

THE PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991 AND GYANVAPI MASJID CONTROVERSY WITH SPECIAL REFERENCE TO BHAGWAN ADI VISHWESHWAR VIRAJMAN CASE

Dr. Neelam Batra*
Priyanka**

Abstract

The Places of Worship (Special Provisions) Act, 1991 had been enacted in 1991 with the intent to foreclose all kinds of claims and reclamation by one community over places of worship of other community. But in spite of its enactment, the courts in present are overstepping the provisions of the 1991 Act and entertaining petitions related to conversion of religious places. One such petition is filed in the name of Bhagwan Adi Vishweshwar Virajman currently pending before the civil court in Varanasi, which demands for removal of Gyanvapi Masjid. The civil court in its order dated 17th November 2022 rejected the objection of Anjuman Intezamiya Management Committee under Order 7 Rule 11 of the Code of Civil Procedure, 1908 and held the suit maintainable. This article analyses the maintainability of the suit in view of the provisions of the 1991 Act.

Keywords: Religion, Worship, Mosque, Temple, Reclamation.

1. Introduction

In view of George Bernard Shaw, "there is only one religion, though there are hundreds of versions of it."¹ This statement is unsubtly true in respect of India, where numerous 'versions' of religion have emerged and flourished. It may be appropriate to call Indian society as 'highly religious and multi-religious'. There are numerous religious versions/traditions prevalent in India, to name a few, such as Hinduism, Christianity, Buddhism, Jainism, Islam, Sikhism etc. Apart from these, a large number of Indian inhabitants claim themselves to be 'atheists'. All the religious groups have their own set of established religious doctrines, fundamental principles, dogmas and practices and places for prayer/worship. In fact, religion is an inseparable part of the individual life in India. Recognizing the same, the Constitution of India grants everybody the fundamental right 'to freely profess, practise and propagate' religion under its Article 25. If everyone exercises such right in a reasonable manner without causing disruption in the exercise of similar right of others, there would not arise any disputes related directly or incidentally to religion. But the thought of 'supremacy' of one's own religion in comparison to that of others gives rise to several inter-religious disputes. For an Indian, religion is a personal, but perhaps the most-sensitive matter. In respect of interreligious matters, we often witness prevailing environment of tension and discontent, which gravely impacts upon the interreligious communal harmony. India has witnessed massive communal discord before and after independence, due to which India itself was divided in 1947 on religious lines. Communal heat and passion have never declined at any

* Assistant Professor, Panjab University Regional Centre, Ludhiana.

** Research Scholar, Department of Laws, Panjab University, Chandigarh.

¹ *George Bernard Shaw: Quotes*, BRITANNICA (Apr. 06, 2023, 12:00 PM), <https://www.britannica.com/quotes/George-Bernard-Shaw> .

point of time in independent India. Increase in inter-religious conflicts lead to animosity and unrest in the social milieu.

One such legal dispute is in relation to ownership of Gyanvapi Masjid of Varanasi and discovery of a stone-structure similar to a *Shivalinga* in the *wazukhana* (ablution pond) during a court-commissioned survey in May 2022 which has aroused communal sentiments and social unrest between the Hindu and the Muslim communities. It has been fuelled by the Varanasi Civil Court order dated 17th November 2022 holding the civil suit namely *Bhagwan Adi Vishweshwar Virajman and Others v State of Uttar Pradesh through Secretary and Others*² maintainable, wherein demand for reclamation of Gyanvapi Masjid site to the Hindus after the removal of its structure has been made. Through this research study, the researcher tries to analyse the said order of 17th November 2022, which is in violation of the provisions of the Places of Worship (Special Provisions) Act, 1991 and also against the Supreme Court verdict of the Ayodhya dispute³.

