

**IN THE COURT OF MS. NEHA SHARMA, CIVIL JUDGE-01 (SOUTH)**  
**SAKET COURT, NEW DELHI**

**Civil Suit No :- 875/2020**

**CNR No :- DLST03-001127-2020**

**(1) TIRTHANKARA LORD RISHAB DEV**

Principles Jain Deity,  
Temple Complex now known as Qutub Complex area,  
Mehrauli District-South-West Delhi-110030,  
Through Next Friend Hari Shankar Jain,  
O2-503, Oxirich Apartment, Niho Scottish Garden,  
Ahinsha Khand-2, Indirapuram,  
Ghaziabad Uttar Pradesh-201014

**(2) LORD VISHNU, PRINCIPAL DEITY,**

Temple Complex now known as Qutub Complex area,  
Mehrauli District-South-West Delhi-110030,  
Through Next Friend  
Ranjana Agnihotri, Advocate  
D/o Late Rajendra Kant Agnihotri,  
R/o 512/695, Badla Road, Nishantganj.  
Near Nishantganj Police Chowki, Lucknow,  
New Hyderabad, Uttar Pradesh-226007

**3. HARI SHANKAR JAIN, ADVOCATE**

S/o Late Nem Chandra Jain  
R/o O2-503, Oxirich Apartment, Niho Scottish Garden,  
Ahinsha Khand-2, Indirapuram,  
Ghaziabad Uttar Pradesh-201014

**4. RANJANA AGNIHOTRI, ADVOCATE**

D/o Late Rajendra Kant Agnihotri,  
R/o 512/695, Badla Road, Nishantganj.  
Near Nishantganj Police Chowki, Lucknow,

New Hyderabad, Uttar Pradesh-226007

**5. JITENDER SINGH “VISHEN”**

S/o Sri Yaduraj Singh,  
R/o Gulab Singh Purwa, Virpurvishen, Darjikuan,  
District-Gonda, (Gonardh), Uttar Pradesh-271123  
Present Address:- Shree Ram Mandir (27/106),  
Lane no.7, Vishwas Nagar, Shahadra, Delhi-110032 .....**PLAINTIFFS**

*Versus*

**1. UNION OF INDIA**

Through the Secretary Ministry of Culture  
Government of India  
C-Wing, Shastri Bhawan, New Delhi, Delhi-110015,  
Email Id:-office-hcm@gov.in

**2. DIRECTOR GENERAL**

Archaeological Survey of India,  
Dharohar Bhawan, 24 Tilak Marg,  
New Delhi-110001  
Email Id:-dg.asi@gov.in

**3. SUPERINTENDING ARCHAEOLOGICAL DELHI CIRCLE,**

Archeological Survey of India,  
Puratatva Bhawan, General Pool Office Complex,  
D-Block, 3<sup>rd</sup> Floor, INA New Delhi-110023  
Email Id: circledel.asi@gmail.com

.....**DEFENDANTS**

**SUIT FOR DECLARATION, PERMANENT AND MANDATORY**

**INJUNCTION**

1. This order shall decide the maintainability of the present suit.
2. The present suit has been filed for relief of declaration, permanent and mandatory injunction against the defendants.
3. The case of the plaintiff is that the subject matter of the present suit is a huge temple complex known as Quwwat Ul Islam which was declared as a protected monument in exercise of the powers under Section 3 of Ancient Monuments Preservations Act 1904 vide notification no. DL, 387 EDU dated 16.01.1914.
4. It is averred in the plaint that Delhi was ruled by celebrated Hindu Kings upto 1192 when Mohammed Gauri invaded and defeated King Prithiviraj Chauhan in the battle in 1192 AD. Thereafter, Qutubdin Aibak a commander of Mohammed Gauri dismantled/ destroyed Shree Vishnu Hari temple and 27 Jain and Hindu temples along with constellations with respective deities and raised some inner constructions within the temple complex. The temple complex was renamed as 'Quwwat-Ul Islam Mosque', in Arabic language which means 'Might of Islam'.
5. The Qutubdin Aibak failed to completely demolish the existing temples and only partial demolition was carried out and after reusing the material of the temple construction was erected and the mosque was built. On the walls, pillars and roof of the existing building the images of Gods and Goddess including other religious/ pious Hindu symbols and deities like Shri Ganesh, Vishnu, Yaksha, Yakshini, Dwarpal, Lord Parshvanath, Lord Mahavir, Natraj and symbols like Mangal Kalash, Shankh (Conch), Gada, Lotus Motifs, Shri Yantra, Temple Bells and Sacred Lotus etc are still present.
6. In view of the fact that the pictures of Hindu God and Goddess, Jain Tirthakars and also Hindu/ Jain temple architectural design which are

