WWW.LIVELAW.IN

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO …….. OF 2020
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:
Ashwini Kumar Upadhyay

……..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

WRIT PETITION UNDER ARTICLE 32 TO CHALLENGE VALIDITY OF SECTION 2, 3, 4 OF THE PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991,

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

1. Petitioner is filing this writ petition as PIL under Article 32 to challenge the validity of Sections 2, 3, 4 of the Places of Worship (Special Provisions) Act 1991, which not only offend 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.

WWW.LIVELAW.IN

2. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions as prayed.

3. Petitioner name is

Petitioner is an Advocate and social-political activist and striving for gender justice gender equality fraternity unity national integration transparency and the development of downtrodden people.

4. The facts constituting cause of action accrued on 11.7.1991, when the impugned act came into force. Centre by making the impugned Act has created arbitrary irrational retrospective cutoff date, declared that character of places of worship-pilgrimage 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 fundamentalist 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

WWW.LIVELAW.IN

pilgrimages and now Hindus Jains Budhists Sikhs cannot file 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.

5. 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 '*perse'* 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 Budhists and Sikhs nor take away the power of High Courts and Supreme Court, conferred under Article 226 and 32.

6. The injury caused to Hindus Jains Budhists and Sikhs is extremely large because Sections 2, 3, 4 of the Act has taken away the right to approach the 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,

WWW.LIVELAW.IN

21, 25, 26 and 29 but also against the principle of secularism, which is the part of Preamble and basic structure of the Constitution.

7. 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 prorogate religion (Article 25), right to manage maintain administer places of worship-pilgrimage (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, Purans, Ramayan, 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 Budhists Sikhs to take over the complete possession of their places

WWW.LIVELAW.IN

of worship and pilgrimage through judicial process nor can make law to abridge their rights and particularly with retrospective effect.

8. 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 Ghandi [(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]. Hence, Centre cannot make such law.

9. 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

WWW.LIVELAW.IN

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 the 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 and pilgrimage 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.

10. 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

WWW.LIVELAW.IN

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.'*

11. It's well settled that deity property will continue to be deity property and other's possession will be invalid. In Mahant Ram Swaarop 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

WWW.LIVELAW.IN

with respect to such matter in any Court. This is a serious jolt on the rights of Hindus Budhists 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 Mugal and British Rule.

12. 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 and Judiciary and same has to be exercised by every branch within the parameters. Judiciary is one of the components of sovereign State and Courts have power and duty to protect rights of the citizens. Centre enacted the impugned Act to impose injunction on rights of Hindus Jains Sikhs Budhists 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’*.

WWW.LIVELAW.IN

13. 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.

14. S.4(1) declared that: *'religious character of a place of worship exiting on 15th day of August 1947 shall continue to be the same as it existed on that day'.* S.4(2) provides that: *'If, on the commencement of this Act, any suit, appeal or other proceeding with respect to conversion of the religious character of any of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie after such commencement in any court, tribunal or other authority. Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in religious*

WWW.LIVELAW.IN

character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall be disposed of in accordance with provisions of sub-section (1)". 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.

15. 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.

16. 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

WWW.LIVELAW.IN

of Hindus Jains Buddhists Sikhs guaranteed under Article 25,26,29 but also manifestly arbitrary unreasonable and offends Article 14.

17. Centre has no legislative competence to 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.

18. 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 enact law to legalize barbarian acts of invaders.

19. Centre must respect international conventions and particularly the declarations, to which India is signatory. In several declarations, United Nations has declared that the citizens of free country have right to restore demolished/damaged places of worship-pilgrimage and remove signs of atrocities and slavery. In 1192, after invasion

WWW.LIVELAW.IN

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 and pilgrimage. Hence Centre has no power to legalize those illegal 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.

20. 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.

WWW.LIVELAW.IN

21. 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 their ancient places of worship and pilgrimage and Centre cannot restrict such right, thus, S.2,3,4 is ultra virus.

22. 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

WWW.LIVELAW.IN

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.

23. Islamic Rule came in India by way of invasion and invaders destroyed hundreds of places of worship and pilgrimage to show

WWW.LIVELAW.IN

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.

24. 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;*

WWW.LIVELAW.IN

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 that *"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".*

25. 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, purnamevavasisyate* (*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], the Court held: *"An*

WWW.LIVELAW.IN

Idol which a juridical person is not subject to death, because the Hindu concept is that the Idol lives forever” Thus the impugned 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.

26. S. 4(1) is discriminatory as Centre while enacting 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 two places of worship and pilgrimage is arbitrary discriminatory and contrary to Articles 14-15.

