

SYNOPSIS

It is no more *Res Integra* that a legislation promulgated to take over the administration & management of a religious endowment is co-terminus of removal of consequence of alleged maladministration; the judgment reported in 2014(5)SCC 75 Dr. Subramaniam Swami vs. State of Tamil Nadu have unambiguously & authoritatively laid down the said proposition of law by enumerating the ratio in following paragraphs:

“65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such an expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

66. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the

objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.

67. *“Regulate” is defined as to direct; to direct by rule or restriction; to direct or manage according to certain standards, to restrain or restrict. The word “regulate: is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meanings and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word “regulate:” is elastic enough to include issuance of directions, etc. (Vide K. Ramanathan v. State of T.N. and Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy).”*

In 2008(5) SCC 287 Satyawati Sharma vs. Union of India this Hon’ble Court have also held as under Para

- “32. It is trite to say that legislation which may be quite reasonable and rational at the time of this enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. In State of M.P. v. Bhopal Sugar Industries Ltd. this Court while dealing with a question whether geographical classification due to historical*

reasons could be sustained for all times observed: (AIR p. 1182, para 6).

“6... Differential treatment arising out of the application of the laws so continued in different regions of the same reorganized State, did not, therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganization Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.”

If the above referred judgments are conjointly read along with catena of judgement rendered laying down law by this Hon’ble Court the “Uttar Pradesh Sri Kashi Vsihwanath Temple Act 1983” would definitely fail the scrutiny of law to remain in force further. The preamble of the Act is beneficial to be read at this stage to appreciate the *ratio decidendi* in proper prospective;

“An Act to provide for the proper and better administration of Sri Kashi Vishwanath Temple, Varanasi and its endowments and for matters connected therewith or incidental thereto.”

In the aforesaid background. the factual scenario needs to be enumerated for the kind perusal of this Hon'ble Court.

Prior to the promulgation of the Act, 1983, and the preceding Ordinance 20 of 1983, the forefathers of/and the petitioners had "Poornaadhikar" for conducting seva, puja, raj bhog, and other religious affairs of the deity and administering and managing the temple and other endowments of the deity "Sri Adi Kashi Vishwanath" in the city of Varanasi.

In fact this absolute and exclusive right and role of the petitioner & their ancestor is well documented and had continued since time immemorial, which could be evidenced from various historical narratives, scriptures, etc. Even though it was questioned by some quarters in the past, their right to have "Poornaadhikar" had been judicially determined by several judicial pronouncement –

- After the death of the ancestor of the petitioner namely Devidutta, about their right to act as Panda of lord Vishwanath, one pundit namely Vishveshwar Dayal filed a suit in the year 1900 which was decreed & was held pundit

Vishveshwar Dayal being the brother-in-law was *entitled* to the office of priest and panda of deity Sri Adi Vishveshwar.

- In a judgment dated 18.01.1935 the First Additional Sub Judge in suit no. 20/1935 had held that the *right to receive the offerings in the temple is as much a right as a property, as a house or as a movable, which is exclusively belongs to "Lingiyas"*.
- Smt. Indrani W/o Pundit Vishveshwar Dayal bequeathed her right through a will dated 22.11.1905, while dealing with the said will the Ld. Sub-judge in a detailed judgment had held that through her will *she had rightly bequeathed the rights of entire temple of Sri Adi Vishwanath as well as the other things as owners*.
- In the suit no. 43/1958 filed by "Mahant" Kailashpati Tiwary one of the ancestor of the petitioner was given a declaration that he is qualified to manage the affairs of the temple to the exclusion of all other "Mahants".

Therefore, the right & entitlements of the petitioners to manage, administer and perform religious duty and other affairs pertaining to the Temple of Sri Adi Vishwanath is judicially determined apart from the fact it has a support of strong historical evidence, which are narrated in the preceding paragraphs.

When the matter stood thus, in late 1982 it was alleged that there was great deal of maladministration and mismanagement in the temple leading to appalling conditions of the temple and there was an alleged incident of theft of jewellery and apparels of the deity. Disturbed with the huge mal-administration of the temple the government of Uttar Pradesh promulgated an Ordinance namely the “Uttar Pradesh Kashi Vishwanath Temple (Third Ordinance) 1983” and thereby taking over the management of the Temple and its endowments forthwith.

Subsequent thereto, the Ordinance was repealed only to be replaced by an Act namely “Uttar Pradesh Kashi Vishwanath Temple Act, 1983”. The sole object of and rational for enacting the Act was to take over the management of the temple to remedy the maladministration which is clearly and categorically proclaimed in the preamble of the Act itself. Although

the Act should have been legislated for a definite period but none of the provisions suggested this as such the effect of the Act is to take away the management for perpetuity which is impermissible in view of the temporary nature of the object and purpose The Act sought to achieve.

Petitioner No. 1,2 & 3 along with the late fathers of the petitioners challenged the vires of the said act by way of writ petition before the Hon'ble High Court of Judicature at Allahabad. The Hon'ble High Court turned down the writ petition of the petitioner and declined to declare the Act, 1983 as ultra vires and impinging the constitutional rights guaranteed to the petitioner under article 25 & 26 of Constitution of India.

The matter thereafter travelled to this Hon'ble Court; this Hon'ble Court vide reported judgment dated 14.03.1997 although declined to interfere with the order of the Hon'ble High Court but recognized the fact that the effect of the Act 1983 is of temporary nature and would not impinge upon the rights guaranteed to the petitioner under article 25 & 26 of Constitution of India. The following paragraphs for the purpose of better appreciation are reproduced hereunder:-

"2. Though it is claimed that some of appellants are the descendants of Pt. Visheshwar Dayal Tiwari

and that the Mahant (Priest) of the Temple got it re-erected, it is not necessary for the purpose of this case dwell on the history. Suffice it to state that the management of the Temple was in an appalling condition. Devoted pilgrims when they visited the Temples were subjected to exploitation at the behest of pandas, the precincts were in most unhygienic condition. Admittedly, the jewellery of Lord Shiva was stolen which necessitated constitution of Committee which had gone into and recommended to the Government to take steps for proper management thereto. The theft that took place in the mid-night of January 4-5, 1983, 14 years from now, had become cause of concern to all the Hindus and the residents of Varanasi, in particular for protection and proper management of the temple. It became necessary to take effective steps to provide efficient administration and proper arrangements for orderly visit and prayer by the devotees, thronging daily the precincts of the temple in millions coming from every nook and corner of the country and abroad.

3. *By operation of sub-section (2) of Section 1, the Act came into force w.e.f. January 28, 1983, i.e. on the 'appointed date' under the first Ordinance. Before the High Court, the Act was assailed by filing a writ petition, primarily on the ground that it infringes the appellants' fundamental rights enshrined in Articles 25(1) and 26(b) and (d) of the Constitution."*

Perusal of the judgment supra, would unambiguously and without adulteration would lead us to infer the following-

- The Act of 1983 is meant for limited purpose and confined to administration and management of the Sri Adi Kashi Vishwanath Temple.
- The purpose of the Act is only to remedy the prevailing maladministration particularly, un-hygienic

condition, reported theft and giving better facility to the pilgrims.

- The Act in no manner determines the right and entitlements of the petitioner who are descendents of “Lingiyas” and have been managing the complete affairs of the temple prior to the ordinance and the Act.
- The Act does not invest the government with any power to interfere with the religious part of management or day today administration of the temple or its endowments.
- The Act does not allow to interfere with the discharge of the religious duty performed by the Archakas as such and in such capacity, in the performance of ceremonies, rituals and services being observed in accordance with customs and usages.
- The Act, thus, demarcates the religious functions and then entrusted to priest, similarly the secular functions of administration and management of the temple, endowment and temple fund are entrusted to the board.