(Neha Sharma)

clearly visible on pillars, walls, roof, bracket, staircase and several other places, the Mosque was abandoned and never used. Naturally, the only purpose was to demoralize Hindu and Jain devotees and subjects residing there to feel that that they had been crushed by the Islamic forces. That Hindu and Jain devotees regularly visit the temple place occupied by alleged mosque and pay homage to deities and destroyed idols which is a matter of national shame.

7. That after the judgment in Ayodhya case delivered on 9<sup>th</sup> November, 2019 the plaintiffs alongwith several other devotees visited Qutub Minar two three times and lastly on 23 December 2019, purchased book from the Book sale counter available at entrance gate. Thereafter, the plaintiffs have studied a number of historical books, literary works and available materials regarding the history of Qutub Complex.

8. That from the well-established historical fact it is clear that a number of temples with deities were existing within the temple complex before the construction of the alleged Quwwat-ul-Islam Mosque and nature of Hindu religious property continued and the Muslims never declared the place as Waqf property before or after the construction was raised under the command of Qutub-din Aibak and therefore, the construction could not be used as Mosque at any point of time.

9. It is submitted that our constitution is transformative in nature and we, the citizens of India are not supposed to carry on the shameful and black spot of history on our head in the change of the circumstances with the change of the sovereign of the State. Plaintiffs have averred that Central Government is the owner and ASI has administrative control over the property in question. Hence, through this present suit relief for restoration of deities within the temple complex and also for issuance of direction to Central Government to frame

scheme of administration and create a trust to manage Puja, Worship, Maintenance of Property in accordance with the provisions contained in sections 14, 16, 17, 18 and 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as “AMASR Act”) has been sought.

10. Heard the parties. Perused the record. Considered.

11. The law with regard to Order VII Rule 11 CPC is well settled. While dealing with an application for rejection of plaint under Order VII Rule 11 CPC, the court has to consider only the averments made in the plaint and not the defence of the defendant or the contents of the application under Order VII Rule 11 CPC.

12. In *T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467*, the Hon’ble Supreme Court held;

*“5. The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them.”*

13. It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code.

14. In *C. Natrajan v. Ashim Bai (2007) 14 SCC 183*, the Apex Court has observed:

*“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence.”*

15. Further, in *Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557* it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The court observed that:

*“The trial court can exercise the power at any stage of the suit even before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of*

(Neha Sharma)

*deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.”*

16. The preliminary objection of the plaintiffs is that all the questions raised can only be decided after framing of issues and not at this stage is devoid of any merit as nothing in Order VII Rule 11 CPC limits the power of the court to examine whether the plaint discloses any cause of action or not. The phrase “at any stage” in Order VII Rule 11 CPC must not be interpreted to limit the power of courts to throw meritless suits even at the initial stage. Further the phrase ‘before the conclusion of the trial’ used in *Saleem Bhai* judgment (supra) must also be read in light of the provision under Order VII Rule 11 CPC which gives ample power to the trial court to nip frivolous suit in the bud. Thus, this cannot be held to mean that defendant must be burdened with the cost of defending the suit in every case even if the plaint discloses no cause of action. Moreover, caution has to be exercised where the defendant is the state body as no fruitful purpose would be served to entangle the state body in an unnecessary litigation.

17. It is trite that a cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated. Present suit has been filed for the relief of declaration, permanent and mandatory injunction. The Hon’ble High Court of Calcutta has in its judgment in *Smt. Nilima Bose vs Santosh Kumar Ghosh AIR 1997 Cal 202* has observed that;

*“15. In this connection reference may be made to the*

(Neha Sharma)

*provision of Section 34 of the Specific Relief Act wherefrom it will appear that any person entitled to any legal character or to any right as to any property may institute suit against any person denying or interested to deny his title to such character or right, where the court may in its discretion make a declaration that he is so entitled. The object and the scope of the section is to perpetuate and strengthen testimony regarding title and to protect the same from adverse attack, that is, to prevent future litigation by removing existing cause of controversy not only to secure the plaintiff possession of the property wrongfully taken away from him or her but also to see that he or she is allowed to enjoy that property peacefully.”*

18. Thus, in a suit for declaration, any person entitled to any legal character or to any right as to any property may institute suit against any person denying or interested to deny his title to such character or right, where the court may in its discretion make a declaration that he is so entitled. Hence, foremost it is required to be tested if plaintiffs are entitled to any legal character or to any right which they can enforce by way of relief of declaration.

