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Hindu Front For Justice (Regd. Trust No. ... vs Union Of India Ministry Of Culture on 15 May, 2026

Author: [Vijay Kumar Shukla](#)

Bench: [Vijay Kumar Shukla](#)

NEUTRAL CITATION NO. 2026:MPHC-IND:8805

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE ALOK AWASTHI

ON THE 15th OF MAY, 2026

WRIT PETITION No. 10497 of 2022

HINDU FRONT FOR JUSTICE (REGD. TRUST NO. 976) THROUGH
ITS PRESIDENT MS. RANJANA AGNIHOTRI & ORS.

Versus

UNION OF INDIA & ORS.

Appearance:

Shri Vishnu Shankar Jain - Advocate (through V.C.) with Varsha Parashar, Shri Harishankar Jain, Shri Parth Yadav, Shri S Mani Munjal Yadav, Shri Utkarsh Dubey, Shri Devendra Nagar, Shri Shri Rohit Shukla, Ms. Shalini Joshi, Ms. Shivangee Parmar, Shri Ms. Priyanka Sharma, Shri Bhuvnesh Gupta, Shri Lalit Namdev, Shri Malpani, Shri Arpit Singh Parihar, Shri Rajesh Joshi and Ms. Pooj appeared for the petitioners.

Shri Salman Khurshid - Sr. Advocate through VC with Shri Sheikh, Shri Zishan Khan, Ms. Lubna Naaz, Ms. Azra Rehman, Shri Ta Shri Arshad Mansuri - Advocates for the respondent No.8.

Shobha Menon - Senior Counsel with Shri N.A. Sheikh, Shri Ansari and Shri Rahul Choubey - Advocates for interveners Mohd. Munir.

Shri Sunil Kumar Jain - Sr. Advocate and Addl. Solicitor Aviral Vikas Khare, Shri Rishi Bhargava, Ms. Ayushi Agrawal, Ms. Shri Kushagra Jain, Ms. Bhoomika Mev, Ms. Jyoti Sencha, Shri Sachi Ms. Ayush Agrawal - Advocates for respondent No.1 to 4 in WP No.1

Shri Vishwajit Joshi, Ms. Nena Mishra, Shri Shreesh Dubey Ms. Ayushi Agrawal - Advocates for respondent No.9.

Shri Syed Ashhar Ali Warsi, Ms. Poorvi Asati, Ms. Manan S Hashim and Ms. Priyal Agrawal - Advocates for the interveners Jib Qureshi and Firoz Sheikh.

Shri Mohd Ikram Ansari - Advocate for respondent No.8 in No.10484/2022 & WP No.10497/2022.

Shri Prashant Singh - Advocate General through VC with S AAG, Shri Rahul Sethi - AAG, Shri Dharendra S. Parmar - AAG, Shri AAG, Shri Sonal Gupta - AAG, Shri Sudeep Bhargava, Dy.AG, Shri S Dy.AG, Shri Swapnil Ganguly, Dy.AG and Shri Abhijeet Awasthy - D Surendra Kumar Gupta and Shri Viraj Godha - G.A., and Shri Sahil Viraj S. Jha - PL for the respondent/State.

Ms. Nena Mishra and Ms. Surbhi Bahal - Advocates for the re

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NEUTRAL CITATION NO. 2026:MPHC-IND:8805

WITH

WRIT PETITION No. 10484 of 2022
KULDEEP TIWARI
Versus
UNION OF INDIA & ORS.

Appearance:

Shri Manish Gupta, Shri Chandresh Gupta & Shri Sahaj Choud
for the petitioner.

Shri Sunil Jain, Senior Advocate and Additional Solicitor
Shri Aviral Vikas Khare and Ms.Ayushi Agrawal and Ms.Ayushi Agra
for the respondents Nos. 1 to 4.

Shobha Menon - Senior Counsel with Shri N.A. Sheikh, Shri Mohd.I
Shri Rahul Choubey - Advocates for interveners Mohd. Farukh and

Shri Noor Ahmed Sheikh, Shri Zishan Khan, Shri Tausif Wars
Mansuri - Advocates for the respondent No.8.

Shri Mohd Ikram Ansari - Advocate for respondent No.8 in
No.10484/2022 & WP No.10497/2022.

Shri Aniket Naik, learned counsel for the respondent No.

Shri Prashant Singh - Advocate General through VC with S
AAG, Shri Rahul Sethi - AAG, Shri Dharendra S. Parmar - AAG, Shr
AAG, Shri Sonal Gupta - AAG, Shri Sudeep Bhargava, Dy.AG, Shri S
Dy.AG, Shri Swapnil Ganguly, Dy.AG and Shri Abhijeet Awasthy - D
Surendra Kumar Gupta and Shri Viraj Godha - G.A., and Shri Sahil
Viraj S. Jha - PL for the respondent/State.