The petitioner are filing the present writ petition and seeking a declaration as prayed primarily for two

reasons. Firstly, this Hon'ble Court while deciding appeals arising out of challenge to the validity of the 1983 Act have returned certain findings which were not the subject matter of the lis. Those observations have unsettled the previous judicial determinations as to the rights historically and customarily enjoyed by petitioners and their ancestors, which, though meant to be temporarily aligned with the Purpose and objectives of the Act, was, in effect, permanently taken away.

Therefore, these observations need to be declared as "obiter".

Further, reading the provisions of section 43 of the Act 1983 makes it abundantly clear that determination of any right of any person through judicial determination is not precluded and is specifically saved. Therefore, a judgment testing the validity of the said Act ought not to have expressly or impliedly precluded or in any manner influenced the determination of any right including the petitioner which is protected under the statute. For ready reference the provisions are reproduced herein below:-

"Section 43 - Savings - Nothing in this act shall preclude any person from instituting any suit or other legal proceedings in court of competent jurisdiction to establish the right claimed by him."

Secondly, as per the settled principle of law, now affirmed particularly in the case of Satyawati Sharma (Supra) & Dr. Subramanian Swamy (Supra), the effect of the said Act diminished, outlived its utilities once the maladministration is remedied.

It is further pertinent to mention here that the allegation of theft against some of the Pandas which is a contributory cause of promulgation of the ordinance also proved to be false after the criminal court acquitted the panda from the charges of the alleged theft vide judgment dated 07.09.2000 passed by ACJM (II), Varanasi in case no. 372/2000, titled "State vs. Markandey Singh and others".

In the aforementioned precinct, the petitioners have invoked the writ jurisdiction of this Hon'ble Court under article 32 of the Constitution of India, for protection of their rights and entitlements etc. under the statute as well as the constitutional rights guaranteed under article 14, 19, 21, 25 & 26 of the Constitution Of India.

Historical back ground and List of Dates and Event

Ancient Times According to Pauranik Mahatmya in Kashi Khand of 'Skand Purana' the Jyotirlingam was established by Lord Shiva himself, when he went into exile to the Mount Mandara during the reigns of legendary king Devadasa. That Lord Shiva while leaving his own imprint in the form 'Linga' widely known as Lord Vishweshwar , entrusted and handed over with authority to manage its affairs as 'Poorna Adhikari' (absolute right & title) to the then existing family of Lingiyas. The word 'Lingiya' too was the title given to the authorised priest managing the affairs of Lord Vishweshwar having being entrusted with by Lord Shiva himself.

Till 1195AD Ancestors of the Petitioners as members of Lingiya Brahmins have since the entrustments of the Swayambhu Jyotirlinga to them by the

Lord Himself established and maintained the temple of the Lord which over time grew in fame far and wide . Since time immemorial through generations after generations the ancestors of the petitioners held the 'Poorna Adhikar' for carrying on Seva Puja and Rag-Bhog, the religious affairs of the Deity, Shri kashi Vishweshwar in the city of Varanasi, protecting and safeguarding the image of the Deity in the form of the Jyotirlinga, and receiving the religious offerings made to the Deity and managing the endowment of the Deity of the famous Temple.

1194-1585

The ironic indication of the importance of the fame of Lord Vishweshwar comes out of the historical fact that the Temple was singled out for destruction by the Kuttubddin Aibak, a captain of Moghul plunderer Mohd. Gori in the 12th century(1194).Since then the story of the Temple is one of construction

and destruction and desecration with the Lingiya ancestors of the Plaintiffs playing the crucial role of hiding away the image of the Lord and then reinstalling it in their humble abode. The temple construction was undertaken in a big way in 1585 by Raja Todar Mal, the Finance Minister of Mughal Emperor Akbar who was then Governor of Jainpur.

1650s

The possession, ownership and poorna Adhikar enjoyed by the petitioners since time immemorial to manage the affairs of the lord is apparent from a FIRMAN of Shahzada Dara Shikho dated 4th safar 30, the year of ascension in 1067 Hizri(under his Royal Seal) which proclaimed that whatever the Hindu pilgrims bring for worship of Bishweshwar nath Mahadeo should be received by Bhim and other Lingiyas. It is therefore ordered by His Highness that they should act upon the Firman and allow the said Lingiyas and

their Heirs to appropriate the offerings made at the time of worship and do not interfere with them in any way. This document can also be deemed as a grant of Patta to then Chief of Lingiya, Sri Bheem ram (Sharma) and his descendents/Heirs.

1669

Moghul despot Aurangjeb again destroyed the Temple in 1669 AD when again the then Lingiya Ancestors in customary and traditional possession of the Linga removed it and hid it in the underground Mandap near GyanVapi well to prevent it from being defiled and destroyed. That with the restoration of peace and removal of danger, Pandit Sri Bheem Ram Sharma, ancestor of the Plaintiffs who had in his personal possession the Linga enshrined the Linga in the North East corner of his residential abode, conducted the Pran Pratistha ceremony in accordance with the religious dictate

and practice and started offering Seva Puja in the room serving as a make shift temple for the benefit of worship of the Lord by his numerous Bhaktas. The place of the residential room of late Sri Bheem Ram Lingiya where the Jyotirlingam was originally established and Pran Pratishtha ceremony carried out is still the place, Garbha Griha where the Jyotirlingam is placed till the present day.

1777-1785 After obtaining permission from Sri JayaRam Sharma, the then ancestor of the Plaintiffs in charge of the affairs of the Lord, Rani Ahalyabai Holkar constructed a temple in and around the room , the Garva Griha already housing the Jyotirlingam during 1777-1785. The Temple structure having been raised by her over the land and the small residential house belonging to late Sri Bheem Ram Sharma after obtaining the then Lingiya Panda Sri Jayaram Sharma's permission, the

Poorna Adhikar to own, possess , offer Seva Puja, Rag-Bhog and to manage all affairs of the Jyotirlingam was again continued in the hands of the then living ancestors of Lingiya panda.

1895 Maharaja Ranjit Singh of Punjab, with the consent/permission of the then ancestors of the Plaintiffs who were in charge of the affairs of the temple, renovated and gold plated the entire dome constructed over the temple with 22 tons of gold in 1895 AD.

Till 1983 Ancestors of the petitioners continued to administer and manage the affairs and endowments of the Temple according to Hindu Customs, traditions and vidhi. The Ownership and Possessory rights of the Predecessors / Petitioners are also reflected in the RORs of the Nagar Nigam of Varanasi.

28.10.1983 The UP Kashi Vishwanath temple Act was promulgated with the declared

objective of better administration and management of temple on the pretext of a theft of jewellery and appalling conditions prevailing at the temple. The Respondents took over the possession of the temple and all its endowments and even other structures not falling under the scope of the Act in the garb of discharging the secular functions better administration and management and deeply encroached over the religious affairs of the temple suddenly at one stroke depriving and extinguishing the pre-existing rights of the petitioners which they enjoyed since ancient times and passed over to them by their ancestors over generations.

28.10. 1986 The constitutionality of the Act of 1983 was challenged before the the Hon'ble High Court. The Hon'ble high court by revisiting the historical back ground of the temple in para 4 of the judgment noted that

“ the ancestors of the present petitioners have been responsible not only for the installation of the deity after saving it from Auranzab but by customs and uses become entitled to offerings and use the surplus even for their personnel use. It is not denied that these pandas by their personnel efforts are responsible for collection of donation ,and development and growth of the temple in the present form”

14.3.1997 Finally the matter reached this Hon’ble court which by its Order dated 14.3.1997 upheld the constitutionality of the Act. However many important issues of existing/subsisting rights pertaining to the poornadhikaar of the petitioners were left unanswered.