2. Significant provisions of the Places of Worship (Special Provisions) Act, 1991

Keeping in view the *Gyanvapi Masjid* dispute, wherein the demand for removal of its structure has been made in several civil suits filed for the purpose, it becomes relevant to discuss the important provisions of the Places of Worship (Special Provisions) Act, 1991 which was enacted with the primary object to prohibit such disputes to arise and be adjudicated by the judiciary. The Places of Worship (Special Provisions) Act, 1991 came into force on 18th September 1991. It mandated that the religious nature of the places of worship existing on the date of independence of India from the British Rule i.e., 15th August 1947 shall not be altered for religious purposes. Simultaneously, it also ousted the jurisdiction of the courts to hear such petitions, so that no legal proceedings that involve the demand for alteration of any religious structure remain pending in the law courts or other legal authority.

Section 3⁴ and Section 4⁵ are the most important provisions of this 1991 Act. While Section 3 of the Act is addressed to every person for prohibiting the conversion of any place of worship for religious purposes; Section 4 makes a declaration that nature of the religious places constructed before 15th August 1947 will remain the same as it was on that date. Section 4(2) has the effect of ouster of jurisdiction of the courts in respect of hearing the matters related to conversion of the religious buildings. It has further provided some exceptions under Section 4(3), upon which the provisions of section 4(1) and section 4(2) will not apply,

² *Bhagwan Adi Vishweshwar Virajman and Others v State of Uttar Pradesh through Secretary and Others*, Civil Suit 712 of 2022 (India).

³ *M. Siddiq (Dead) Through LRs. v Mahant Suresh Das and Ors.* (2019) 4 SCC 656 (India).

⁴ The Places of Worship (Special Provisions) Act, 1991, § 3 (India).

⁵ *Id.*, § 4.

such as an ancient monument, a dispute related to conversion finally decided, a dispute about conversion settled by negotiation etc., a conversion by acquiescence, a matter of conversion not challengeable due to law of limitation.

Section 5⁶ exempted Babri Masjid (in Ayodhya) dispute from the applicability of the Act due to which the legal proceedings over the dispute continued in the court and got its final adjudication by the Supreme Court in 2019.⁷ Section 6⁸ of the Act prescribed punishment of imprisonment along with fine for the principal offender, attempter, abettor or facilitator of the offence of conversion of a religious place. Section 7⁹ declares that the Act to be overriding over all other laws.

The Act was enacted necessarily for maintenance of law, order and social solidarity which was highly disturbed during 1980-90s because of countrywide reclamation movement for the birthplace of Lord Ram in Ayodhya, which eventually led to the destruction of Babri Masjid structure in 1992. Through the enforcement of the Act, it was intended that no such demands or movements would arise in future in relation to the disputed religious places. But, while the Act is still in force, several demands over disputed religious structures have arisen in some parts of the country. Among them, legal disputes over Shahi Idgah in Mathura and Gyanvapi Masjid in Varanasi have led to communal unrest in the country.

3. The Places of Worship (Special Provisions) Act, 1991: Judicial Approach

Judiciary of India has highlighted the significance of the 1991 Act in its several rulings. The Bombay High Court in its ruling in *Yusuf Ajjij Shaikh*¹⁰ observed that aim of the Act is to deter any religious group from unlawfully occupying and altering a religious place, which belongs to another religious group. It mandates that religious character of a place of worship has to be preserved and no one makes change in the character of a religious place. It is imperative so that communal harmony is not disturbed due to human acts against religious structures. The Punjab and Haryana High Court in *Bharpur Singh v Union of India*¹¹ held that the purpose of the Places of Worship (Special Provisions) Act, 1991 is preservation of the religious nature and to ensure that no person is allowed to alter a place of worship into place of worship of different religion. Further, the Supreme Court in its Ayodhya verdict¹² regarded the enforcement of the Places of Worship (Special Provisions) Act, 1991 in furtherance of the fulfilment of

⁶ *Id.*, § 5.

⁷ *Supra* note 3.

⁸ *Supra* note 4, § 6.

⁹ *Supra* note 4, § 7.

¹⁰ *Yusuf Ajjij Shaikh v Special Land Acquisition Officer*, (1995) BOMLR 823 (India).

¹¹ *Bharpur Singh v Union of India*, (1996) 114 PLR 591 (India).