27. The Court finally decided Ayodhya Case on 09.11.2019 and found substance in the claim of Hindus and now a new temple is

WWW.LIVELAW.IN

going to be constructed after 500 years of demolition. In case, the matter would not have been decided, Hindus would have been denied the justice. Section 4(1) bars remedy against encroachment made on places of worship & pilgrimage 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 Mautts 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.

28. 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 Courts 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 fundamental right to preserve the script and culture and under Article 51-A(f), Centre is obligated *"to value and preserve the rich heritage of our composite culture."*.

29. From 1192-1947, the invaders not only damaged destroyed desecrated the places of worship and pilgrimage depicting Indian

WWW.LIVELAW.IN

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.

30. It is well settled that 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*

WWW.LIVELAW.IN

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.

31. If the impugned Act has been enacted for maintaining *'Public order'* then it is State subject [Entry-1, List-II item, Schedule-7]. And hence, Centre has no legislative competence 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.

WWW.LIVELAW.IN

32. In Kashmir Valley, since 1947, hundreds of places of worship and pilgrimage 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 the basis of religion race caste etc. Centre cannot show its inclination or hostile attitude towards any religion.

33. 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.*

WWW.LIVELAW.IN

34. The power conferred by Article 32 of the Constitution is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constraint to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to “forge new tools and device new remedies”.

35. For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by the Supreme Court. Being the protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by part-III

WWW.LIVELAW.IN

in general and under Article 21 in particular zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. [ML Sharma (2014) 2 SCC 532]

36. It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the ‘right’ and ‘power’, but the ‘duty’ and ‘obligation’ of the Court to ensure that the petitioners fundamental right is protected and safeguarded. [V.G. Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]

37. The power of Supreme Court is not confined to issuing prerogative writs only. By using expression “in the nature of”, the jurisdiction has been enlarged. The expression “in the nature of” is not the same thing as the other phrase “of the nature of”. The former emphasis the essential nature and latter is content with mere similarity. [M. Nagraj v UOI, (2006) 8 SCC 2012] Therefore Supreme Court cannot refuse an application under Article 32 of the Constitution, merely on the grounds: **(i)** that such application have

WWW.LIVELAW.IN

been made to Supreme Court in the first instance without resort to the High Court under Article 226 **(ii)** that there is some adequate alternative remedy available to petitioner **(iii)** that the application involves an inquiry into disputed questions of fact / taking of evidence. **(iv)** that declaratory relief i.e. declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for **(v)** that the proper writ or direction has not been paid for in the application **(vi)** that the common writ law has to be modified in order to give proper relief to the applicant. [AIR 1959 SC 725 (729)] **(vii)** that the article in part three of the constitution which is alleged to have been infringed has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke a particular article. [PTI, AIR 1974, SC 1044]

38. Article 32 of the Constitution of India provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo

WWW.LIVELAW.IN

directory process of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Supreme Court has thus been constituted as protector defender and guarantor of the fundamental rights of the people. It was very categorically held that: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* [AIR 1961 SC 1457]. In another case, the Supreme Court has held that: *"the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a "sentinel on the qui vive" and it must always regard it as its*

WWW.LIVELAW.IN

solemn duty to protect the said fundamental right zealously and vigilantly." [Prem Chand Garg, AIR 1963 SC 996].

39. Language used in Articles 32 and Article 226 is very wide and the powers of the Supreme Court as well as of the High Courts extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ in law are observed. [AIR 1954 SC 440]

40. An application under Article 32 cannot be thrown out simply because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing debars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the

WWW.LIVELAW.IN

writ to suit the exigencies of particular cases. [AIR 1951 SC 41] Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to [Rambhadriah, AIR 1981 SC 1653]. The Court has power to grant consequential relief or grant any relief to do full - complete justice even in favour of those persons who may not be before Court or have not moved the Court. [Probodh Verma, AIR 1985 SC 167] For the protection of fundamental right and rule of law, the Supreme Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of a special nature. [Paramjit Kaur, AIR 1999 SC 340]

41. Simply because a remedy exists in the form of Article 226 for filing a writ in the High Court, it does not prevent any bar on aggrieved person to directly approach the Supreme Court under

WWW.LIVELAW.IN

Article 32. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction where the aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is rule of convenience and a matter of discretion rather than rule of law. It does not oust of the jurisdiction of the Supreme Court to exercise its writ jurisdiction under Article 32 of the Constitution. [Mohd. Ishaq (2009) 12 SCC 748]

42. The Supreme Court is entitled to evolve new principle of liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held in that case that the court was not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a fundamental right imposes a constitutional obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables reward of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where

WWW.LIVELAW.IN

withal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Supreme Court can pass appropriate orders or facts to do complete justice between parties even if it is found that writ petition filed is not maintainable in law. [Saihba Ali, (2003) 7 SCC 250]

43. Article 37 very categorically clarifies that directive principles are nevertheless fundamental in the governance of the Country and it shall be the duty of State to apply these principles in making law. Article 49 directs the State to protect the places of national and historic importance and Article 51(c) directs to 'foster respect for International law and treaty obligations in dealing of organized people with one another. However, the impugned act is contrary.

44. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this writ petition as PIL.

45. There is no civil, criminal or revenue litigation, involving petitioner, which has/could have legal nexus, with issue involved.

WWW.LIVELAW.IN

46. Petitioner has not submitted any representation to authorities as the issues involves are interpretation of the Constitution.

47. Keeping in view the above facts, International conventions and legal provisions, the Court may be pleased to allow the petition. Petitioner may be allowed to place history books during the hearing.

QUESTIONS OF LAW

1. Whether the Centre has power to close the doors of Courts?
2. Whether Centre has power to bar judicial remedy against illegal encroachment on the places of worship and pilgrimage?
3. Whether Centre has transgressed its power by making provisions to bar judicial remedy available to aggrieved Hindus Jains Buddhists Sikhs against the wrong committed by invaders and law breakers?
4. Whether the Hindu law is the 'Law in force' within the meaning of Article 372(1) after commencement of the Constitution?
5. Whether Section 2, 3, 4 of the impugned Act is void under Article 13(2) and ultra virus to the Article 14, 15, 21, 25, 26 and 29?
6. Whether any rule regulation custom usage having the force of law, running counter to Articles 25-26 is void by virtue of Article 13(1)?

WWW.LIVELAW.IN

7. Whether illegal construction on religious places before 15.8.1947 has become void and nonest by virtue of injunction under Article 13(1)?

8. Whether exclusion of Lord Ram birthplace inclusion of Lord Krishna birthplace offends Article 14 as both are incarnation of Lord Vishnu?

9. Whether impugned Act violates the principle of secularism as same has been made to curb the right of Hindus Jains Buddhists Sikhs to restore their places of worship and pilgrimage through Court?

GROUNDS:

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.

WWW.LIVELAW.IN

C. Because the impugned 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 word, 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 the Country and Article 49 directs the State to protect the places of national importance from disfigurement-

WWW.LIVELAW.IN

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 fundamental 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 erected or constructed in derogation of the personal law, cannot be termed as a *'place of worship'*.

L. Because the retrospective cutoff-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

WWW.LIVELAW.IN

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 all 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 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.*

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

WWW.LIVELAW.IN

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 *perse* unconstitutional and beyond law making power of the Centre. The

WWW.LIVELAW.IN

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/proceeding in respect of which cause of action have arisen and continuing wrong, the remedy of the aggrieved person for resolution of disputes through Court have been abolished, which violate the 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

WWW.LIVELAW.IN

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.*

Y. The power conferred by Article 32 of the Constitution is in the

WWW.LIVELAW.IN

widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constraint to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to "forge new tools and device new remedies".

Z. For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by the Supreme Court. Being the protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by part-III in general and under Article 21 in particular zealously and vigilantly. The Supreme Court

WWW.LIVELAW.IN

and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. [ML Sharma (2014) 2 SCC 532]

AA. It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded. [V.G. Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]

BB. The power of Supreme Court is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis the essential nature and latter is content with mere similarity. [M. Nagraj v UOI, (2006) 8 SCC 2012] Therefore Supreme Court cannot refuse an application under Article 32 of the Constitution, merely on the grounds: **(i)** that such application have been made to Supreme Court in the first instance without resort to the High Court under Article 226 **(ii)** that there is some adequate

WWW.LIVELAW.IN

alternative remedy available to petitioner **(iii)** that the application involves an inquiry into disputed questions of fact / taking of evidence. **(iv)** that declaratory relief i.e. declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for **(v)** that the proper writ or direction has not been paid for in the application **(vi)** that the common writ law has to be modified in order to give proper relief to the applicant. [AIR 1959 SC 725 (729)] **(vii)** that the article in part three of the constitution which is alleged to have been infringed has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke a particular article. [PTI, AIR 1974, SC 1044]

CC. Article 32 of the Constitution of India provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory process of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Supreme Court has thus been

WWW.LIVELAW.IN

constituted as protector defender and guarantor of the fundamental rights of the people. It was very categorically held that: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* [AIR 1961 SC 1457]. In another case, the Supreme Court has held that: *"the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a "sentinel on the qui vive" and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly."* [Prem Chand Garg, AIR 1963 SC 996].

