

SYNOPSIS AND LIST OF DATE

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

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

The Act is a penal Law so it must be interpreted literally not purposively. Temple is a *place of worship as God resides therein* and that's why *temple is always a temple and its religious character never changes*. On the other hand, Mosque is simply a *place of prayer* and that's why, in gulf countries (birthplace of Islam), it is demolished/shifted even for making road school hospital and public office. Moreover, *Religious Character of temples (Place of Worship) & Mosque (Place of Prayer) is totally different. So, the 1991 Act can't be applied to Mosques*.

The 1991 Act was enacted in the garb of '*Public order*', which is a State subject [Schedule-7, List-II, Entry-1] and '*places of pilgrimages within India*' is also State subject [Schedule-7, List-II, Entry-7]. So, the Centre cant enact the Law. Moreover, Article 13(2) prohibits the State to make law to take away fundamental rights but the 1991 Act takes away the rights of Hindus Jains Buddhist Sikhs to restore their '*places of worship and pilgrimages*', destroyed by barbaric invaders. The Act excludes the birthplace of Lord Rama but includes the birthplace of Lord Krishna, though both are incarnations of Lord Vishnu, the Creator and equally worshiped throughout the word, hence it is arbitrary.

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

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

On the touchstone of the principle of secularism read with Articles 14-15, it is very clear that the State cannot show its inclination or hostile attitude towards any religion, may be majority or minority. Therefore, the 1991 Act violates the principle of secularism as it violates the right of Hindus Jains Buddhists Sikhs for restoration of their places of worship destroyed before 15.8.1947 even through the mediation and the Court.

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

11.07.1991: The 1991 Act, without resolution of dispute through the process of law, has abated the suit and proceedings, which is *per se* unconstitutional and beyond the law-making power of Centre. The provisions of 1991 Act cannot be implemented with retrospective effect and the remedy of disputes pending, arisen or arising cannot be barred. Centre neither can close the doors for aggrieved persons nor can take away the power of District Court, High Court and Supreme Court of India. The maxim "*ubi jus ibi remedium*" has been frustrated by the 1991 Act as pending suits in respect of which cause of action have arisen and continuing wrong, the remedy of the aggrieved person for resolution of disputes through the Court have been abolished, which violate the very concept of justice and 'Rule of law'.

7.6.2022: Constitution is made by Indians, for the Indians and it protects Indian languages not foreign languages, Indian religions not foreign religions, Indian traditions not foreign traditions, Indian culture not foreign culture. But Act legalize illegal act of invaders. Hence, PIL.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO ... OF 2022
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Anil Kabotra
s/o late Dr. S.S. Kabotra

.....Petitioner

Verses

1. Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001,
 2. Union of India
Through the Secretary,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi-110001,
 3. Union of India
Through the Secretary
Ministry of Culture
Shastri Bhawan, New Delhi-110001
- ...Respondents

PIL TO CHALLENGE THE VALIDITY OF PLACES OF WORSHIP ACT 1991

THE HON'BLE CHIEF JUSTICE
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONER
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this PIL under Article 32 to challenge the constitutional validity of Sections 2, 3, 4 of the Places of Worship (Special Provisions) Act 1991, which not only offends Articles 14, 15, 21, 25, 26, 29 but also violates the principles of secularism, which is integral part of Preamble and basic structure of the Constitution.

- 2. The facts** constituting cause of action accrued on 11.7.1991, when the impugned act came into force. By making the impugned Act, Centre has arbitrarily created an irrational retrospective cut-off date, declared that character of places of worship shall be maintained as it was on 15.8.1947 and no suit or proceeding shall lie in Court in respect of disputes against encroachment done by barbaric invaders and law breakers and such proceeding shall stand abated. If suit /appeal/proceeding filed on ground that conversion of place of worship and pilgrimage has taken place after 15.8.1947 and before 18.9.1991, that shall be disposed off in terms of S.4(1). Thus, Centre has barred the remedies against illegal encroachment on the places of worship and pilgrimages and now Hindus Jains Buddhists Sikhs cannot file a suit or approach High Court under Article 226. Therefore, they won't be able to restore their places of worship and pilgrimage including temples-endowments in spirit of Articles 25-26 and illegal barbarian act of invaders will continue in perpetuity.
- 3.** Centre by making impugned S.2,3,4 has, without resolution of the disputes through process of the Law, abated the suit/proceedings, which is '*per se*' unconstitutional and beyond its law-making power. Moreover, impugned provisions cannot be forced with retrospective