2008 This Hon’ble court laid down the ratio of the judgment in (2008) 5 SCC 287 Satyawati sharma vs UOI, that a statute deserves to be struck down if it has worn out and though it was unobjectionable as a transitional or temporary measure at an initial stage, it became discriminatory and hence violative of [Article 14](#) of the

Constitution as it persisted in over a long period without any justification."

2013

This Hon'ble court lays down the ratio in the judgment in the case in Dr Subramaniam swamy vs State of Tamilnadu AIRSC pg 476(DB), that The Madras Hindu Religious and Charitable Endowments Act 1951 deserves to be stuck down as has achieved its objective of better management and administration of the Temple and Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of mal administration. "Supersession of pre existing rights of the petitioners of administration though the instrument of the Act of 1983 cannot be of permanent enduring nature.

21.09.2017

The petitioners filed a civil declaratory suit in the court of Civil Judge(SD), Varanasi praying to declare their

poornaadhikar rights over the
Jyotirlinga and other reliefs.

Hence this Petition.

IN THE SUPREME COURT OF INDIA
(CIVIL EXTRA-ORDINARY JURISDICTION)
WRIT.PETITION(Civil) NO. OF 2018
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. Shri Adi Vishweshwar of
 Kashi Vishwanmath
 Temple,
 Premises no CK 35/18

 Gali Vishweshwar,

 Varanasi

 Through next friends as given below

Petitioner No1

2. Ramashankar Tripathi
 aged about 94 years
 S/o Late Pt. Bhavani Shankar Tripathi

 R/o H.No. CK-35/15,

 Vishwanath Gali,

 Varanasi Petitioner No.2

3. Shiva Bhushan Tripathi
 aged about 63 years
 S/o Late Pt. Laxmi Shankar Tripathi

 H. No. 9/4 Shanischar Gali,

Varanasi-221001 (U.P.). .Petitioner No.3

4. Pushp Shankar Tripathi aged 48
S/o Ravi Shankar Tripathi

House No CK 35/13,

Saraswati Phatak.

VaranasiPetitioner No.4

5. Shiv Shankar Tripathi aged 45 years

S/o Ravi Shankar Tripathi

House No CK 35/13,

Saraswati Phatak.

VaranasiPetitioner No.5

6. Deep Shankar Tripathi aged 42 Years

S/o Ravi Shankar Tripathi

House No CK 35/13,

Saraswati Phatak.

VaranasiPetitioner No.6

7. Shree Shankar Tripathi aged 40 Years

S/o Ravi Shankar Tripathi

House No CK 35/13,

Saraswati Phatak.

VaranasiPetitioner No.7

8. Mani Shankar Tripathi aged 39 Years

S/o Ravi Shankar Tripathi

House No CK 35/13,

Saraswati Phatak.

Varanasi

Petitioner No.8

9. Ganesh Shankar Tripathi

aged about 60 years

S/o Krishna Shankar Tiwari,

House No D9/4, Shanichar Gali,

Varanasi

.....Petitioner No.10

10. Shyam Shankar Tripathi

aged about 55 years

S/o Krishna Shankar Tiwari,

House No D9/4, Shanichar Gali,

Varanasi

.....Petitioner No.11

11. Indra Bhushan Tripathi

aged about 43 years

S/o Vidya Bhushan Tripathi,

House No D9/4, Shanichar Gali,

Varanasi

.....Petitioner No.12

12. Ratna Bhushan

aged about 40 years

S/o Vidya Bhushan Tripathi,

House No D9/4,
Shanischar Gali,
VaranasiPetitioner No.13

13. Rajan Bhushan Tripathi
aged about 37 years
S/o Vidya Bhushan Tripathi,
House No D9/4, Shanichar Gali,
VaranasiPetitioner No.14

14. Vikas Bhushan Tripathi
aged about 34 years
S/o Late Pt. Vidya Bhushan Tripathi
R/o H. No. D-9/4
Shanischar Gali
Varanasi-221001 (U.P.)Petitioner No.15

15. Hari Shankar Tiwari
aged about 60 years
S/o Late Pt. Chandra Shekhar Tiwari
R/o H. No. D-9/5-7
Shanischar Gali
Varanasi-221001 (U.P.)Petitioner No.16

16. Shiva Shankar Tiwari
aged about 57 years

S/o Late Pt. Chandra Shekhar Tiwari
R/o H. No. D-9/5-7
Shanischar Gali
Varanasi-221001 (U.P.)Petitioner No.17

17. Jai Shankar Tiwari
aged about 53 years
S/o Late Pt. Chandra Shekhar Tiwari
R/o H. No. D-9/5-7
Shanischar Gali
Varanasi-221001 (U.P.)Petitioner No.18

18. Rajendra Prasad Tiwari
aged about 51 years
S/o Late Pt. Chandra Shekhar Tiwari
R/o H. No. D-9/6-7
Shanischar Gali
Varanasi-221001 (U.P.)Petitioner No.19

19. Verendra Shankar Tiwari
aged about 40 years
S/o Late Pt. Kanhaiya Lal Tiwari
R/o H. No. D-9/5-7
Shanischar Gali
Varanasi-221001 (U.P.)Petitioner No.20

20. Ashwini Tiwari

aged about 25 years

S/o Late Pt. Kanhaiya Lal Tiwari

R/o H. No. D-9/5-7

Shanischar Gali

Varanasi-221001 (U.P.)Petitioner No.22

21. Shree Prakash Tiwari

aged about 25 years

S/o Late Pt. Kanhaiya Lal Tiwari

R/o H. No. D-9/5-7

Shanischar Gali

Varanasi-221001 (U.P.)Petitioner No.23

Versus

1. State of Uttar Pradesh

through collector,

District Varanasi.Respondent No.1

2. The Board of Trustees

for Sri Kashi Vishwanath Temple Varanasi

through its president,

Sri Kashi Vishwanath Temple,

Vishwanath Gali Varanasi.Respondent No.2

3. The Chief executive officer,
Executive committee of
the Kashi Vishwanath Temple,
Vishwanath Gali, Varanasi.

.....Respondent No.3

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA, 1950 FOR
ISSUANCE OF AN APPROPRIATE WRIT
PROTECTING THE FUNDAMENTAL RIGHTS
OF THE PETITIONERS ENSHRINED UNDER
ARTICLE 14,19,21,25 & 26 OF THE
CONSTITUTION OF INDIA**

TO

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

Petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:-

1. That, the instant writ petition under Article 32 of the Constitution of India, has been preferred by the present Petitioners primarily for two reasons. Firstly, this Hon'ble Court while deciding appeals arising out of challenge to the validity of the 1983 Act have returned certain findings which were not the subject matter of the lis. Those observation have unsettled the previous judicial determinations as to the rights historically and customarily enjoyed by petitioners and their ancestors, which , though meant to be temporarily aligned with the Purpose and objectives of the Act, was, in effect, permanently taken away.

Further, reading the provisions of section 43 of the Act 1983 makes it abundantly clear that determination of any right of any person through judicial determination is not precluded and is specifically saved. Therefore, a judgment testing the validity of the said Act ought not to have expressly or impliedly precluded or in any manner influenced the determination of any right including the petitioner which is protected under the statute.

Secondly, as per the settled principle of law, now affirmed particularly in the case of Satyawati

Sharma (Supra) & Dr. Subramanian Swamy (Supra), the effect of the said Act diminished, outlived its utilities once the maladministration is remedied.