WWW.LIVELAW.IN

DD. Language used in Articles 32 and Article 226 is very wide and the powers of the Supreme Court as well as of the High Courts extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ in law are observed. [AIR 1954 SC 440]

EE. Application under Article 32 cannot be thrown out simply because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing debars Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. [AIR 1951 SC 41] Even if petitioner has asked for wider relief which cannot be granted by

WWW.LIVELAW.IN

Court, it can grant such relief to which petitioner is entitled [AIR 1981 SC 1653]. The Court has power to grant consequential relief or grant any relief to do complete justice even in favour of those persons who may not be before Court or have not moved the Court. [AIR 1985 SC 167] For the protection of fundamental right and rule of law, the Court under can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of a special nature. [Paramjit Kaur, AIR 1999 SC 340]

FF. Simply because a remedy exists in the form of Article 226 for filing a writ in the High Court, it does not prevent any bar on aggrieved person to directly approach the Supreme Court under Article 32. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction where the aggrieved person has an effective alternative remedy in the form of Article 226. However,

WWW.LIVELAW.IN

this rule which requires the exhaustion of alternative remedy is rule of convenience and a matter of discretion rather than rule of law. It does not oust of the jurisdiction of the Supreme Court to exercise its writ jurisdiction under Article 32. [Mohd. Ishaq (2009) 12 SCC 748]

GG. The Supreme Court is entitled to evolve new principle of liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held in that case that the court was not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a fundamental right imposes a constitutional obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables reward of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which more appropriate.

WWW.LIVELAW.IN

Under Article 32, the Court can pass appropriate orders or facts to do complete justice even if it is found that petition is not maintainable. [Saihba Ali, (2003) 7 SCC 250]

PRAYERS

Keeping in view the above historical facts, International conventions legal provisions and right of Hindus Jains Buddhists Sikhs to restore their religious places by process of law & sentiments attached with ancient places of pilgrimage, the Hon'ble court may be pleased to issue appropriate writ, order(s) or direction(s) to respondents 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, in so far as it seeks to validate *'places of worship'*, illegally made by barbaric 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 seeks to validate *'places of worship'*, illegally made by barbaric invaders;

c) direct and declare that Section 4 of the Places of Worship (Special Provisions) Act, 1991 is void and unconstitutional for being violative

WWW.LIVELAW.IN

of Articles 14,15,21,25,26,29 of the Constitution, in so far as it seeks to validate '*places of worship*', illegally made by barbaric invaders;

d) pass such other order(s) or direction(s) as Court deems fit.

28.10.2020 ASHWANI KUMAR DUBEY

NEW DELHI ADVOCATE FOR PETITIONER

WWW.LIVELAW.IN

SYNOPSIS & LIST OF DATES

Petitioner is filing this writ petition under Article 32 to challenge the constitutional validity of S. 2, 3, 4 of the Places of Worship (Special Provisions) Act 1991, as they not only offend Articles 14, 15, 21,25,26, and 29 but also violate principles of secularism, which is integral part of the basic structure and Preamble of the Constitution of India.

Centre by making impugned provisions in 1991 has created arbitrary irrational retrospective cutoff date, declared that character of places of worship and pilgrimage shall be maintained as it was on 15.8.1947 and no suit or proceeding shall lie in Court in respect of the dispute against encroachment done by barbaric fundamentalist invaders and such proceeding shall stand abated. If suit/proceeding filed on the ground that conversion of place of pilgrimage has taken place after 15.8.1947 and before 18.9.1991 that shall be disposed off in terms of S. 4(1). Centre has barred the remedies against illegal encroachment on the places of worship and pilgrimages and Hindus Jains Budhists Sikhs cannot file suit or approach High Court. Hence, won't be able to restore their places

WWW.LIVELAW.IN

of worship and pilgrimage including Temples, Endowments, Mutts etc from hoodlums and illegal barbaric acts of the invaders will continue in perpetuity.

The Centre by making impugned provisions has, without resolution of the disputes through process of Law, abated the suit / proceedings, which is '*perse'* unconstitutional and beyond the law making power, for the reason that the impugned provisions cannot be implemented with retrospective effect and the remedy of resolution of dispute pending, arisen or arising cannot be barred. Centre neither can close doors of Courts of first instance, Appellate Courts and Constitutional Courts for aggrieved Hindus Jains Sikhs Buddhists nor take away the power of High Courts and Supreme Court, conferred under Articles 226 and 32 of the Constitution.

The maxim *ubi jus ibi remedium* has been frustrated by the impugned provisions in pending suit/proceeding, in which the cause of action has arisen or continue and remedy available to aggrieved person through court has been abolished thus violating the concept of justice and 'Rule of law' which is core of Articles 14-15.