effect and the judicial remedy of dispute pending, arisen or arising cannot be barred. Centre neither can close the doors of Courts of first instance, Appellate Courts, Constitutional Courts for aggrieved Hindus Jains Buddhists and Sikhs nor take away the power of High Courts and Supreme Court, conferred under Article 226 and 32.

4. **The injury** caused to Hindus Jains Buddhists and Sikhs is extremely large because Sections 2, 3, 4 of the Act has taken away the right to approach Court and thus right to judicial remedy has been closed. As an officer of this Court, petitioner feels its bounden duty to file this PIL, as S. 2, 3, 4 are not only contrary to Articles 14, 15, 21, 25, 26 and 29 but also against the principle of secularism, which is the part of Preamble and basic structure of the Constitution.
5. *Maxim ubi jus ibi remedium* has been frustrated by the impugned provisions in pending suit/proceeding, in which cause of action has arisen or continue and the remedy available to aggrieved person through court has been abolished thus violating the concept of justice and Rule of Law, which is core of Article 14. Section 2,3,4 not only offend right to pray practice propogate religion (Article 25), right to manage maintain administer places of worship (Article 26), right to conserve culture (Article 29) but also contrary to State's

duty to protect historic places (Article 49) and preserve religious cultural heritage (Article 51A). S. 2,3,4 offend basic dictum of Hindu law enshrined in Vedas, Puranas, Ramayana, Geeta that Idol represents the Supreme Being and so its existence is never lost and deity cannot be divested from its property even by the Ruler or King. Therefore, Hindus have fundamental right under Article 25-26 to worship the deity at the place 'It' is, utilize deity's property for religious purposes. Moreover, Pilgrimage is a State subject [Entry-7, List-II, Schedule-7] hence Centre neither can restrain Hindus Jains Buddhists Sikhs to take over the complete possession of their places of worship and pilgrimage through judicial process nor can make law to abridge their rights and particularly with retrospective effect.

6. Centre has transgressed its legislative power by barring remedy of judicial review which is basic feature of the Constitution. Apex Court has reiterated that judicial review cannot be taken away. *Indira Gandhi* [(1975) SCC (Supp) 1], *Minerva Mills* [(1980) 3 SCC 625] *Kihota Holohon* [(1992) 1 SCC 309] *Ismail Farooqui* [(1994) 6 SCC 360] *L Chandra Kumar v. Union Of India* [(1997) (3) SCC 261] *I.R. Coelho v. State of T.N.* [(2007) 2 SCC 1] The Apex Court, in a catena of decisions has held that right to judicial remedy

cannot be taken away by State and power of courts, and particularly constitutional courts conferred under Article 32 and 226 cannot be frustrated and such denial has been held violative of basic structure of the Constitution and beyond legislative power. Moreover, it is necessary to reiterate that places of worship and pilgrimage is a State subject [Entry-7, List-II, Schedule-7].

7. Hindus are fighting for restoration of birthplace of Lord Krishna from hundreds of years and peaceful public agitation continues but while enacting the Act, Centre has excluded the birthplace of Lord Ram at Ayodhya but not the birthplace of Lord Krishna in Mathura, though both are the incarnations of Lord Vishnu, the creator. The Apex Court has finally decided Ayodhya dispute on 9.11.2019 and found substance in the claim of Hindus and now a new temple is going to be constructed after more than 500 years of demolition by barbaric invaders. If Ayodhya case wouldn't have been decided, Hindus would have been denied justice. Hindus Jains Buddhists Sikhs are continuously paying homage to the places of worship though physical possession has been taken by member of other faith. So, restriction to move Court is arbitrary irrational and against the principle of rule of law, which is core of the Article 14.