¹² *Supra* note 3.

constitutional obligation of equality of all the religions, secularism and non-retrogression by ensuring the protection of religious places belonging to all the religions.

Currently, legality of the Places of Worship (Special Provisions) Act, 1991 itself is in challenge before the Supreme Court. The Act has been challenged on several grounds as violation of the fundamental rights, contravention of secularism, taking away judicial review, violation of Hindu Law etc. The petitions challenging its constitutional validity will be heard in July 2023 by the Apex Court.¹³

3.1 The Places of Worship (Special Provisions) Act, 1991 and Gyanvapi Masjid Controversy

3.1.1 Gyanvapi Masjid Dispute and its brief History

Gyanvapi Masjid dispute is related to demand of routine worship and ownership of a 17th-century religious structure known as Gyanvapi Masjid situated in plot no. 9130 in Dashashwamedh ward of Varanasi, next to renowned Kashi Vishwanath Temple. The structure of Gyanvapi Masjid was erected in 1669 after demolition of a part of the ancient temple of Lord Vishweshwara/Vishwanath, as ordered by Mughal ruler Aurangzeb.¹⁴ The temple of Lord Vishwanath venerated presently was constructed nearby the site of Gyanvapi mosque by Queen of Indore, Ahilyabai Holkar from 1777 to 1785.¹⁵ The western wall at the back side of the Gyanvapi mosque still retains the remnants of the temple-wall and visibly holds the symbols of ancient temple, which was erstwhile situated at the same site. It is worth mentioning that unlike Babri Masjid in Ayodhya (where namaz was not offered since 1949 and was later demolished in 1992), Gyanvapi mosque is regularly used for namaz by the Muslim community.

In 1936, in the case of *Din Mohammad v Secretary of the State*¹⁶ Gyanvapi Masjid except the enclosure was declared as waqf property. Against this judgment, petition filed in Allahabad High Court was also dismissed¹⁷ The controversy gained momentum during Ram Janmabhoomi reclamation movement of 1980-90s. It was declared that the sites of Babri Masjid (Ayodhya), Shahi Idgah Masjid (Mathura) and Gyanvapi Masjid (Varanasi) will be reclaimed and restored to their original ancient status of Hindu temples. In 1991, Gyanvapi

¹³ *Supreme Court lists pleas challenging constitutional validity of Places of Worship Act for hearing in July*, INDIA LEGAL (Apr. 5, 2023, 4:32 PM), <https://m.indialegallive.com/article/supreme-court-constitutional-validity-places-worship-act/307418> .

¹⁴ MEENAKSHI JAIN, FLIGHT OF DEITIES AND REBIRTH OF TEMPLES 96 (2019).

¹⁵ *Id.* at 97.

¹⁶ *Din Mohammad v Secretary of the State*, Civil Suit No. 62 of 1936 (India).

¹⁷ *Din Mohammad v Secretary for State in India*, 1942 SCC OnLine All 56 (India).

Masjid dispute also reached before the judiciary. Civil Suit 610 of 1991¹⁸ with demand of removal of the mosque structure and transfer of its possession to the Hindus was filed before the civil court and its hearings were stayed by the High Court in 1998. In 2019, one plea demanding inspection and survey by the archaeological department was filed and the same was accepted by the civil judge in 2020. However, the order of archaeological survey and legal proceedings before the civil court were stayed by the Allahabad High Court in 2021.