In the aforementioned precinct, the petitioners have invoked the writ jurisdiction of this Hon'ble Court under article 32 of the Constitution of India, for protection of their rights and entitlements etc. under the statute as well as the constitutional rights guaranteed under article 14, 19, 21, 25 & 26 of the Constitution Of India.

2. The facts leading to the present case in the nutshell are as follows:

A. That Shri Kashi Vishweshwar Temple at varanasi (hereinafter referred to as the 'Temple') is in existence since times immemorial and had been established, maintained and administered since beginning by the members of reputed Brahman sect of Hindu Religious denomination, commonly known as Lingiya Brahmins in Varanasi. There are several stories on self-incarnation of Linga idol at Varanasi. The fact remains that it is very ancient for the last thousands of years Lord Vishwanath/ Vishweshwar has been pre-eminent Shiva Linga/ Jyotirlingam

(idol) at 'Kashi, the supreme principal deity. According to Pauranik Mahatmya in Kashi Khand of 'Skand Purana' the Jyotirlingam was established by Lord Shiva himself, when he went into exile to the Mount Mandara during the reigns of legendary king Devadasa. That Lord Shiva while leaving his own imprint in the form 'Linga' widely known as Lord Vishweshwar, entrusted and handed over with authority to manage its affairs as 'Poorna Adhikari' (absolute right & title) to the then existing family of Lingiyas. The word 'Lingiya' too was the title given to the authorised priest managing the affairs of Lord Vishweshwar having being entrusted with by Lord Shiva himself.

B. Ancestors of the Petitioners as members of Lingiya Brahmins have since the entrustments of the Swayambhu Jyotirlinga to them by the Lord Himself established and maintained the temple of the Lord which over time grew in fame far and wide . Since time immemorial through generations after generations the ancestors of the petitioners held the 'Poorna Adhikar' for carrying on SevaPuja

and Rag-Bhog, the religious affairs of the Deity, Shri kashi Vishweshwar in the city of Varanasi, protecting and safeguarding the image of the Deity in the form of the Jyotirlinga, and receiving the religious offerings made to the Deity and managing the endowment of the Deity of the famous Temple of Adi Vishweshwaar popularly known as The Kashi Vishwanath Temple including all subordinate temples, shrines, subshrines and the asthan of all other images and deities, mandaps, wells, tanks and other necessary structures and land appurtenant thereto added over time. Because of this timeless association, the clan of the plaintiffs are known as Lingiya Pandas who were vested with possession and ownership rights of the idol and the endowments and a right to administer and manage the properties accrued through ownership of original land, customs and long user. The special nature of the age long relationship of the Lingiya Brahmins to Shri Kashi Vishwhweswar Temple is a complex conundrum of owners, Mahant, Shebait, priests, archaks of the Idol, conducting all the religious affairs Rag Bhog Puja Path etc and as Owner Trustees, Mahants , Manager, shebait,

conducting all other administration and management related affairs relating to Temple and its properties.

C.That generations after generations of these Lingiya Panda who were ancestors of the Plaintiffs devotedly conducted Seva Puja and Rag Bhog of Lord Vishweshwar and the Mahima of the Lord spread far and wide. The ironic indication of the importance of the fame of Lord Vishweshwar comes out of the historical fact that the Temple was singled out for destruction by the Kuttubddin Aibak, a captain of Moghul plunderer Mohd. Gori in the 12th century(1194).Since then the story of the Temple is one of construction and destruction and desecration with the Lingiya ancestors of the Plaintiffs playing the crucial role of hiding away the image of the Lord and then reinstalling it in their humble abode. The temple construction at this site was undertaken in a big way in 1585 by Raja Todar Mal, the Finance Minister of Mughal Emperor Akbar who was then Governor of Jainpur.

D.That the possession, ownership and poorna Adhikar enjoyed by the petitioners since ancient times to

manage the affairs of the Lord is apparent from a FIRMAN of Shahzada Dara Shikho dated 4th safar 30, the year of ascension in 1067 Hizri(under his Royal Seal) which proclaimed that whatever the Hindu pilgrims bring for worship of Bishweshwar nath Mahadeo should be received by Bhim and other Lingiyas. It is therefore ordered by His Highness that they should act upon the Firman and allow the said Lingiyas and their Heirs to appropriate the offerings made at the time of worship and do not interfere with them in any way. This document can also be deemed as a grant of Patta to then Chief of Lingiya, Sri Bheem ram (Sharma) and his descendents/Heirs.

Copy of the FIRMAN of Shahzada Dara Shikho dated 4th safar 30, the year of ascension in 1067 Hizri(under his Royal Seal) is annexed and marked as **ANNEXURE-P-1**

E. Moghul despot Aurangjeb again destroyed the Temple in 1669 AD when again the then Lingiya Ancestors in customary and traditional possession of the Linga removed it and hid it in the

underground Mandap near GyanVapi well to prevent it from being defiled and destroyed. That with the restoration of peace and removal of danger, Pandit Sri Bheem Ram Sharma, ancestor of the Plaintiffs who had in his personal possession the Linga enshrined the Linga in the North East corner of his residential abode, conducted the Pran Pratistha ceremony in accordance with the religious dictate and practice and started offering Seva Puja in the room serving as a make shift temple for the benefit of worship of the Lord by his numerous Bhaktas. The place of the residential room of late Sri Bheem Ram Lingiya where the Jyotirlingam was originally established and Pran Pratishtha ceremony carried out is still the place, Garbha Griha where the Jyotirlingam is placed till the present day.

F. That the then Rani Ahalyabai Holkar, W/o Martand Rao Holkar the then Maharaja of Indore Estate (MP), who was son of Raja Malhar Rao Holkar of Maheshwar Nagari, a Hindu Royal and a staunch and pious devotee when could come to know about the famous Jyotirlingam being place in a small residential room of Late Sri Bheem Ram Sharma,

Lingiya Panda, who was the ancestor of the petitioner decided to visit Kashi. After Rani Ahilya Bai Holkar came to Kashi and contacted Late Pt. JayaRam Sharma, and offered to get a temple constructed by the permission of Lord Vishweshwar and with the consent of ruling Mahant Pt. Sri Jay Ram Sharma. The late Pt. Jay Ram Sharma realising the wishes of Late Rani Ahilyabai Holkar being so pious, agreed to get a temple constructed by her through him. Consequently thereof the temple was constructed in and around the room, that is the "Garbha-Griha" wherein Jyotirlingam had already been installed and housing. The construction of the aforementioned was raised during 1777 to 1785 AD. The temple structure having been got raised by Rani Ahilyabai Holkar over the land and small residential house belonging to late Pt. Bheem Ram Sharma on being permitted by Lord Shiva himself with the consent of Late Pt. Jay Ram Sharma, S/o Late Pt. Bheem Ram Sharma was Pt. Shiv Ram Sharma and his son was Late Pt. Jay Ram Sharma and so on so forth, their descendants, petitioners perfected their rights by virtue of being descendants of Late Pt. Bheem Ram Sharma, the

“Poorna Adhikar” to own, possess and carry out seva-pooja, rag bhog etc. of Jyotirlinga and to manage all affairs thereof and the same is being continued since, then in the hands of the then living ancestors of “*Lingiya Panda*” of whom the petitioners are decedents. This was engraved in tablet placed therein and the inscriptions reproduced hereunder clearly show that the temple was constructed by her Highness Rani Ahilyabai Holkar through late Pt. Jay Ram Sharma. :

Vishweashwarashyaramanniyataram Sumandir
Shri Panch Mandapyutam SadryushamchaaVesham

Kashyamantagriyuhesthane Shwiye Kailashtoadhike
Tadagnayatdaptan **Jaya Ram Susharmana**
KritamtaDwijvaryen kashyam Nivasata Sada
Gatam Vishwesh kripayam Nirbighnaam Paripurnatam

Copy of the transcript of inscriptions on the Tablet
is annexed and marked as **ANNEXURE P-2**

G. That the next round of benevolence flowed through the pious hands of Maharaja Ranjit Singh of Punjab who with the consent/permission of the then ancestors of the Plaintiffs who were in charge of the affairs of the temple, renovated and gold plated the entire dome constructed over the temple with 22 tons of gold in 1895 AD.