8. The impugned Act is void and unconstitutional for many reasons. It:

(i) offends right of Hindus Jains Buddhists Sikhs to pray profess practice and prorogate religion (Article 25) (ii) infringes on rights of Hindus Jains Buddhists Sikhs to manage maintain administer the places of worship and pilgrimage (Article 26) (iii) deprives Hindus Jains Buddhists Sikhs from owning/acquiring religious properties belonging to deity (misappropriated by other communities) (iv) takes away right of judicial remedy of Hindus Jains Buddhists Sikhs to take back their places of worship and pilgrimage and the property which belong to deity (v) deprives Hindus Jains Buddhists Sikhs to take back their places of worship and pilgrimage connected with cultural heritage (Article 29) (vi) restricts Hindus Jains Buddhists Sikhs to restore the possession of places of worship and pilgrimage but allows Muslims to claim under S.107, Waqf Act (vii) legalize barbarian acts of invaders (viii) violates the doctrine of Hindu law that *'Temple property is never lost even if enjoyed by strangers for years and even the king cannot take away property as deity is embodiment of God and is juristic person, represents 'Infinite the timeless' and cannot be confined by the shackles of time.'*

- 9.** Deity property is continued to be deity property, other's possession will be invalid. In Mahant Ram Swaroop Das [AIR 1959 SC 951, Para 10], the Court held that: *“Even if the idol gets broken or is lost or stolen, another image may be consecrated and it cannot be said that the original object has ceased to exist.”* By impugned Act, Centre has declared that religious character of place of worship and pilgrimage as it existed on 15.8.1947 shall continue and barred the remedy by way of suit with respect to such matter in any Court. This is a serious jolt on the rights of Hindus Buddhists Jains Sikhs to worship and profess their religion and restore their religious places even through the Court. It is necessary to State that members of other faith have occupied those places taking advantage of pitiable condition of Hindus during Mughal and British Rule.
- 10.** The sovereign can remedy wrong committed by invaders and the sovereignty lies in people who have given themselves a Constitution, which has distributed the functions in three organs- Legislature, Executive, Judiciary and same has to be exercised by every branch within parameters. Judiciary is one of the components of sovereign State and Courts have power and duty to protect rights of citizens. Centre enacted the impugned Act to impose injunction

on rights of Hindus Jains Sikhs Buddhists to reclaim their place of worship and pilgrimage. "Place of worship" has been defined in Section 2(c) *'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'*.

- 11.** Petitioner submits that only those Temples Mosques Churches Gurudwara can be protected under the Act, which were erected /constructed in accordance with the spirit of personal law applicable to person constructing them, but religious places, erected/ constructed in derogation of the personal law, cannot be termed as place of worship. Thus, S.2(c) is arbitrary irrational and ultra virus and unconstitutional to the extent it abridges the right to religion Hindus Jains Buddhists Sikhs protected under Articles 25, 26, 29.
- 12.** Centre has transgressed its legislative power as it has no competence to enact law infringing fundamental right of citizens in view of the embargo created by Article 13. Provisions affect right to religion of Hindus Jains Buddhists Sikhs and snub their voice against illegal acts of invaders and thus offend fundamental rights guaranteed to Hindus Jains Buddhists Sikhs under Articles 14, 15, 21, 25 and 26 of the Constitution.