Thereafter, five household women namely Rakhi Singh, Laxmi Devi, Sita Sahu, Manju Vyas and Rekha Pathak filed a civil suit¹⁹ with the main demand to allow daily worship of Goddess *Shringar Gauri* situated at the western wall (at the back side) of the Gyanvapi mosque and all other deities (visible and invisible) present therein.²⁰ They made a claim that regular worship of the deities continued before and after 15th August 1947, but it was stopped in 1990s under the orders of the government. In furtherance of the legal proceedings before the Civil Judge Senior Division Varanasi, an inspection and survey by the court-commissioner was ordered to be conducted in the whole premises of Gyanvapi Masjid in the presence of all the parties under the suit and their advocates. But the women petitioners of the suit were not allowed entry into Gyanvapi Masjid by the managing committee of the mosque. During the survey and videography, the survey team found a stone structure similar to *Shivalinga* encircled with well-like enclosure in the ablution pond of the mosque after removing the water therefrom on May 16, 2022.²¹ This discovery has fuelled the religious sentiments across the country and also resulted in more petitions being filed demanding for protection and worship of the *Shivalinga* found therein. In present, more than twelve petitions are pending before the district judiciary of Varanasi, which relate to Gyanvapi mosque dispute. All of them demand for flattening of Gyanvapi mosque structure and permitting for Hindu worship at the site. Ablution pond of Gyanvapi Masjid has been sealed under the order of the Civil Judge Senior

¹⁸ Ancient Idol Swayambhu Lord Vishweshwar v Anjuman Intejamiya Masjid and Others, Civil Suit 610 of 1991 (India).

¹⁹ Rakhi Singh and Others v State of Uttar Pradesh and Others, Civil Suit 693 of 2021, now Civil Suit 18 of 2022 (India).

²⁰ Sudhir Kumar, *5 Women who got together for their Right to Worship Shringar Gauri*, HINDUSTAN TIMES (June 1, 2022, 12:48 AM), <https://www.hindustantimes.com/cities/lucknow-news/5-women-who-got-together-for-their-right-to-worship-shringar-gauri-101654024685476.html>.

²¹ Rajat Sharma, *Gyanvapi Mosque: How Shivling was found inside wazukhana (ablution pond)*, INDIA TV (May 17, 2022, 4:15 PM), <https://www.indiatvnews.com/news/india/opinion-gyanvapi-mosque-how-shivling-was-found-inside-wazukhana-ablution-pond-aaj-ki-baat-blog-post-2022-05-17-777229>.

Division²² and also of the Supreme Court²³ and nobody is allowed entry there, so that *Shivalinga* found there shall be granted protection from human activities. In one sense, the order of sealing of ablution pond of Gyanvapi Masjid itself is in violation of the provisions of the Places of Worship (Special Provisions) Act, 1991. The civil suit praying for worship of Shringar Gauri was transferred from Civil Judge Senior Division to the District Judge of Varanasi under the order of the Supreme Court for hearing firstly on the ground of its maintainability.²⁴ The District Judge held the civil suit demanding for regular worship of Shringar Gauri as maintainable on Sept. 12, 2022, reasoning that the prayers made in the suit only demand for regular worship of the deities (visible and invisible) but do not claim alteration of status quo of the site in dispute. Therefore, the barring of court jurisdiction to hear the dispute under the Places of Worship (Special Provisions) Act, 1991 is not attracted. As under the said civil suit, no demand is made for converting the mosque into a temple, but only a civil right to worship is demanded, which has been discontinued since 1990s. Further, the provisions of the Waqf Act, 1995 does not extend to a civil dispute, which involves non-Muslim parties in it.²⁵ It may be mentioned that the managing committee of Gyanvapi Masjid, Anjuman Intezamiya Committee challenged this order before the Allahabad High Court in revision.²⁶ The High Court reserved its judgment under the revision over maintainability of the civil suit on Dec. 23, 2022.

3.1.2 Bhagwan Adi Vishweshwar Virajman v State of U.P. and Others Case

A Civil Suit was filed by Kiran Singh Bisen as the next friend of Lord Adi Vishweshwar before the civil court of Varanasi. Various demands made in the suit are: (a) to declare the deity Lord Adi Vishweshwar as the owner of the property in dispute (Gyanvapi Masjid Complex). (b) to remove the mosque

²² Diksha Munjal, *Explained The Gyanvapi Mosque and Kashi Vishwanath dispute and the Current Case*, THE HINDU (May 16, 2022, 11:43 AM), <https://www.thehindu.com/news/national/gyanvapi-mosque-kashi-vishwanath-temple-history-case-explained/article65411250.ece>.