H. That even in the days of unquestioned supremacy of Royals, Rani Ahalyabai Holkar and Maharaja Ranjit Singh should seek consent, permission and religious advice from the ancestors of the Lingiya Brahmins before embarking on further construction of temple of Shri Kashi Vishweshwar show the position and Poorna Adhikar enjoyed by Lingiya Brahmins pertaining to the affairs of Shri Kashi Vishweshwar.

I. That the the premises no. CK 35/18 in the record of Nagar Mahapalika Varanasi is recorded as “Mandir Maharaja Vishwanath in-charge Pundit Uma Shankar Tripathi” and in the remark colounm, it is mentioned as Temple of “Vishwanath Ji” of the year 1945-51.

It is material to mention here that aforesaid Temple bearing nagar nigam no. CK 35/18, situated SM Plot No. 9133 area 10 acre at mouza Sheher Khash, pargana Dehat Amanat, Tehsil Sadar, District Vnaras and in the remark column following remarks found mentioned

“Mandir Pokhta Sangi Visheshwar Nath Sona Chadhaya Maharaja Ranjit Singh Wallia Mulk may chabutra Khas Musammat Lakhpatt Kunwar Jauja Ganesh Dutt and Musammat Ajnashi Kunwar Jauja Ramdutta Panda, Kaum- Brahmin, Sakin Mohalla - Gyanvapi, Sahar Benaras.”

The aforesaid remark is proved by the photocopy of the certified copy of the extract of Khasra 1291 Fasli which is in Urdu language and translated. The entry proves beyond all shadows of doubt that the right title, interest of the petitioners and their ancestors is unquestionable.

Copies of few RoRs is annexed and marked as

ANNEXURE P-3

J. That further proof of the undisputable and inalienable character of association of Lingiya Brahmins as enjoying the Poorna Adhikar pertaining to Title, possession , Seva Puja, Rag-Bhog of the Jyotirlingam and all religious affairs can be appreciated from the photograph depicting Shringar (Rajvesh) of Jyotirlingam in the background of which the marble statute of their ancestor Late Shri Mahabir Prasad Tiwari, the then one of the Mahantas, which still adorns the wall in the Garbha Griha, near the Asthan, the abode of the Lord Kashi Vishweshwar.

K. That since then Lingiya Pandas having been bestowed with Poorna Adhikar over the Jyotirlingam and the administration and management of all

affairs including sevaPuja and rag bhog over generation and generations from Puranic and historical times, enjoyed rights to ownership of the Jyotirlingam by title and to manage all affairs pertaining to worship, service, rituals, ceremonies and other religious observances in accordance with the Hindu Sashtra, scriptures and usage and to manage the Temple Properties. Even though in the great spirit of Hindu Religion and practices, the Temple welcomed all worshippers as Lord Vishwanath is Lord of all, the Poorna Adhikar always remained with the section of Lingiya pandas and their descendants. This Poorna Adhikar in concept is much more than the rights and entitlement of Shebait/Mahant/ Manager/Archaka/Pujari/Trustee etc as is commonly understood. The term Poorna Adhikar connotes a sense of “absolute domain “ by which the Lingiya Panda and their descendents are entitled to retain possession of Shiva Linga/Jyotirlingam irrespective of the fact that religious offerings and other properties vested in the Deity and Lingiya Panda being the de facto Next of Kin to the Deity.

L. A genealogical table has been annexed to the plaint & the relationship of the parties would appear from the said genealogical table.

M. That the Jyotirlingam, as has been submitted herein above, has all along through ages, was under the ownership and in the safe custody and possession of Lingiyas. The family Tree annexed with the suit show beyond all shadows of doubts that by historical evidence, customs and usage , the Jyotirlingam could come to the hands of petitioners. As has been submitted hereinabove, the temple is a structure time to time destroyed by bigots but always protected by the then living Lingayats and were later re-erected, reconstructed, renovated by devotees of the Jyotirlingam like Raja Todar Mal, Rani Ahalya bai Holkar, Maharaja Ranjit Singh to continue the glory, splendour and mahima of Lord Vishwanath, but the Jyotirlingam has always been treated and considered as the exclusive property of Lingayats, both in the religious and secular sense. While the Linga , the original abode of Bheema Ram which served as the Temple and was later renovated and added on and on through benevolence of Royalties and other devotees and

other movable and immovable properties acquired through religious offerings were considered private property under ownership of the existing Lingayats in the nature of a Private Endowment, the Temple was open for all devotees equally without any restriction who worshipped and obtained the blessings of God freely . This fact-situation was never controverted. In fact an old Sanad dating back to 2nd Shawal 1160 Hizri (English calendar 1746/47) issued by the then Kazi decreed that the performance of religious services of the Hindu in the city of Muhammadabad alias Kasha was formally entrusted to the ancestors of their caste the Lingiyas from ancient times and to support their family members from the charitable offerings made by the Public.

N. That the above facts clearly show the ownership and possessory rights over the Jyotirlinga of the section of Brahmins called Lingiya, the ancestors of the Plaintiffs from time immemorial. Historical documents, Customs and Long User strongly support these rights of the Lingiya Pandas, the ancestors of the Plaintiffs . Because of timeless and ancient nature of the fact and situation

pertaining to The Jyotirlingam, the ownership of original land belonging to Shri Bheem Ram Sharma and his descendents where the original temple was re-erected and later renovated and added onto by benevolence of Royal and Common devotees like Rani Ahalya, Mahraja Ranjit Singh. Though no documentary evidence in the nature of title deeds are available/ in existence. However there is no controverting proof against the same at the same time. The recital on the inscription, the Moghul Farman and Sanad not only prove that as per long Customs and Usage, the Lingayats have been the exclusive owners having possessory rights over the Jyotirlingam but also the all other affairs pertaining to religious and other affairs of the Vishweshwar Temple.

- The Supreme Court in the case of [B. Satyanarayana and others vs. Konduru Venkatapayya and others](#) (AIR 1953 SC 195) held thus: "There is no doubt on the authorities that a presumption of an origin in some lawful title may, in certain circumstances, be made to support possessory rights long and quietly enjoyed, where no actual proof of title is forth-

coming, but it is equally well established that that presumption cannot be made where there is sufficient evidence and convincing proof of the nature of grant and the persons to whom it was made."the Supreme Court in the case of [Manohar Das vs. Charu Chandra](#) (AIR 1955 SC 228):"It was a presumption made for securing ancient and continued possession which could not otherwise be reasonably accounted for. But it was not a "presumptio Juris et de jure" and the Courts were not bound to raise it if the facts in evidence went against it."

P. The special Custodianship of the Lingam has been a religious matter with the religious Section of Lingiyas as it involved daily and offering regular and defined seva and worship, rituals and other religious observances as per religious scriptures and shastras whether general public visited to offer worship or not. Thus this custodianship transcended the usual secular perspective of " Custody" or "Custodianship" and conveyed a special relationship indicating a more than a mere possessory rights but with strong religious

overtones and concomitant duties pertaining to such custody by daily and offering regular and defined seva and worship, rituals and other religious observances as per religious scriptures and shastras.