- 13.**Article 13(1) 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'*. In pre-independence era, Hindu Jain Sikh Buddhist's temples were destroyed by invaders hence, neither can continue after enforcement of the Constitution nor can Centre make law to legalize the barbaric act of the invader.
- 14.**S.4(1) declares that *'the religious character of a place of worship existing on the 15th of August 1947 shall continue to be the same as it existed on that day'*, hence, hence it not only infringes the rights of Hindus Jains Buddhists Sikhs guaranteed under Article 25,26,29 but also manifestly arbitrary unreasonable and offends Article 14.
- 15.**Centre cannot fix retrospective cutoff date 15.8.1947. It is a historical fact that in 1192, the invader Mohammad Gori after defeating Prithviraj Chauhan established Islamic Rule and foreign rule continued up to 15.8.1947, therefore, any cutoff date could be the date on which India was conquered by Gori and the religious places of Hindus Jains Buddhists Sikhs as were existing in 1192 have to be restored with same glory to provide them solace and opportunity to resume their places of worship and pilgrimage.

- 16.** Citizens have right to restore its past glory and nullify the signs of slavery and atrocities committed by invaders. Similarly, its duty of everyone to make every endeavour to get back past glory of nation thus Centre cannot legalize barbarian acts of invaders.
- 17.** Centre must respect international conventions and declarations, to which India is signatory. In several declarations, United Nations has declared that citizens have right to restore demolished/damaged places of worship and remove signs of atrocities and slavery. In 1192, after invasion by Mohammad Gori, India remained under slavery till 15.8.1947 and during this period, number of atrocities, which cannot be expressed in words, were committed including demolition of places of worship. Hence Centre has no power to legalize inhuman barbarian acts in view of Article 13(1). Barbarian acts offending rights of Hindus Jains Buddhists Sikhs guaranteed under Article 25,26,29, became void on 26.1.1950 with enforcement of the Constitution. Thus, S.4 is ultra virus by virtue of Article 13(2) itself. Moreover, Hindu Law was 'law in force' at the commencement of the Constitution by virtue of Article 13(1) thus Hindus have right under Articles 25, 26, 29 to profess practice and propagate religion.

18. Article 13(2) prohibits State from making any law which takes away or abridges fundamental rights conferred under Part-III and any law made in contravention to basic rights is void. Moreover, Pilgrimage is a State subject [Entry-7, List-II, Schedule-7]. Hence, Centre does not have jurisdiction to make impinged Act. Likewise, Centre has no power to enact law in derogation of the personal law of Hindus Jains Buddhists Sikhs in force at commencement of the Constitution or curtail such right, guaranteed under Part-III. 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 Jains Buddhists Sikhs to worship, profess and manage their religious property have become void and non-est by virtue of injunction created by Article 13(1). Under Hindu Law, the property once vested in the Deity continue to be Deity's property and if any construction over place of worship and pilgrimage belonging to Deity has been done at any point of time, the same stood revived with the arm given by Article 13(1). Moreover, Hindus Jains Buddhists Sikhs have right to protect ancient places of worship and Centre cannot restrict such right.

19.The mosque can be constructed only over Waqf property and no waqf can be created by any Muslim including Ruler, on the places of worship and pilgrimage of Hindus Jains Buddhists Sikhs. Hence, any mosque constructed over the land belonging to the deity or any property under the ownership of deity, cannot be a mosque in the eyes of Islamic law, thus having no legal sanction. Such mosques were constructed to trample the places of worship and pilgrimage of Hindus Jains Buddhists Sikhs and to make them realize that they have been conquered. The status of mosque can be given only to such structures which have been constructed according to tenets of Islam and the mosques constructed against the provisions contained in Islamic law cannot be termed as mosque. Muslims cannot assert any right in respect of any piece of land claiming to be mosque unless the same has been constructed according to Islamic law. The mosque constructed at places of worship and pilgrimage of Hindus, Jains, Sikhs, Buddhists are only ornamental fulfilling the desire of invaders but have no effect on the continuity of rights of Hindus Jains Buddhists Sikhs. Mosques constructed on Temples 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. Right to restore the places of worship and pilgrimage is unfettered and continuing wrong may be stopped by judicial remedy.