Sections 2,3,4 not only offend right to pray practice prorogate

WWW.LIVELAW.IN

religion (Article 25), right to manage maintain administer place of worship and pilgrimage (Article 26) and right to conserve culture (Article 29) but also contrary to the duty to protect historic places (Article 49) and preserve religious-cultural heritage (Article 51A).

Pilgrimage is State subject [Entry-7, List-II, Schedule-7] hence Centre neither can restrain Hindus Jains Budhists Sikhs from taking over complete possession of places of worship & pilgrimage through judicial process nor can make law to abridge the rights, guaranteed under Articles 25-26 and particularly with retrospective effect.

Sections 2, 3, 4 offend basic dictum of Hindu law enshrined in Vedas, Purans, Shastra, Smritis, Ramayan and Bhagavad Geeta that the 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. Hence, Hindus have fundamental right under Article 25-26 to worship the deity at the place ‘It’ is and utilize deity’s property for religious purposes subject to public order, morality and health.

Centre has transgressed its legislative power by barring the remedy of judicial review, which is basic feature of the Constitution.

WWW.LIVELAW.IN

Apex Court has reiterated that the remedy of judicial review cannot be taken away. *Indira Ghandi v. Raj Narayan, [(1975) SCC (Supp) 1], Minerva Mills Ltd v. Union of India [(1980) 3 SCC 625] Kihota Holohon v Zachilhu [(1992) 1 SCC 309] Ismail Farooqui v. Union of India [(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 the State and the power of courts and particularly constitutional courts, conferred under Article 32 and 226 of the Constitution cannot be frustrated and such denial has been held violative of basic structure of the Constitution and beyond legislative power of the State. Moreover, place of worship and pilgrimage is part of State subject [Entry-7, List-II, Schedule-7] hence Centre cannot make the impugned law.

Hindus are fighting for complete possession of birthplace of Lord Krishna from hundreds of year and peaceful public agitation continues till date 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 and preserver. The Court has finally decided

WWW.LIVELAW.IN

Ayodhya case 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 invaders. If Ayodhya case wouldn't have been decided, Hindus would have been denied justice. Thus, restriction on Hindus to approach Court is arbitrary irrational and against the principle of rule of law, which is core of Article 14-15.

Hindus Jains Buddhists Sikhs are continuously paying homage to the places of worship and pilgrimage though physical possession has been taken by members of other faith. Therefore the Act is void and unconstitutional for many reasons: (i) It offends right of Hindus Jains Buddhists Sikhs to pray profess practice prorogate religion (Article 25) (ii) It infringes on rights of Hindus Jains Buddhists Sikhs to manage maintain administer places of worship and pilgrimage (Article 26) (iii) It deprives Hindus Jains Buddhists Sikhs of owning and acquiring religious properties of deity(misappropriated by other communities) (iv) It takes away right of judicial remedy of Hindus Jains Buddhists Sikhs to restore places of worship and pilgrimage and property of deity (v) It deprives Hindus Jains Buddhists Sikhs to restore places of worship and pilgrimage connected with cultural heritage (vi) It restricts Hindus Jains

WWW.LIVELAW.IN

Buddhists Sikhs to restore complete possession of places of worship and pilgrimage but allows Muslims to claim under S.107, Waqf Act (vii) It legalize barbarian acts of invaders (viii) It violates Hindu law that '*Temple property is never lost even if enjoyed for years and even the king cannot take property as deity is embodiment of God & juristic person, represents 'Infinite the timeless' and cannot be confined by the shackles of time.'*

According to Vedas, Purans, Geeta and Ramayan, it is a settled principle that deity property will continue to be deity property and other's possession will be invalid. In Mahant Ram Swaarop Das Case [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."*

18.09.1991: The Places of Worship Act 19991 was made (Appendix)

28.10.2020: Centre neither can abridge the right of deity-worshiper

nor can take away the right of Courts to entertain suits without creating alternative forum but S.2, 3, 4 takes away the rights available to Hindus Jains Buddhists

WWW.LIVELAW.IN

Sikhs to restore complete possession of their places of worship and pilgrimage. Hence, S.3,4,5 offends Articles 14,15,21,25,26,29. Muslims can restore their religious property under S.107 of Waqf Act, as there is neither any limitation nor any retrospective cutoff date but on the other hand, similarly situated Hindus Buddhists Jains Sikhs can't restore. Therefore, S.2,3,4 of the Act is not only contrary to secularism and Preamble but also offends Articles 14, 15, 21, 25, 26, 29. Hence, the PIL.