²³ Srishti Ojha, *Gyanvapi Mosque Case– Protect Area Where Shivalinga is Stated to be Found, No Restrictions on Muslims' Rights : Supreme Court Clarifies Varanasi Court's Order*, LIVE LAW (May 17, 2022, 5:28 PM), <https://www.livelaw.in/top-stories/gyanvapi-mosque-case-direction-to-protect-shiv-ling-spot-wont-restrict-rights-of-muslims-to-offer-namaz-perform-religious-obsevances-supreme-court-clarifies-199347>.

²⁴ Shruti Kakkar, *Breaking: Supreme Court Transfers Gaynvapi Mosque Suit To District Court Varanasi*, LIVE LAW (May 20, 2022, 4:22 PM), <https://www.livelaw.in/top-stories/supreme-court-gyanvapi-mosque-suit-199672>.

²⁵ Sparsh Upadhyay, *Plaint Avers Hindu Deities were Worshipped inside Gyanvapi Mosque Complex even after Aug. 15, 1947; Places of Worship Act No Bar to Suit : Varanasi Court* LIVE LAW (Sept. 12, 2022, 4:54 PM), <https://www.livelaw.in/news-updates/hindu-deities-worshipped-inside-gyanvapi-mosque-complex-august15-1947-places-worship-act-bar-suit-varanasi-court-209037>.

²⁶ Committee of Management Anjuman Intezamia Masjid Varanasi v Rakhi Singh and Ors., Civil Revision 101 of 2022 (India).

structure and transfer of possession of the site to the deity, Lord Vishweshwar and (c) to stop the entry of Muslim community for namaz in the mosque complex and to prohibit the Muslims from creating any hurdles in the conduct of proper and regular worship of the Hindu deities at the said site.²⁷

In the said suit, *Anjuman Intezamiya* Management Committee (Managing Committee of Gyanvapi mosque) filed objection under Order 7 Rule 11 of the Code of Civil Procedure, 1908 on several grounds, including that proceedings in that civil suit are prohibited to be continued because of the legal bar imposed by the Places of Worship (Special Provisions) Act, 1991 and also under the provisions of the Waqf Act, 1995, the Code of Civil Procedure, 1908, the Limitation Act, 1963 and the U.P. Kashi Vishwanath Temple Act, 1983.

The civil court after hearing the objections filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 pronounced its order on November 17, 2022 over the maintainability of the suit. It was held that the continuation of the proceedings under the suit are not barred under legal provisions. The court in its order reasoned that the suit is not barred under the provisions of the Limitation Act, Order 1 Rule 8,²⁸ Order 7 Rule 3²⁹ or under Section 9³⁰ of the Code of Civil Procedure, 1908. The civil court has jurisdiction to try the civil suit, where infringement of a fundamental right as well as a civil right is complained of. Further, the plaint of the suit has properly disclosed the cause of action for filing the civil suit, which is to be determined from the bundle of facts. The plaint avers the nature of the property in dispute to be of a 'temple' at the time of independence even after demolition of its upper portion in 1669. Thus, the doubt arises about the 'religious nature' of the property in dispute at the time of independence, for which evidence has to be brought during trial. Therefore, Order 7 Rule 11³¹ of the Code of Civil Procedure, 1908 does not debar the suit. In addition, the provisions of the Waqf Act, 1995, would not be applicable to the present suit, as its provisions would not apply to the matters involving non-Muslims. Also, the question of the property in dispute being a waqf legally can be decided only through evidence during trial of the case. Provisions contained under the U.P. Kashi Vishwanath Temple Act, 1983 do not prohibit initiation of legal proceedings for demand of right to worship the deities present within the temple premises or outside. In respect of the judgment in *Din Mohammad v Secretary of State*,³² Hindus were not a party to that suit. Therefore, it cannot take away the right of the Hindu parties. Further, because of the existence of the deities

²⁷ *Bhagwan Adi Vishweshwar Virajman and Others v State of Uttar Pradesh through Secretary and Others*, Civil Suit 712 of 2022 (India).