20. Islamic Rule came in India by way of invasion and invaders destroyed hundreds of places of worship and pilgrimage to show the might of Islam to realize the Hindus Jains Buddhists Sikhs that they have been conquered and are being ruled and have to follow dictum of Ruler. Hindus Jains Sikhs Buddhists, the natives of country were deprived of their right to life liberty and dignity from 1192 to 1947. THE QUESTION is as to whether even after the independence, they cannot seek judicial remedy to undo the historical wrong through judicial proceeding to establish that the Law is mightier than Sword.

21. Hindu Law prescribes that deity never dies and property once vested in deity shall continue its property and even King cannot take over possession. According to Katyayan (*P.V.Kane Vol. III, 327-328*) :
“Temple property is never lost even if it is enjoyed by strangers for hundreds of years. Even king cannot deprive temples of their properties. Timelessness, thus, abounding in Hindu Deity, there cannot be any question of the Deity losing its rights by lapse of time.

Jurisprudentially also, there is no essential impediment in provision, which protects the property rights of minors, like a Deity, to remain outside the vicissitudes of human frailties for ensuring permanent sustenance to it, therefore to keep it out of reach of human beings, including King. Every law is designed to serve some social purpose; the vesting of rights in Deity, which serve social purpose indicate above since ancient times, is quite in order to serve social good.” In Ramareddy v. Ranga 2549 (1925 ILR 49 Mad 543) Court held “managers and even purchasers from them for consideration could never hold endowed properties adversely to deity and there could be no adverse possession leading to acquisition of title in such cases”

22. The Deity which is an embodiment of Supreme God and is a Juristic Person, represents '*Infinite- the Timeless*' and cannot be confined by shackles of Time. Brihadaranakya Upanishad (Mulla's Principles of Hindu Law, page 8) lays down: “*Om Purnamadah, purnamidam, purnatpurnamudachyate; purnasayapurnamadaya, purnameva vasisyate* (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). In Mahant Ram Saroop Das Case, Court recognized that “a Deity is immortal and it is difficult to visualize 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". In *Thakurji Govind Deoji Maharaj Jaipur* [AIR 1965 SC 906 para 7], Court held: *"An Idol which a juridical person is not subject to death, because the Hindu concept is that the Idol lives forever"* Thus Act violates the concept of Hindu law. The 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 and the Hindu Law recognized the principle that once deity property, will continue to be deity property and nobody's possession will be valid.

- 23.** Petitioner respectfully submits that S. 4(1) is discriminatory as the Act has excluded birthplace of Lord Ram at Ayodhya but not the birthplace of Lord Krishna in Mathura, though, both are equally worshipped and both are incarnations of Lord Vishnu, the creator. Petitioner submits that Hindus are fighting for restoration of birthplace of Lord Krishna since many decades and peaceful public agitation may become violent, if they are not allowed to avail judicial remedy. Moreover, excluding similarly situated places of worship is arbitrary and contrary to Articles 14.

- 24.** The Court decided Ayodhya Case on 09.11.2019 and found substance in the claim of Hindus and now a new temple is being constructed after 500 years of demolition. In case, the matter would not have been decided, Hindus would have been denied the justice. S. 4(1) bars remedy against encroachment made on places of worship of Hindus Jains Buddhists. Thus, the devotees cannot raise their grievances by instituting civil suit or invoking the jurisdiction of High Court to restore Temples, Endowments Mutts and such illegal barbarian act will continue in perpetuity. Restriction on right to justice is against basic principle of socialist secular democratic republic, governed by the rule of law.
- 25.** Centre has transgressed its legislative power in barring the judicial remedy, which is basic feature of the Constitution. It is well established that right to judicial remedy by filing suit in competent Court, cannot be barred and power of Court cannot be abridged and such denial has been held to be violative of basic feature of the Constitution, beyond legislative power. Moreover, under Article 29, Hindus Jains Buddhists Sikhs have right to preserve the script and culture and under Article 51-A(f), Centre is obligated “*to value and preserve the rich heritage of composite culture.*”.