WRIT PETITION No. 8986 of 2026
SALEK CHAND JAIN
Versus
UNION OF INDIA & ORS.

Appearance:

Shri Dinesh.P.Rajdhar - Advocate with Ms.Priya Jain and Shri
the petitioner.

Shri Sunil Kumar Jain - Addl. Solicitor General with Shri Av
Ms.Ayushi Agrawal - Advocates for respondents No.1 to 6 & 10.

Shri Prashant Singh - Advocate General through VC with Shri N
Shri Rahul Sethi - AAG, Shri Dharendra S. Parmar - AAG, Shri Ash

Shri Sonal Gupta - AAG, Shri Sudeep Bhargava - Dy.AG, Shri Shrey Dy.AG, Shri Swapnil Ganguly, Dy.AG and Shri Abhijeet Awasthy - D Surendra Kumar Gupta and Shri Viraj Godha - G.A., Shri Sahil Son Viraj S. Jha - PL for the respondent State.

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NEUTRAL CITATION NO. 2026:MPHC-IND:8805

WRIT PETITION No. 28334 of 2019
MAULANA KAMALUDDIN WELFARE SOCIETY DHAR THR. ITS
PRESIDENT ABDUL SAMAD KHAN S/O SIRAJUDDIN KHAN
Versus
STATE OF MP & ORS.

Appearance:

Shri Noor Ahmed Sheikh, Shri Zishan Khan, Shri Tausif W Mansuri - Advocates for the petitioner.

Shri Sunil Jain, - Senior Advocate and Additional Solicitor
Shri Aviral Vikas Khare and Ms.Ayushi Agrawal - Advocates for the
7, 8 & 10.

Shri Manish Gupta, Shri Chandresh Gupta and Shri Sahaj C
Advocates for the intervenor Kuldeep Tiwari.

Shri Prashant Singh - Advocate General through VC with Shri
AAG, Shri Rahul Sethi - AAG, Shri Dharendra S. Parmar - AAG, Shri
AAG, Shri Sonal Gupta - AAG, Shri Sudeep Bhargava - Dy.AG, Shri
Saxena - Dy.AG, Shri Swapnil Ganguly, Dy.AG and Shri Abhijeet Aw
Shri Surendra Kumar Gupta and Shri Viraj Godha - G.A., Shri Sahi
Shri Viraj S. Jha - PL for the respondent State.

WRIT APPEAL No. 559 of 2026
QAZI ZAKULLAH AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Ms.Shobha Menon - Sr.Advocate (through V.C.) assisted by Shri
Mohd. Ikram Ansari and Shri Rahul Choubey - Advocates for the ap

Shri Sunil Jain - Senior Advocate and Additional Solicitor G
Aviral Vikas Khare and Ms.Ayushi Agrawal - Advocates for the res

5.

Shri Manish Gupta, Shri Chandresh Gupta & Shri Sahaj Choudhar the intervenor Kuldeep Tiwari.

Shri Prashant Singh - Advocate General through VC with Shri N Shri Rahul Sethi - AAG, Shri Dharendra S. Parmar - AAG, Shri Ash Shri Sonal Gupta - AAG, Shri Sudeep Bhargava - Dy.AG, Shri Shrey Dy.AG, Shri Swapnil Ganguly, Dy.AG and Shri Abhijeet Awasthy - D Surendra Kumar Gupta and Shri Viraj Godha - G.A., Shri Sahil Son Viraj S. Jha - PL for the respondent State.

WRIT PETITION No. 6514 of 2013
ANTAR SINGH & ORS.

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NEUTRAL CITATION NO. 2026:MPHC-IND:8805

Versus
UNION OF INDIA & ORS.

Appearance:

Shri.A.K. Chitale - Sr. Advocate with Shri Kartik Chital petitioners.

Shri Sunil Jain - Senior Advocate and Additional Solicit Shri Aviral Vikas Khare and Ms.Ayushi Agrawal - Advocates for th 1, 2 & 6.

Shri Prashant Singh - Advocate General through VC with S AAG, Shri Rahul Sethi - AAG, Shri Dharendra S. Parmar - AAG, Shr AAG, Shri Sonal Gupta - AAG, Shri Sudeep Bhargava - Dy.AG, Shri Saxena - Dy.AG, Shri Swapnil Ganguly, Dy.AG and Shri Abhijeet Aw Shri Surendra Kumar Gupta and Shri Viraj Godha - G.A., Shri Sahi Shri Viraj S. Jha - PL for the respondent State.