19. The plaintiffs have averred in their plaint that right to worship has been bestowed under Article 25 and 26 as a fundamental right. The worshippers have right to exercise their religion conferred by Article 25 and 26 of the Constitution of India and they have right to ensure that deities are restored at original place with due dignity. This argument is devoid of merit. It is settled

that fundamental rights enshrined under Article 25 and 26 of the Indian Constitution are not absolute in nature. In *Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj and Others v. The State of Gujarat & Others (1975) 1 SCC 11*, after considering the various contentions, the Court observed that;

*“No rights in an organized society can be absolute. Enjoyment of one’s rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests. The Court also observed that a particular fundamental right cannot exist in isolation in a water-tight compartment. One Fundamental Right of a person may have to co-exist in harmony with the exercise of another Fundamental Right by others also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. In the constitutional order of priorities, the right to religious freedom is to be exercised in a manner consonant with the vision underlying the provisions of Part III.”*

20. Thus, the right under Article 25 and 26 of the Indian Constitution have to be exercised subject to just exceptions created. It is an admitted fact that the suit property is a mosque built over temples and is not being used for any religious purpose, no prayers/namaz is being offered in the suit property. Hence, in my considered opinion, plaintiffs do not have an absolute right to restoration and worship in the suit property as public order which is an exception to Article 25 and 26 requires that status quo be maintained and protected monument be

(Neha Sharma)

used for no religious purpose.

21. Plaintiffs have averred in the plaint that section 16 of the AMASR Act permits to continue worship of the religion which maybe in consonance with the character of the building. Section 16 of the new act is on the same lines as the Section 13 of erstwhile the Ancient Monuments Preservation Act 1904 (VII Of 1904). Section 13 is reproduced herein-

*“13. Protection of place of worship from misuse, pollution or desecration—*

*A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character. (2) Where the Collector has, under section 4, purchased or taken a lease of any protected monument or has accepted a gift or bequest, or the Commissioner has, under the same section accepted the guardianship thereof, and such monument, or any part thereof, is periodically used for religious worship or observances by any community, the Collector shall make due provision for the protection such monument, or such part thereof, from pollution or desecration- (a) by prohibiting the entry therein, except in accordance with condition prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or (b) by taking such other action*

*as he may think necessary in this behalf.”*

22. This provision has to be read in consonance with the Places of Worship Act, 1991. The contention of the plaintiffs that section 4(3)(a) of the Places of Worship Act, 1991 excludes an ancient and historical monument or an archaeological site or remains covered by the AMASR Act and hence, the present suit is not barred under the Places of Worship Act, 1991 would, in my opinion, frustrate the purpose of the act itself.

23. Section 4 (3)(a) has to be seen in the larger context of the Places of Worship Act. The object of the Act is to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947. By placing reliance on the Lok Sabha Debates, the purpose of enacting the law was observed in the Hon’ble Supreme Court in its judgment in *Ayodhya Case*;

*“We see this Bill as a measure to provide and develop our glorious traditions of love, peace and harmony. These traditions are part of a cultural heritage of which every Indian is justifiably proud. Tolerance for all faiths has characterized our great civilization since time immemorial. These traditions of amity, harmony and mutual respect came under severe strain during the pre-independence period when the colonial power sought to actively create and encourage communal divide in the country. After independence we have set about healing the wounds of the past and endeavoured to restore our traditions of communal amity and goodwill to their past glory. By and large we have*

(Neha Sharma)

*succeeded, although there have been, it must be admitted, some unfortunate setbacks. Rather than being discouraged by such setbacks, it is our duty and commitment to taken lesson from them for the future.”*

24. Section 4(3)(a) of the Places of Worship Act, 1991 is an exception to Section 4(1). Section 4(1) and section 4(3)(a) are reproduced herein for perusal;