²⁸ The Code of Civil Procedure, 1908, O. 1, R. 8 (India).

²⁹ *Id.*, O. 7, R. 3.

³⁰ *Id.*, § 9.

³¹ *Id.*, O. 7, R. 11.

³² *Supra* note 16.

within the property in dispute before and after the date of independence, the nature of the deity's property is not changed even after its destruction. Also, the claim of the regular worship at the property in dispute before and after independence till 1993 and religious nature of the property in dispute at the time of independence has to be proved by evidence. Therefore, the continuation of the further legal proceedings is not against the provisions of the Places of Worship (Special Provisions) Act, 1991.³³

4. Detailed analysis regarding the correctness of maintainability of the aforesaid suit³⁴

Now, the task of the civil court is to ascertain if the property in dispute retained the religious character of a 'temple' after its demolition and imposition of superstructure of 'mosque' since 1669. The major question is whether after such demolition, the religious nature of the property in dispute changed and it ceased to be the deity's property? For such ascertainment, the court will have to look at Hindu Law of dedication to the deity and Muslim Law related to waqf. Hindu Law provides that after dedication, the temple land and property belong to the deity.³⁵ In similar terms, Muslim Law states that 'once a waqf, always a waqf'.³⁶ Thus, there is conflict over the application of Hindu Law of dedication and Muslim Law of waqf to be applied in respect of the property in dispute. It is never denied that structure of Gyanvapi mosque was constructed at the site of the demolished *Vishweshwar* Temple. At the time of demolition in 1669, the land belonged to the deity and was forcefully converted into a mosque. Subsequently, the new temple was constructed nearby at the distance of about 50 meters therefrom. But at the time of independence, the nature of the property in dispute was undoubtedly of a 'mosque' with namaz being offered regularly. Even after assuming that worship of the visible and invisible deities continued somehow in Gyanvapi mosque complex after the demolition of the ancient temple, nevertheless it must not be forgotten that the Muslim community too has never abandoned Gyanvapi mosque at any point of time. Therefore, it is equally difficult to predict what would be the legal outcome if Hindu parties are able to prove through evidence the status of Gyanvapi structure as that of a 'temple' at the time of independence (because of existence of the deities), as the provisions of the Act, 1991 strictly prohibit any kind of alteration in the religious nature of a place of worship. It is also important to mention here that the management

³³ Sparsh Upadhyay, *BREAKING: Varanasi Court Dismisses Masjid Committee's Challenge To Maintainability Of Suit Seeking Possession Of Gyanvapi Premises*, LIVE LAW (Nov. 17, 2022, 3:38 PM), <https://www.livelaw.in/news-updates/varanasi-court-dismisses-masjid-committee-challenge-maintainability-suit-seeking-possession-gyanvapi-premises-214352>.

³⁴ *Supra* note 27.

³⁵ Rangacharya and Ors. v Guru Revti Raman Acharya, AIR 1928 All 689 (India).

³⁶ Chhedi Lal Misra v Civil Judge, Lucknow and Others, 1998 (4) AWC 459 (India).

committee of the mosque, *Anjuman Intezamiya* has filed a civil revision³⁷ against the rejection of their application under Order 7 Rule 11 by the Civil Judge, which is now pending before the District Judge, Varanasi.

In the opinion of the researcher, the civil suit *Bhagwan Adi Vishweshwar Virajman* is not maintainable for the continuation of further legal proceedings before the civil court and particularly barred under Sub-rule (d) of Order 7 Rule 11 of the Code of Civil Procedure, 1908. As, the reliefs demanded in the suit are barred under the Places of Worship (Special Provisions) Act, 1991 and also the suit property is not expressly covered under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 in order to exclude the suit property from the purview of the 1991 Act. Discussion regarding the same is made hereunder:

(a) Applicability of the Places of Worship (Special Provisions) Act, 1991

The order dated 17th November 2022 in *Bhagwan Adi Vishweshwar Virajman case* is in violation of the provisions of the Places of Worship (Special Provisions) Act, 1991, because the Act under its Section 4 expressly debar all kinds of the legal proceedings which demand for any sort of alteration in the religious status of any public place of worship constructed in pre-independence days. This provision is applicable to all the places of worship erected before 15th August 1947. It mandates the preservation of the religious nature as it was on the date of independence of India, notwithstanding ancient status and usage of a religious structure. It does not matter whether a particular religious place was forcefully devastated, usurped or converted at any point of time in history. Gyanvapi mosque was constructed in 1669 in Mughal reign, hence the provision of Section 4(1) is applicable in respect of it. While the prayers in this civil suit³⁸ *Bhagwan Adi Vishweshwar Virajman* expressly demand for removal of the mosque structure. Till the time the prohibition over legal proceedings is there in force under the provisions of the Act, 1991, the path for any kind of legal recourse for alteration of religious structures is foreclosed. Therefore, the civil court ought to have dismissed the Civil Suit 712 of 2022.

(b) Ayodhya verdict of the Apex Court

The Supreme Court under its Ayodhya verdict of 2019 had cautioned against ‘retrogression’ and declared the Places of Worship (Special Provisions) Act, 1991 to be highly important measure in furtherance of secularism and equality of all religions. Although a wrong committed always remains a wrong, notwithstanding how much time has elapsed. In this sense, wrongful demolition of the ancient temple of Lord Vishweshwar in 1669 would always be considered a ‘historical wrong’ committed by the then ruler. But as the Supreme Court in its

³⁷ Committee of Management Anjuman Intezamiya Masajid Varanasi v Bhagwan Aadi Vishweshwar Virajman and Others, Civil Revision 162 of 2022 (India).

³⁸ *Supra* note 27.

Ayodhya verdict held that the court cannot entertain the claims stemming from ‘the actions of the Mughal rulers against Hindu places of worship’ in present.³⁹ Therefore, historical wrongs committed under the previous regimes cannot be undone or rectified and the Supreme Court itself has discouraged against such demands to be made. Such claims would indeed open ‘pandora’s box’ with unending demands for undoing of historical wrongs.

It may also be mentioned here that the Supreme Court made an oral observation on 20th May 2022 that ascertainment of the religious nature of a place of worship is not barred and can be done as a ‘processural instrument’.⁴⁰ In the view of such observation, although the court is not prohibited to ascertain the nature of Gyanvapi structure as it was on 15th August 1947, but alteration or removal of Gyanvapi mosque is strictly prohibited.

(c) Gyanvapi mosque as an ancient monument

It is true that Gyanvapi mosque structure is more than 100 years old in accordance with the requirement of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 to declare it an ancient monument⁴¹ in order to bring it in the exception of Section 4(3)(1) of the Places of Worship (Special Provisions) Act, 1991. But Gyanvapi Mosque has not yet been declared as an ‘ancient monument’ and it is in management of the Sunni Central Waqf Board and not under the control of Archaeological Survey of India.

In the case before Himachal Pradesh High Court namely, *Satinder Kumar v Union of India*,⁴² the High court hold the view that a religious place declared to be ‘ancient monument’ renders it out of the purview of the Places of Worship (Special Provisions) Act, 1991. But thereafter the use of such religious structure must not be against its religious nature and ethos. Therefore, in the view of said ruling also, the suit *Bhagwan Adi Vishweshwar Virajman* is not maintainable, as it demands for regular Hindu worship in Gyanvapi mosque.

It may be mentioned that Delhi Civil Court had dismissed a petition⁴³, which demanded for restoration of 27 demolished Hindu and Jain temples and worship in Qutub Minar complex. The civil judge reasoned that although Qutub Minar complex being an ancient monument is covered under the exception of Section 4(3)(a) of the Places of Worship (Special Provisions) Act, 1991, but such exception cannot be taken in isolation to frustrate the objective of the Act. But it should be seen in the larger context of the Act and its objective. Past historical wrongs must not be allowed to cause disruption towards peace of present and

³⁹ *Supra* note 3.

