is being continuously performed thereat by devotees in number of ways.
- N) Because the impugned Act takes away the right and remedy both of deity and worshiper whereas parliament cannot take away the power of the Constitutionals Courts. The Parliament cannot take away the right of civil court to entertain suits without creating any alternative forum.
- O) Because the impugned Act has barred the right and remedy against encroachment made on religious property of Hindus exercising might of power by followers of another faith. The result is that Hindu devotees cannot raise their grievance by instituting any suit in civil court or invoking the jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India against high handiness of ultras and will not be able to restore back the religious character of Hindu Endowments, Temples, Mautts etc from hoodlums if they had encroached upon such property before 15<sup>th</sup> August 1947 and such illegal and barbarian act will continue in perpetuity.
- P) Because the Parliament has transgressed its legislative power in barring remedy of judicial review which is basic feature of the Constitution. In the following cases Supreme Court has reiterated that remedy of judicial review cannot be taken away. From the catena of decisions of this

Hon'ble Court it is well established that right to judicial remedy by filling any suit or proceeding in a competent court cannot be barred by the State and the power of Constitutional Courts under Article 32 and 226 Constitution of India cannot be taken away and such denial has been held to be violative of basic feature of the Constitution and beyond legislative power of parliament.

- Q) Because according to Article 51-A (f) falling in Part –IV A under Fundamental Duties, it shall be the duty of every Citizen of India “to value and preserve the rich heritage of our composite culture
- R) Because the every citizen under Article 29 (1) of the Constitution of India has fundamental right to preserve its distinct, language, script or culture. These elements are found in ancient religious structure and same is part of religious and cultural heritage of India. The impugned Act violates the right conferred under Article 29(1) of the Constitution of India.
- S) Because the Citizens of India apart from having fundamental right to worship all the ancient places of worship and administer the same, have fundamental duty to preserve and protect the cultural heritage of the country and for that purpose such right and duty can be asserted through Court of law to get justice.
- T) Because it is relevant to mention that invaders during 1192 to 1947 have damaged, destroyed and desecrated Hindu Temples and religious places depicting Indian cultural from North to South, East to West constructed hundreds of year ago and they have occupied the same under Military

power and some monuments are still lying in dilapidated condition.

- U) Because the Parliament by the impugned Act has destroyed the Hindu law relating to deity as the deity and its property is never lost and devotees has right to sue a wrongdoer for restoration of temple and status of deity.
- V) Because according to Hindu law the property once vested will continue to be deity's property. According to Muslim law on creation of waqf the property vests in 'Allah.
- W) Because the pertinent question is as to whether a Waqf can be created over a deity property and such property can be assumed to be a waqf by user.
- X) Because it is relevant to mention that in 1990 and thereafter in Kashmir Valley in free India hundreds of temples in existence since before 15<sup>th</sup> August 1947 have been demolished/ destroyed by ultras and unsocial elements in connivance with Terrorist Organizations.
- Y) Because the impugned Act has been enacted for maintaining public order. "Public order" is a State subject falling in List II item 1 of seventh schedule of the Constitution of India. The Parliament has no legislative competence to legislate of State subject.
- Z) Because in the garb of concept of secular State in justice cannot be done with the cultural and religious history of the country and it will be height of injustice if in the name of secularism the rights of Hindus are junked.
- AA) Because every nation has a cultural and religious legacy and its subjects are bound to glorify the same and they

have every right to be proud of their religious and cultural heritage.

- BB) Because on the touch stone of the principle of the secularism read with Article 14 and 15 of the Constitution of India it is very clear that state cannot show its inclination or hostile attitude towards any religion, may be majority or minority community.
- CC) Because impugned violates the principle of secularism as a same has been made to curb right of Hindus for liberation of cultural and religious places damaged/ destroyed before 15<sup>th</sup> August 1947 even through process of Court.
- DD) Because at International level a number of conventions has taken place to consider the cultural and religious property of the subjects destroyed or damaged during war.
- EE) Because the Parliament by making impugned provision has without resolution of dispute through process of the Court has abated the suit and proceedings which is perse unconstitutional and beyond law making power of Parliament for the reason that the impugned provision cannot be implemented with retrospective effect and the remedy of resolution of dispute pending, arisen or arising cannot be barred by Parliament and Parliament cannot close the doors for aggrieved persons and cannot take away the power of the Courts of first instance, Appellate Court and the power of Constitutional Courts conferred under Article 226 and 32 of the Constitution of India.
- FF) Because the maxim ubi jus ibi remedium has been frustrated by the impugned provision as pending suits or

any proceeding in respect of which cause of action has already arisen and continuing wrong, the remedy of the aggrieved person for resolution of disputes through courts have been abolished violating the very concept of justice and theme of 'Rule of law' one of the pillars of our Constitution which infringes right to religion and administer religious property guaranteed by Article 25 and 26 of the Constitution of India and also creates an embargo to preserve the religious and cultural heritage of the country in exercise of fundamental duty cast upon every citizen under Article 51-A (f) of the Constitution of India.

- GG) Because the mosque constructed at the religious site/ temple land are only ornamental fulfilling the desire of the then Ruler but having no impact on the continuity of religious rights of Hindu devotees.
- HH) Because the mosque constructed at the temple land cannot be a mosque, not only for the reason that such construction is against Islamic law, but also on the ground that the property once vested in deity continues to be deity property and the right of deity and devotees is never lost howsoever long illegal construction continues on such property. The right to restore back the religious property is unfettered and continuing wrong may be stopped by resorting to judicial remedy.
- II) Because the Islamic Rule came in India by way of invasion and those invaders during their rule destroyed a number of Hindu temples and religious places to show the might of Islam to feel the Hindu community that they have been conquered and are being ruled and have to follow the

dictum of the Ruler. The Hindus, the natives of the country, had to suffer atleast from 1192 to 1947. The question is as to whether even after independence Hindus cannot seek judicial remedy to undo the historical blunder through process of court to establish that law is mightier than sword. Therefore, Section 4 of the impugned Act is liable to be struck down.

JJ) Because keeping in view the facts, the constitutional provisions, historical and religious heritage of the country, right of Hindus to restore their religious places by process of law, the sentiments attached of a large number of majority community with old temples and he development emerged at International level in different conventions, section 4 of the impugned Act is wholly unconstitutional and is liable to be stuck down.

### **PRAYERS**

The petitioner therefore, most humbly prays that this Hon'ble court may be pleased to:-

- a) declare Section 4 of The Places of Worship (Special Provisions) Act, 1991 (Parliament Act no. 42 of 1991) as ultra virus to Article 14, 15(1), 25 and 26 of the Constitution of India and consequently void;
- b) issue a consequential writ order or direction for restoration of all the proceedings which have abated by operation of Section 4 of the Act;
- c) issue an appropriate writ, order or direction striking down Section 4 of The Places of Worship (Special Provisions) Act, 1991 (Parliament Act no. 42 of 1991) as ultra virus to Article 14, 15(1), 25 and 26 of the Constitution of India:

- d) issue any other and further order and/or directions be given as in the nature and circumstances of the case may require;
- e) Allow the petition with costs.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

Drawn By

FILED BY

HARI SHANKAR JAIN  
Advocate

VISHNU SHANKAR JAIN  
Counsel for the Petitioners

Drawn on: 25.05.2020  
PLACE: NEW DELHI;  
FILED ON: 08.06.2020