26. From 1192-1947, invaders not only damaged destroyed desecrated the places of worship and pilgrimage depicting Indian culture from north to south, east to west but also occupied the same under military power. Therefore, S. 4 is a serious jolt on the cultural and religious heritage of India. Moreover, under the Hindu Law, the deity and its property is never lost and devotees have right to sue a wrongdoer for restoration of deity and its property. Thus, crux of the matter in every case would be as to whether any Hindu Buddhist Sikh Jain religious structure was initially in existence, over which members of other faith have raised construction/such encroachers are utilizing the Temple and Mutt's property of for their religion.

27. Places of worship and pilgrimage cannot be taken by the carrot and the stick. Therefore, illegal encroachment by other faith doesn't yield any right and equity in favor of usurper. According to Hindu law, property once vested will continue to be deity's property and likewise, on creation of waqf, the property vests in 'Allah'. *The Question is whether a Waqf can be created over deity property and can such property be assumed to be Waqf by user. Another Question is as to whether Hindu law will be applicable to the properties, which had been encroached upon during Invaders' Rule or even after*

independence, the ghost of slavery will continue to haunt the sentiments of Hindus Jains Buddhists Sikhs and they should consider themselves helpless to remedy the wrong through legal process after enforcement of Constitution. Petitioner submits that Hindus Jains Buddhists Sikhs have right to remedy on the subjects depressed/oppressed during slavery period through legal means. I is also essential give message that the power of pen not the sword, is mighty and will prevail. As a matter of reference, it is submitted that recently Taliban demolished Buddha Statue on the line of their predecessor invaders did during Medieval Age.

28. The Act was enacted to maintain '*Public order*' which is a State subject [Entry-1, List-II]. Hence, Centre has no legislative power to enact it. Likewise, 'pilgrimage' is State subject [Entry-7, List-II, Schedule-7] Moreover, the Act violates principles of secularism and State cannot interfere in religious matters. In the garb of secularism, Injustice cannot be done with places of worship and pilgrimage. Religious and cultural heritage plays vital role in laying the future foundation. Therefore, we cannot say goodbye to our cultural legacy. It will be the height of injustice; the rights of Hindus Jains Sikhs Buddhists are junked.

29.In Kashmir, since 1947, hundreds of places of worship of Hindus Jains Sikhs Buddhists have been destroyed by separatists and fundamentalist. *THE QUESTION* is as to whether applying the impugned Act, will Central maintain the status of those places of worship with the glory as was on 15.8.1947. India has cultural religious legacy and Centre is bound to glorify them. Centre neither can deny equality before law and equal protection of laws not can discriminate on basis of religion race caste etc. Centre cannot show its inclination or hostile attitude towards any religion.

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

31. Petitioner's full name is Anil Kabotra, father's name is DR. S.S

Kabotra, _____ PAN: _____, AADHAAR:

_____. Annual income is around ___ LPA.

Petitioner is a retired Army Officer and 1971 War-Veteran. Petitioner

is striving to make a united integrated developed and delighted

India, free from corruption, criminalization, casteism, communalism

linguism, regionalism separatism radicalism and nepotism.

32. Petitioner has not filed any other same or similar writ petition either

in this Hon'ble Court or any other High Court.

33. Petitioner has no personal interests, individual gain, private motive

or oblique reasons in filing this writ petition as PIL.

34. There is no civil, criminal or revenue litigation, involving petitioner,

which has/could have legal nexus, with issue involved.

35. Petitioner has not submitted any representation to authorities as the

issues involves are interpretation of the Constitution.

36. Petitioner don't have any other remedy available except approaching

this Hon'ble Court under Article 32.

37. Petitioner seeks liberty of this Hon'ble Court to places other material

facts and evidence and judgments of the Courts.