⁴⁰ *Supra* note 24.

⁴¹ Ancient Monuments and Archaeological Sites and Remains Act, 1958, § 2(a).

⁴² *Satinder Kumar v Union of India*, AIR 2007 HP 77 (India).

⁴³ *Tirthankara Lord Rishab Dev v Union of India*, Civil Suit 875 of 2020 (India).

future. However, the plea against the dismissal was accepted in the District Court later.

(d) No legal right vested in the Hindu parties

The Supreme Court ruling in *Most Rev. P.M.A. Metropolitan v Moran Mar Marthoma*⁴⁴ had opined that the suits filed to enforce any right vested or recognized before the coming into force of the Places of Worship (Special Provisions) Act, 1991 to be outside the purview of the Act and hence maintainable for continuation of further legal proceedings.

In this sense, the suits filed in respect of Shahi Idgah of Mathura (for declaration of illegality of the compromise of 1968 which was signed between Shahi Idgah Masjid Committee and Shri Krishna Janamsthan Sewa Sansthan) can be held to be maintainable. Because the right to challenge the compromise vested in the Hindus before 1991 and also because of Section 4(3)(b) and Section 4(3)(c) of the Act, 1991, that dispute is out of the purview of the 1991 Act. But any such right did not vest in Hindu parties in relation to Gyanvapi mosque in Varanasi.

(e) Ruling in *Din Mohammad v Secretary of State*

Gyanvapi mosque was declared to be a waqf by the Civil Court in *Din Mohammad v Secretary of State*⁴⁵ and was also approved by High Court in *Din Mohammad v Secretary for State in India*⁴⁶. Therefore, it is a binding precedent, which accepts the position of Gyanvapi structure as a mosque in the time of pre-independence. That is why, the demand for removal of Gyanvapi mosque structure is not maintainable under the said civil suit.

5. Conclusion

During 2021-2022, numerous persons have filed more than a dozen petitions in relation to Gyanvapi mosque dispute before the civil court in Varanasi, having identical complaints and prayer clauses, which is a recent example of multiplicity of legal proceedings. In spite of that, these petitions having identical demands are being admitted and heard by the civil court by overstepping the provisions of the Act, 1991. Recently, former judge of the Supreme Court, Gopala Gowda opined that the Supreme Court's Ayodhya judgment encouraged the Right Wing to demand for Gyanvapi and other mosques.⁴⁷ Thus, the opinion of several scholars that Ayodhya judgment has the impact of fuelling the ongoing tension between the Hindu and Muslim communities is not unfounded. As, more and more demands about 'doubtful and disputed religious buildings' are brought before the

⁴⁴ Most Rev. P.M.A. Metropolitan v Moran Mar Marthoma, 1995 Supp (4) SCC 286 (India).

⁴⁵ *Supra* note 16.

⁴⁶ *Supra* note 17.

⁴⁷ *Track Record Of Supreme Court In Last 8 Years Is Disappointing: Former SC Judge Justice Gopala Gowda*, LIVE LAW (Jan. 7, 2023, 7:47 PM), <https://www.livelaw.in/top-stories/track-record-of-supreme-court-in-last-8-years-is-disappointing-former-sc-judge-justice-gopala-gowda-218360>.

court across the country. Such several instances include Shahi Idgah Masjid situate in Mathura, Meena Masjid of Mathura, Bhojshala Complex in Dhar, Malali Masjid in Mangaluru, Qutab Minar Complex of Delhi, Teele wali Masjid of Lucknow etc.

The courts in India have to act more cautiously and vigilantly in dealing with such kind of disputes, keeping in view the underlying objective of the Places of Worship (Special Provisions) Act, 1991 to curb the communal hatred; as further progresses in such disputes may have far-reaching consequences of grave disruption of communal harmony in Indian society. Instead of 'literally' interpreting the law (The Places of Worship Act, 1991), it is demanded that the lower judiciary show some judicial activism and provide rulings while applying the underlying spirit of the 1991 Act, without being influenced by clever drafting or similar considerations.

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