ORDER

Per: Justice Vijay Kumar Shukla [1] The aforesaid petitions and appeal deal with the common issues, to the claim of prayer by hindus/namaz by muslims/prayer by Jain samaj in —disputed area|| of Bhojshala and Kamal Maula Mosque situated at Dhar. In these petitions, a challenge has also been made to the order dated 7.4.2003 passed by Archaeological Survey of India to the extent to restrict the right of Hindus to worship in Bhojshala Complex —the disputed area|| on a particular day and timings and also challenge to the order permitting the muslim community to offer namaz on Friday in the —disputed area|| and in some petitions different

reliefs are claimed in relation to the same —disputed area. Regard being had to the similitude of these petitions, they are being disposed of by the common order, however, the facts of each case and the arguments of learned counsel for parties are recorded separately.

(HINDU FRONT FOR JUSTICE (REGD. TRUST NO.976) THROUGH ITS PRESIDENT MS. RANJANA AGNIHOTRI & ORS.

Versus UNION OF INDIA & ORS.

[2] The present petition is filed under [Article 226](#) of the Constitution of India seeking following reliefs:-

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 —[i] Issue an appropriate writ, order, direction or declaration to the effect that only the members of Hindu Community have fundamental right under [Article 25](#) of the Constitution of India to perform pooja and rituals at the place of Goddess Vagdevi/Maa Saraswati within the premises of 'Saraswati Sadan' commonly known as 'Bhojshala' situated at khasra land No.604 (Old No.313) within the city and District Dhar, State of Madhya Pradesh and the members of Muslim community have no right to use any portion of the aforesaid property for any religious purposes;

[ii] Issue an appropriate writ, order or direction to the Government of India to create a Trust under the provisions of [Trust Act, 1882](#) for the purposes of administration and management of the affairs of Bhojshala Temple and Sanskrit learning within the property in question at Land No.604 situated at Dhar town, District- Dhar and ASI be directed to continue to have overall administration and management of the property in accordance with the provisions of 1958 Act;

[iii] Issue an appropriate writ, order or direction to the Trust (created by the Govt. of India in terms of prayer number (i) to re-establish the idol/Pratima of Goddess Saraswati and make provision for Darshan, Pooja and Worship of Goddess Saraswati and make proper management of Sanskrit learning in consonance with the Bhojshala as originally established; | [iv] Issue an appropriate writ, order or direction restraining the Respondents from allowing the Muslims to perform prayer or worship in any manner within the temple complex i.e. property in question at Land No.604 at City and District Dhar;

[v] Issue an appropriate writ, order or direction quashing para 1 of the order dated 07.04.2003 passed by Director, Archaeological Survey of India and also para 3 of the said order to the extent it restricts the right of Hindus to worship within Bhojshala complex i.e. the property in question at Land No.604 (old 313) in the city of District Dhar and direct that Hindus shall be permitted to perform Pooja daily without any restriction;

[vi] Issue an appropriate writ, order or direction directing the Government of India to undertake every effort to bring back the Pratima of Goddess Saraswati from London Museum in United Kingdom and re-establish the same within the 'Saraswati Sadan'/Bhojshala complex situated at Khasra land No.604 (Old No.313) within the city and District Dhar, State of Madhya Pradesh;

[vii] Issue any other writ, order or direction in favour of the Petitioners as may be deemed fit and proper in the interest of justice and for which the Petitioners may be found entitled to;

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [viii] Allow the Petition with costs;

[3] Learned counsel for petitioner Shri Vishnu Shankar Jain submitted that the present petition is not for claim of ownership on the disputed area of Bhojshala and Kamal Maula Mosque. The prayer (i) is regarding claim of exclusive right of worship on the disputed portion of khasra land 604 (old 313) (which shall be hereinafter referred as —disputed area)) of Bhojshala and Kamal Maula Mosque and also a declaration that the members of muslim community have no right to use any portion of the aforesaid property for any religious purposes.

[3.1] The prayer (ii) is regarding seeking a direction to the government of India to create a trust under the provisions of the [Trust Act, 1882](#) for the purpose of administration and management of affairs of Bhojshala temple and Sanskrit learning and also a direction to Archaeological Survey of India (hereinafter shall be referred as —ASI)) to continue to have overall administration and management of the property in accordance with the provisions of [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (hereinafter shall be referred as —Act 1958)).

[3.2] The prayer (iii) in which the petitioner has further sought a direction that the said trust created by the government of India in terms of the relief number (ii) be directed to re-establish the idol/pratima (statue) of goddess saraswati and make provisions of darshan, pooja and worship of goddess saraswati and also to make proper arrangement of Sanskrit learning in consonance with the bhojshala as originally established.