*“4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc. (1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.”*

*“(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,- (a) any place of worship referred to in the said sub- sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958.) or any other law for the time being in force;”*

25. Hence, such ancient and historical monument cannot be used for some purpose which runs counter to its nature as a religious place of worship, but it can always be used for some other purpose which is not inconsistent with its religious character. Hence, in my considered opinion, once a monument has been declared to be a protected monument and is owned by the Government, then the plaintiffs cannot insist that the place of worship must actually and actively be used for religious services. Reliance for the same can be placed on the judgment of Himachal Pradesh High Court in ***Satinder Singh vs UOI AIR***

**2007 HP 77**

26. Thus, every endeavour should be made to enforce the objective of the act. The purpose of the Places of Worship Act, 1991 was to maintain the secular character of this nation. Our country had a rich history and has seen challenging times. Nevertheless, history has to be accepted as a whole. Can the good be retained and bad be deleted from our history? Thus, harmonious interpretation of both the statutes is required to give full force to the objective behind the Places of Worship Act, 1991.

27. It is the case of the plaintiffs that in exercise of powers under section 3 of the Act, the Government of India acquired ownership of entire area of Quwwatul Islam Masjid and administrative control was handed over to ASI. However, on the date of acquisition of the area, nobody was representing the temples and deities and no opportunity was granted to them as required under section 10 of the Ancient Monuments Preservation Act, 1904 even though property continues to be vested in the deity.

28. It is an admitted fact that the suit property was declared a 'protected monument' in exercise of powers under section 3 of Ancient Monuments Preservation Act, 1904 vide Notification No. DL 387 Edu. Dated 16.01.1914 as per the Ancient Monuments Preservation Act-VII of 1904 which was repealed when AMASR Act came into force. Section 3 of Ancient Monuments Preservation Act, 1904 is reproduced herein;

*“3. Protected monuments— (1) The 1 [Central Government] may, by notification in the 2 [Official Gazette], declare an ancient monument to be a protected monument within the meaning of this Act.  
(2) A copy of every notification published under sub-*

*section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by 1 [Central Government] within one month from the date when it is so fixed up will be taken into consideration. (3) On the expiry of the said period of one month, the 1 [Central Government], after considering the objections, if any, shall confirm or withdraw the notification. (4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.”*

29. There is a presumption of correctness in every official act. The Notification No. DL 387 Edu. Dated 16.01.1914 has not been challenged till date. Even plaintiffs have not challenged the validity of the said notification. Consequently, it stands valid. Hence, as per the provisions of the act, the ownership lies with the Government and the plaintiffs have no right to claim restoration and right to religious worship in the same without challenging the notification itself.

30. India had a culturally rich history. It has been ruled over by numerous dynasties. During arguments, the Ld. Counsel for plaintiff has vehemently argued on the point of national shame. However, nobody has denied that wrongs were committed in the past but such wrongs cannot be the basis for disturbing peace of our present and future. The Hon’ble Supreme Court in the judgment in *Ayodhya Case* has beautifully penned down;

*“The Places of Worship Act is intrinsically related to the obligations of a secular state. It reflects the commitment of India to the equality of all religions. Above all, the Places of Worship Act is an affirmation of the solemn duty which was cast upon the State to preserve and protect the equality of all faiths as an essential constitutional value, a norm which has the status of being a basic feature of the Constitution. There is a purpose underlying the enactment of the Places of Worship Act. The law speaks to our history and to the future of the nation. **Cognizant as we are of our history and of the need for the nation to confront it, Independence was a watershed moment to heal the wounds of the past. Historical wrongs cannot be remedied by the people taking the law in their own hands. In preserving the character of places of public worship, Parliament has mandated in no uncertain terms that history and its wrongs shall not be used as instruments to oppress the present and the future.**”*

31. Hence, for reasons mentioned above, ***the plaint hereby stands rejected under Order 7 Rule 11(a) of Civil Procedure Code for non-disclosure of cause of action.***

32. No order as to costs.

33. Let decree sheet be drawn accordingly.

***Pronounced in open court:***

**Dated: 29.11.2021**

**(Neha Sharma)  
CJ-01(South)Saket/New Delhi**

Note :-This order contains sixteen pages and all the pages have been checked and signed by me.

**(Neha Sharma)  
CJ-01(South)Saket/New Delhi**