GROUND:

Petitioner is filing this writ petition on the following grounds:

- A. Because the impugned Act has been enacted in the garb of '*Public order*', which is State subject [Entry-1, List-II, Schedule-7]. Likewise, '*Pilgrimage, other than pilgrimages to places outside India*' is also State subject [Entry-7, List-II, Schedule-7]. Therefore, Centre has no legislative competence to enact the impugned Act.
- B. Because Article 13(2) prohibits the State to make law to take away the rights conferred under Part-III but the impugned Act takes away the rights of Hindus Jains Buddhist Sikhs to restore their '*places of worship and pilgrimages*', destroyed by barbaric invaders.
- C. Because the Act excludes the birthplace of Lord Rama but includes birthplace of Lord Krishna, though both are the incarnation of Lord Vishnu, the Creator and equally worshiped throughout the world, hence arbitrary, irrational and offends Articles 14-15.
- D. Because right to justice, right to judicial remedy, right to dignity are integral part of Article 21 but impugned Act brazenly offends them.
- E. Because right to pray, profess, practice and propagate religion of Hindus Jains Buddhists Sikhs, guaranteed under Article 25, have been deliberately and brazenly offended by the impugned Act.

- F. Because the impugned Act blatantly offends the rights of Hindus Jains Buddhists Sikhs to restore, manage, maintain and administer the '*places of worship and pilgrimage*', guaranteed under Article 26.
- G. Because right to restore and preserve the script and culture of the Hindus Jains Buddhists Sikhs, guaranteed under Article 29 of the Constitution have been brazenly offended by the impugned Act.
- H. Because directive principles are nevertheless fundamental in the governance of Country and Article 49 directs the State to protect the places of national importance from disfigurement-destruction.
- I. Because State is obligated to respect the ideals and institutions and value and preserve the rich heritage of Indian culture.
- J. Because State has no legislative competence to enact law infringing the right guaranteed to citizens in view of the embargo created by Article 13. Moreover, the Act affects right to religion of Hindus Jains Buddhists Sikhs and snubs their voice against illegal inhumane barbarian action committed in pre-independence period.
- K. Because only those places can be protected, which were erected or constructed in accordance with personal law of the person erected or constructed them, but places constructed in derogation of the personal law, cannot be termed as a '*place of worship*'.

- L. Because the retrospective cut off-date i.e., 15.8.1947 was fixed to legalize the illegal acts of barbaric invaders and foreign rulers.
- M. Because the Hindu Law was 'Law in force' at the commencement of the Constitution by virtue of the Article 372(1).
- N. Because Hindus Jains Buddhists Sikhs have right to profess, practice propagate religion as provided in their religious scriptures and Article 13 prohibits from making law which takes away their rights.
- O. Because the status of mosque can be given only to such structures which have been constructed according to tenets of Islam and the mosques constructed against the provisions contained in Islamic law cannot be termed as mosque. Thus, 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. Moreover, the property vested in Deity continues to be the Deity's property irrespective of the fact that any person has taken illegal possession.
- P. Because S.4(1) violates the concept that *'Temple property is never lost even if is enjoyed by strangers for hundreds of years; even the king cannot deprive temples of their properties. The deity which is embodiment of supreme God and is a juristic person, represents the 'Infinite- the timeless' cannot be confined by the shackles of time.*

- Q.** Because Centre neither can take away the power of Civil Courts to entertain the suit for restoration nor can take the power of High Courts and Supreme Court conferred under Article 226 and 32. The impugned Act has barred right and remedy against encroachment made on religious places of Hindus Jains Buddhists Sikhs. Centre has transgressed its legislative power in barring remedy of judicial review, which is the basic feature of the Constitution of India.
- R.** Because from 1192 to 1947, barbaric invaders damaged-desecrated religious places of Hindus Jains Buddhists Sikhs, depicting Indian cultural from north to south, east to west. Moreover, the impugned Act has destroyed the Hindu Law relating to the deity as deity and its property is never lost and devotees have the right to sue a wrongdoer for restoration of property. Its well established in Hindu law, that property once vested will continue to be deity's property.
- S.** Because on the touch stone of the principle of secularism read with Articles 14-15, it is very clear that State cannot show its inclination/ hostile attitude towards any religion, may be majority or minority. Thus, impugned acts violates the principle of secularism as it curb the right of Hindus Jains Buddhists Sikhs for restoration of their places of worship destroyed before 15.8.1947 even through Court.