Q.Ownership /Possessory rights of the Lingam/symbol of the Lord Vishweshwar enjoyed by the Lingiyas and Possessory rights of properties and endowments dedicated to the Deity for the purpose of better management and administration are two distinct and separate things. While the former is a matter of temporal and religious affair and practice, the latter relates to secular matters of management and administration of the properties. The former is a fundamental right guaranteed under Art 25 and 26 of the Constitution of India.

R.That the plaintiffs claiming as descendents of Shri Bheem Ram Sharma held the Jyotirlingam and that portion of the land and building which belonged to Shri Bheem Ram Sharma and served as his house where he re-erected the temple, re established the Linga as their own private trust and all the others

constructions, additions made thereto, religious offerings and other movable and immovable properties over time as private endowment of Sri Vishweshwara . Even though by tradition, customs and usage, only the Lingiya Brahmins performed sevaPuja Rag Bhog as a distinct section of Hindus, all Hindus were free to enter the temple and worship the Lord. In their all encompassing roles as owners, Mahants and Shebaites, Archakas, Priests, the then living members of Lingiyats performed all the religious functions including safeguarding the Lingam besides handling the administration, management and governance .The fact is also not controverted that the control and management of the Vishweshwar Temple remained in the hand of Lingiya Brahmins since ancient and historic times.

S.That ancestors of the plaintiffs being absolute owner in possession of Jyotirlingam/Shiva Linga took out the same from the said mandapam and placed it where plaintiffs' ancestors resided so as to discharge their religious obligations which they owe to the Jyotirlingam having been given to

them as full owner thereof so as to permit followers of Lord Shiva to fulfil their religious duties of worshipping the lord in the manner in which plaintiffs' ancestors so arranged and organised.

T. That the above facts and circumstances amply show that the forefathers of the petitioners and the petitioners have been, since time immemorial, well defined, well recognized pre existing rights even before the Constitution came into being. In fact, the Lingiya Brahmins were the Deity's next friend with pre existing rights since time immemorial who performed both the secular management and administration functions and also the Religious functions consisting of Rag Bhog Seva Pooja etc.

U. That the Uttar Pradesh Sri Kashi Vishwanath Temple Act 1983 was enacted by the State legislature. That as per the Preamble of The Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983, the main object and rationale for legislating the Act was "to provide for the proper and better administration of

Sri Kashi Vishwanath Temple, Varanasi and its endowments and for matters connected therewith or incidental thereto". The vires of the Act of 1983 was challenged and eventually the lis travelled to this Hon'ble Court which vide its order dated 14.03.1997 upheld the validity of the Act in the Judgment reported in 1997 (4)SCC 607 Shri Adi Vishweswara of Kashi Vishwanath Temple, Varanasi & Ors v The State of U.P. & Ors. While passing the order dated 14.03.1997, this Hon'ble court also made certain observations adverse to the identity and interests of the petitioners as members of the Lingiyas even though the issues were not the direct subject matter of the lis before the Court. In an incorrect, mala fide and vindictive interpretation of the Act of 1983, the Respondents ,in the garb of managing, administration and governance of the secular affairs, forcibly deprived the petitioners poornaadhikar, ownership and possessory rights over the Jyotirlingam, and also the Right to continue their religious affairs and customary rituals and ceremonies flowing from such rights by not allowing offering Seva-puja, Rag Bhog which have been existent since ancient times and vested with

the denomination called Lingiyas and their descendents as an exclusive religious function.

V. This Hon'ble Court vide order dated 14.03.1997 while, deciding the lis in subject, was pleased to observe as under :

Para 35.....

“Accordingly we hold that the contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes their rights and is so is violative of Articles 25 and 26(b) and (d) of the Constitution is untenable and devoid of substance.”

Para 41.....

“In other words, the affairs of Lord Shri Vishwanath Temple by the Pandas/Mahant have become extinct ...”

Para 43 ..

“Panda/Archaka(Priest), by whatever name called is not an integral part of religion and performs all the religious tenets or ceremonies in accordance with the Hindu Sasthras, customs and practices prevailing in the Temple. They owe their existence to an appointment. They are servants of the temple ,terminable on the grounds of misconduct or unfitness to perform service, rituals/ceremonies in accordance with the Hindu Sashtras, customs and practices Temple handed down from centuries. On abolition, the rights of the holder of office or the post stands extinguished.

Para 44:

“The right to receive offerings from the pilgrims is incidental to the service rendered by archakas(Priests). Independent of service, there is no right to receive offerings from pilgrims or the devotee...It is not a vested right as such but is a right coupled with duty to render service. When service on customary basis is abolished, concomitant right to receive offerings given by pilgrims stand extinguished and prohibited and is vested in the Deity, Lord Shiva.It is not an acquisition of their rights but it has only incidental and consequential effect.”

Para 46:

“ In view of the finding that Lord Sri Vishwanath Temple is not a denominational Temple and Hindus as such are not denomination/ section/sect nor the appellants are denominational worshippers, the contention that Sections 6 and 3 cannot be read down so as to make the appellants as members of the Board under Section 6 of the Act, is without any force. Similarly, it is difficult to accede to the contention that Section 6 must be read down to include those persons who profess denominational Hindu Shivaite practising as members of the Board. Equally, Sections 20(1) and (2) cannot be read down so as to give wider powers to the “archaka” defined in Section 4(2). Equally, Sections 22(2), 23(2)(b), 24(2) and 25(8) cannot be read down so as to confer functional and financial responsibilities on the archaka.

W. That the Petitioners have filed Declaratory Suit No. 424/2017 in the Court of Civil judge(Sr. Division), Varanasi praying for declaration of their rights of Title and Poorna Adhikar as owner of the

Jyotirlingam of Shri Adi Vishweshwar and other reliefs, in view of their claim and holding ownership and possession of the Jyotirlingam in the nature of a private trust/endowment lay their claim on the Jyotirlingam and Garva Griha where the idol is installed as their private and personal property which issue is not decided by the Hon'ble Supreme Court. As the next friend of the deity having Poornaadhikar since ancient times, the jyotirlinga being bestowed on to the ancestors of the Lingiya Brahmins by the Lord Himself and was passed to the descendants from Generations, the Garva Griha being the residential abode of the then Lingiya when Emperor Aurangzeb destroyed the Temple and their poornaadhikar manifest as Mahants/Shebaites and Archaks/pujaris of Shri Kashi Vishweshwar since time immemorial, the Lingiya Brahmins enjoy ownership/possessory rights over the Jyotirlinga and to offer Seva Puja Rag-Bhog of Shri Kaashi Vishweshwar.

Copy of the declaratory suit no. 434/2017 filed before the Ld. Civil Judge (Sr. Division) Varanasi is annexed herewith and marked as **ANNEXURE P-4.**

X. The Respondent/Defendant in the Suit have not filed their Written Statement within the statutory Limit Period and have lost their right to file the same. However it is apprehended that the Respondents Authorities would take a plea and the suit court below might be led to believe during prosecution of the suit ,that all the issues in the matter has already been decided against the petitioners by this Hon'ble Court vide Order dated 14.03.1997 which is contrary to facts.