- T. Because the impugned act, without resolution of dispute through process of law, has abated the suit and proceedings, which is *per se* unconstitutional and beyond law making power of the Centre. The impugned provisions cannot be implemented with retrospective effect and the remedy of disputes pending, arisen or arising cannot be barred. Centre neither can close the doors for aggrieved persons nor can take away the power of Courts of first instance, Appellate Court and Constitutional Courts, conferred under Article 226 or 32.
- U. Because the maxim *ubi jus ibi remedium* has been frustrated by the impugned Act as pending suits in respect of which cause of action have arisen and continuing wrong, remedy of the aggrieved person for resolution of disputes through Court have been abolished, which violate very concept of justice and 'Rule of law'.
- V. Because the mosque constructed at temple land cannot be a mosque, not only for the reason that such construction is against Islamic law, but also on grounds that the property once vested in the deity continues to be deity's property and right of deity and devotees are never lost, howsoever long illegal encroachment continues on such property. Right to restore back religious property is unfettered and continuing wrong and injury may be cured by judicial remedy.

- W. Because barbaric invaders destroyed a number of places of worship and pilgrimage to make Hindus Jains Buddhists Sikhs to realize that they have been conquered and have to follow the dictum of Ruler. Hindus Jains Buddhists Sikhs had suffered from 1192 to 1947. Question is as to whether even after the independence; they cannot seek judicial remedy to undo the barbarian acts through process of court to establish that law is mightier than the sword.
- X. Because there are many International Conventions on the cultural and religious heritage and India is signatory of them. Therefore Centre is obligated to act in accordance with the conventions viz. (i) *Fourth Geneva Convention 1949 reinforced the protection of 'Places of worship which constitute cultural - spiritual heritage of people* (ii) *Statutes of United Nations and UNESCO* (iii) *Hague Convention for the Protection of Cultural Property in the event of Armed conflict 1954* (iv) *World Heritage Convention 1972* (v) *Convention for the Protection of Architectural Heritage of Europe 1985* (vi) *European Convention on Protection of Archaeological Heritage 1969* (vii) *European Landscape Convention 2000* and (viii) *The European Convention on Protection and Promotion of Diversity of Cultural Expressions 2005.*

PRAYERS

The Court may be pleased to issue writ, order or direction to:

- a) direct and declare that Section 2 of the Places of Worship (Special Provisions) Act, 1991 is void and unconstitutional for being violative of Articles 14, 15, 21, 25, 26, 29 of the Constitution of India in so far as it legalizes '*the ancient historical and puranic places of worship and pilgrimage*', illegally occupied by barbaric foreign invaders;
- b) direct and declare that Section 3 of the Places of Worship (Special Provisions) Act, 1991 is void and unconstitutional for being violative of Articles 14, 15, 21, 25, 26, 29 of the Constitution, in so far as it legalizes '*the ancient historical and puranic places of worship and pilgrimage*', illegally occupied by barbaric foreign invaders;
- c) direct and declare that Section 4 of the Places of Worship (Special Provisions) Act, 1991 is void and unconstitutional for being violative of Articles 14, 15, 21, 25, 26, 29 of the Constitution, in so far as it legalizes '*the ancient historical and puranic places of worship and pilgrimage*', illegally occupied by barbaric foreign invaders;
- d) pass such other order(s) or direction(s) as Court deems fit.

07.06.2022

(ASHWANI KUMAR DUBEY)

NEW DELHI

ADVOCATE FOR PETITIONER