Y. This apex court , also in its order dated 14.3.1997 recounted and documents the reasons for the enactment in Para 2.

"Suffice it to state that the management of the temple was in an appalling condition. Devoted Pilgrims when they visited the Temples were subjected to exploitation at the behest of Pandas, the precincts were in most unhygienic conditions. Admittedly the Jewellery of Lord Shiva was stolen which necessitated the constitution of a committee which had gone into and recommended to the Government to take steps for the proper management thereof.

The theft took place in the mid night of January 4-5 1983, 14 years from now, had become cause of concern to all the Hindus and the residents of Varanasi, in particular for protection and proper management of the Temple. It became necessary to take effective steps to provide efficient administration and proper arrangements for orderly visit and prayer by the devotees, thronging daily the precincts of the Temple coming from every nook and corner of the country and

abroad. On the basis of the recommendation of the said Committee dated January 14, 1983, an Ordinance titled U.P Sri Kashi Vishwanath Temple Ordinance, 1983 was promulgated by the Governor of the State of UP on January 24, 1983 whereby the management and control of the said temple was taken over from Mahants and Pandas(Priests)."

Z. The Hon'ble Supreme Court in *Sri Adi Vishweshwar of Kashi Vishwanath temple, Varanasi vs State of UP and Ors* 1997(4)SCC 606 while upholding the constitutionality of the Act of 1983 left many questions unanswered. The Hon'ble court also touched upon many aspects of the issue as obiter while deciding the constitutionality of the Act of 1983. The defendants are most likely to take advantage of these obiter by incorrectly attributing them to have the force of Ratio *Decidendi* to counter the legitimate claims of the petitioners.

AA. In *Dr Subramaniam swamy vs State of Tamilnaadu* AIRSC pg 476(DB), where the lis involved the claim by Podhu Dikshitaras (Smarthi Brahmins) to administer the properties of Sri Sabhanayagar Temple at Chidambaram in question dedicated to Lord Natraja and also the genesis of such pre-existing rights even prior to the

commencement of the Constitution and the extent of exercise of State control under the statutory provisions of The Madras Hindu Religious and Charitable Endowments Act 1951 (hereinafter referred to as the 'Act 1951') as well as the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 and where the Dikshitaras claimed that they constituted a 'religious denomination' and their position vis-à-vis the Temple was analogous to muttadhipati of a mutt; and the orders impugned therein were violative of the provisions of Article 26 of the Constitution, a position similar to the Lingiya Brahmins in case of Sri Kashi Vishwanath temple, this Honorable Court held that

“Supersession of rights of administration cannot be of permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of mal administration. The reason was that the objective to take over the management and administration was not the removal and replacement of the existing administration but to rectify and stump out the consequences of mal -administration. Power to

regulate does not mean power to supersede the administration for indefinite period.” It further held

*“ Even otherwise it is not permissible for the State/ Statutory Authorities to supersede the administration by adopting oblique/circuitous method. In Sant Lal Gupta & Ors vs Modern Co-Op Group Housing Society Ltd & Ors (2010)13SCC 336, this Court held” It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely meaning thereby, whatever is prohibited by law to be done, can not legally be effected by an indirect and circuitous contrivance on the principle of the principle of “quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud”. An authority cannot be permitted to evade a law by “shift or contrivance”. (See also: [Jagir Singh v. Ranbir Singh](#), **AIR** 1979 SC 381; *A.P. Diary Dev. Corporation federation v. B. Narsimha Reddy & Ors.* **AIR2011** SC 3298; and *State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors.* **AIR2011** SC 3470).*

AB. Since the U.P Sri Kashi Vishwanath Temple Act, 1983 was enacted to take care of a specific but temporary situation and unhygienic and appalling conditions prevalent in the Precincts of the Temple at that time, the Act also partook a temporary character. The temporary nature contemplated by the Act is evident from the use and import of the words in the preamble “proper and better administration” clearly referred to the purported conditions prevalent prior to the promulgation of the Act which aimed to make thos

conditions proper and better. The theft of 1983 was investigated and due action under law have already been taken by the Police. The Appalling and unhygienic conditions in the Precincts of the Temple have been taken care of by the administration and management of the Respondents during these long 35 years. As such the reasons which necessitated the enactment of the Act of 1983 no longer exist and therefore the said Act needs to be struck down as being obsolete. In *H.H. Shri Swamiji Sri Admar Mutt vs the Commissioner, Hindu Religious and Charitable Endowment Deptt.* 1997 (4) SCC 642, this hon'ble court has held: Reason is the Soul of Law and when the reason of any particular law ceases, so does the law itself".

AC. While holding that the explanation appearing below [Section 14\(1\)\(e\)](#) of the 1958 Rent Control Act as redundant and setting aside the impugned judgment, [Section 14\(1\)\(e\)](#) of the 1958 Act is partly struck down in (2008 5 SCC 287 *Satyawati sharma vs UOI*, by this s Hon'ble court . The Bench observed:

"32. *In Motor General Traders vs. State of Andhra Pradesh* (*supra*), validity of Section 32(b) of the A.P.

Buildings (Lease, Rent and Eviction) Control, Act, 1960 was considered. By that Section it was declared that the provisions of the main Act will not apply to the buildings constructed after 25th August, 1957. The Court noted that exemption had continued for nearly a quarter century and struck down the same despite the fact that validity thereon had been upheld by the High Court in [Chintapalli Achaiah vs. P. Gopala Krishna Reddy](#) [AIR 1966 AP 51]. Some of the observations made in the judgment are worth noticing. These are:

"What may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of [Article 14](#) of the Constitution if it is persisted in over a long period without any justification."

"What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century....We are constrained to pronounce upon the validity of the impugned provision at this late stage because of grab of Constitution which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge". The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is *ultra vires*, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported."

AD. Even though this Hon'ble court while hearing the lis and passing their 1997 judgment declared that "The primary question is as to the constitutionality of the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983 ([U.P. Act No. 29/83](#)) (for short, the "Act"),

made for the management of the Temple of renowned Lord Vish-wanath, otherwise known as Sri Adi Visheshwara of Kashi' . The Judgment also acknowledged the facts "In the year 1193 A.D., when one of the Lieutenants of Mohd. Gori, namely, Kutubud-din Eibak completely destroyed Lord Shiva's Temple, the Priest (Mahant) concealed the Idol of Lord Vishwanath from being defiled and destroyed" and "Aurangzeb again destroyed the Temple of Lord Shiva in 1669 A.D. when again the then Priest (Mahant) removed the idol of Lord Shiva so as to prevent it from being defiled and destroyed. Thereafter, it was again restored in the year 1777 A.D., by Rani Ahilya Bai Holkar of M.P." The Lordships observed that Though it is claimed that some of the appellants are the descendants of Pt. Visheshwar Dayal Tiwari and that the Mahant (Priest) of the Temple got it re-erected, it is not necessary for the purpose of this case to dwell on the history. Suffice it to state that the management of Temple was in an appalling condition.

AE. The Hon'ble court, in its Order dated 14.3.1997 in Para 45 further held that

“Even assuming that if any action is found to be in excess of the Statutory conferment of the power of wanting in quality that would be an individual case which may be liable to challenge in an appropriate proceeding and for that reason the Act cannot be declared as ultra vires.”

While passing such an order this Hon’ble court , in its order, has commented upon issues that are not the subject matter of the lis and at best can be held as obiter without any force of a ratio decidendi.

3. That the petitioner is filing the present petition inter alia on the following **GROUND**s:

- A. BECAUSE the petitioners have filed a Declaratory Suit no. 434/2017 before the Civil Judge (Sr. Divison), Varanasi for declaration of their ownership, possessory rights and *poornadhikar* over the Jyotirlinga, which may be impeded because of the observation occurred in the judgment reported in 1997(4)SCC 606;
- B. BECAUSE the Petitioners are the lawful Owners enjoying *Poornaadhikar*, Ownershp and Possessory rights over the Jyotirlinga since ancient times, which has been judicially determined on more than one occasion and with the strength of historically and customary evidence. Therefore, the observation occurred in

the judgment reported in 1997(4)SCC 606, which was uncalled for keeping in view the lis under consideration in that case, have largely diluted the established pre-existing rights of the petitioner and their ancestors;

C. BECAUSE Such Poornaadhikar, Ownership and Possessory rights of the Predecessors of Petitioners through time to the present petitioners over the Jyotirlinga since ancient times have matured and become inalienable. Therefore the observation so occurred in the judgment *Adi Vishwanath (supra)* need to be declared as obiter.

D. BECAUSE THE Respondent Authorities in an incorrect, mala fide and excessive interpretation of the Act of 1983 deprived all Poornaadhikar, Ownership and Possessory rights of the petitioners, petitioner oblivious of the statutory protection provided under the said act. The saving clause, in the said Act namely Section 43 saves the individual rights of the petitioner to be determined by the competent court of law, uninfluenced by the provision of the Act. Therefore, any observation made by this Hon'ble

Court while testing the validity of the said Act could not have taken away the rights of the petitioner save under the Act.

- E. BECAUSE this Hon'ble court while deciding CA no 1013-1015 of 1987 and passing its judgment and order dated 14.3.1997 upholding the constitutionality of the Act of 1983 made certain observations about the status of the petitioners in that case even though they were not issues in the lis;
- F. BECAUSE the Petitioner apprehends that the Respondent Authorities are likely to prejudice the minds of the Suit Court by misleading the suit court that the issues before it are already decided by this Hon'ble Court vide its order dated 14.03.1997 even though the observations were purely obiter and cannot be taken as Ratio decidendi as regards the issues before the Suit Court;
- G. BECAUSE the petitioners apprehend that the Suit Court while adjudicating the matter before it will be misled by the Respondent Authorities into believing that the issues before it are already

decided by this Hon'ble Court vide its Order dated 14.3.1997

- H. Because the judgment passed by this Hon'ble Court in the matter of Adi Vishwasar of Kashi Vishwanath Temple (Supra) has categorically observed

“Though it is claimed that the some of the appellants are descendents of Pt. Vishwaeshwar Dayal Tiwari and that the Mahanta (priest) of the temple got it re-erected, it is not necessary for the purpose of this case to dwell upon the history, suffice it to state that management of the temple was in an appalling condition”

The aforesaid observation of this Hon'ble Court paves a way for the petitioners to approach this Hon'ble Court to appreciate the right, title, interest and poornaadhikar of the petitioner since time immemorial enjoyed by their ancestors.

- I. BECAUSE the observations occurred in the judgement of this Hon'ble Court in Adi Vishwanath (supra) particularly the observation as mentioned in para 2V of this petition are beyond the scope of the lis before the court. Therefore, the same are liable to be declared obiter.
- J. BECUASUE it is an admitted case on record that the UP Shri Kashi Vishwanath Temple Act, 1983

was promulgated to overcome the limited appalling condition of the temple and its poor administration. The purpose of the act have already achieved to its fullest and the management and maintenance of the temple has already put in place. Therefore, there is no further utility exist to sustain the said statute. This has been a settled law once an outlived its utility the same should be declared un-enforceable and nullity under law. Satyawati Sharma (supra) has settled the law in subject.

K. Because it is now settled law that right of administration of a temple cannot be a permanent enduring nature and any law brought in this direction is coterminous with the removal of maladministration. Therefore, even if the management of the temple is taken over to remedy the evil, the management must be handed over to the concerned immediately after the evil stands remedied. This law is also settled in the Dr. Subramaniam Swami (supra).

L. Because the saving clause of the Act, in subject also saves the right of the persons claiming right, entitlement and possession over the temple,

therefore, it is in consonance declared by this Hon'ble Court in Satyawati (supra) and Subramaniam Swami (supra)

4. That the petitioners are seeking declaration that the judgment pronounced by this Hon'ble Court may be declared as Obiter. Therefore this Hon'ble Court alone has the jurisdiction to entertain the present lis to adjudicate upon the prayer made by the petitioner. Apart from that the alternate prayer of the petitioner being a prayer seeking declaration of the Act of 1983 to be non-enforceable due to lapse of time having outlived its utility could also be entertained by this Hon'ble court alone because the validity of the Act in Subject had been upheld by this Hon'ble Court in the Judgment reported in 1997 4 SCC 602. Therefore in that view of the matter also the petitioner has no other remedy except the remedy of Writ under Art 32 of the Constitution of India before this Hon'ble Court. The third prayer being a prayer seeking a direction to the Ld. Trial Court to decide the suit uninfluenced by the observation made by this Hon'ble Court in the Judgment reported in 1997 4

SCC 602, the same could be only be entertained by this Hon'ble Court. Therefore the petitioners have rightly invoked the Writ Jurisdiction of this Hon'ble Court with the humble prayer as mentioned below.

5. That, the petitioner has not filed any other similar petition involving the same issue before this Hon'ble Court, and/or before any High Court.

P R A Y E R

In the light of the facts and circumstances outlined in the present writ petition, the petitioner herein respectfully prays that this Hon'ble Court may kindly be pleased to:

- (i) issue appropriate writ, directions and order striking down the U.P. Shri Kashi Vishwanath Temple Act, 1983 holding the same to have run out of course and outlived its utility ;
- (ii) issue appropriate writ, directions and order restoring the administration, management and

conduct of religious affairs as existed on prior to U.P. Ordinance no 20 of 1983 , subsequently replaced by the U.P. Shri Kashi Vishwanath Temple Act,1983 on 28.10.1983;

- (iii) issue a writ, order or direction declaring the observations made in the judgment and order reported in (1997) 4 SCC 602 Shri Adi Vishweshwar Kashi Visahwanath Temple, Varanasi & Ors Vs State of UP as *obiter dicta*;
- (iv) issue appropriate writ, order or direction mandating the Ld. Court of Civil Judge, Senior Division to decide the suit no 434/17 : Shri Adi Visheshwar of Shri Kashi Viswanath Temple & Ors Vs State of U.P. & Ors on merits and on the basis of facts and evidence on record uninfluenced by this Hon'ble Court's order dated 14.03.1997 in C.A no
- (v) pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

Date of Drawn

Drawn & filed by

Date of file

Sibo Sankar Mishra
Advocate for petitioner

Sl. No.	Particulars of Documents	Part 1	Part 2	Remark
(i)	(ii)	(iii)	(iv)	(v)
1.		A	A	
2.	Listing Performa	A1-A2	A1-A2	
3.	Cover page of Paper-book		A3	
4.	Index of Record of Proceedings		A4	
5.	Defect List		A6	
6.	Note Sheet		NS1to..	
7.	List of Dates			
8.	Writ Petition with Affidavit			
9.	Appendix			
10.	Annexure P-1 Copy of the FIRMAN of Shahzada Dara Shikho dated 4 th safar 30, the year of ascension in 1067 Hizri(under his Royal Seal)			
11.	Annexure P-2 Copy of the transcript of inscriptions on the Tablet			
12	Annexure P-3 Copies of few RoRs			

13.	Annexure P-4 Copy of the declaratory suit no. 434/2017 filed before the Ld. Civil Judge (Sr. Division) Varanasi			
14	I. A. No. of 2018 Application for exemption from filing Official Translation of the Annexures			
15	Filing memo			
16.	Vakalatnama			
17	FIR Detail			