[3.3] The relief number (iv) is more or less in the same nature of relief number (i) seeking a direction to the respondents to restrain from allowing the muslims to perform prayer/namaz in any manner in the disputed portion of the said land.

[3.4] The relief number (v) is regarding quashment of Para 1 of the order dated 7.4.2003 passed by the Director, ASI and also para 3 of the said order to the extent it restricts the right of Hindus to worship within the disputed portion of the said land and they be directed to permit the Hindus to perform puja daily without any restriction.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [3.5] The relief number (vi) is to the Government of India to undertake every effort to bring back the pratima of goddess saraswati from London Museum U.K and to re- establish the same within bhojshala complex.

[3.6] The other relief is any other relief deem fit in the interest of justice.

[4] In support of their reliefs, the petitioner has asserted the following facts which are mentioned as under:-

[4.1] The Petitioner No.1 is a registered Trust in the name and style —Hindu Front for Justice|| having Registration No.976/2021, Lucknow. The scope of working of the Trust is within whole of India and abroad. This petition is being filed by founding Trustee Ms. Ranjana Agnihotri to and on behalf of the Trust. The aim and object of the Trust is to abide and cherish the noble and great ideals enshrined in Vedas, Shastras, Upanishads, Ramayana and various Hindu scriptures and to achieve the goal of the Trust to approach the Court for redressal of grievances of the Hindu community. The Trust is committed for restoration of places of worship through procedure of law which were damaged/destroyed during pre independence era. The Trust/office bearers have knocked _the doors of the Court espousing the cause of the members of the society. This case is one of the issues haunting the heart and mind of the members of the Trust and crores of Hindus in India and abroad. The trust has passed a resolution on 20.02.2022 to file the Writ Petition raising the issue of Bhojshala in the interest of the community and the Nation and they have authorized the founding trustee Ms. Ranjana Agnihotri to file this petition on behalf of the Trust. The copy of the Trust Deed registration No.976/18.12.2021 registered in the office of Sub-Registrar, Lucknow, U.P. The Petitioner No.2 Ms. Ranjana Agnihotri is the founding Trustee of the Petitioner Trust. She is a practicing Advocate at Lucknow Bench of Allahabad High Court. She is a social worker as well. She has been an Advocate in the famous Ayodhya Case for Shri Ram Janmabhoomi. She is also actively involved for restoration of the religious and cultural places of Hindus which are pride for the country as well. The Petitioner No.3 Ashish Goyal is the President of District Unit Dhar of the Trust. He is a graduate in Science (Mathematics). He is engaged in business at District Dhar. He is also doing a number of social works. He is an active member of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Bharatiya Janata Party. He is associated with a number of organisations namely, Akhil Bharatiya Vidyarthi Parishad, Hindu Jagran Manch, Vishwa Samvad Kendra, etc. He is actively working for the re-establishment of Pratima of Goddess Vagdevi at Bhojshala Temple. The Petitioner No.4 Ashish Janak is having a degree of LLB. He is engaged in business. He is involved in doing work for public good and is a social worker. He is associated with Bharatiya Janata Yuva Morcha, Seva Bharti, Sahkaar Bharti, Farmers Union etc. He is active

member of Bharatiya Janata Party. The Petitioner No.5 Mohit Garg is having degree of LLM and has obtained a degree of MBA from United Kingdom. He is the Director of Betul Law College and Radha Krishan Degree College, Betul. He is associated with a number of social organisations and is actively involved in social service by providing education and financial assistance to the needy. He is actively associated with Bharatiya Janata Party. The Petitioner No.6 Jitender Singh —Vishen|| is an agriculturist and a social worker. He is founder trustee of Vishwa Vedic Sanatan Sangh. He is committed to espouse the cause of cultural heritage of India and to work for securing the right to religion available to Hindus in [Article 25](#) and [26](#) of the Constitution of India. He is involved in social service in a number of ways. He is working for inter caste marriages amongst Hindus and to prevent inter faith marriages.

He is committed to work to eradicate the caste system | developing in India due to political reasons. The Petitioner No.7 Sunil Saraswat is a journalist and a social worker. He had worked in Hindi Dainik Bhaskar. Since 2008 he is running his own printing press and is doing the business of constructing houses. He has been involved in number of agitations concerning the public cause. He is District Vice President of Bharatiya Janata Party District Ratlam.

[4.2] The petitioners have filed the Public Interest Litigation challenging the order dated 7.4.2023 passed by Director General of Archaeological Survey of India allowing muslims to offer namaz within Bhojshala Complex, the property in question and restricting the right of Hindus to worship within the aforesaid premises. The petitioners are espousing the cause of Hindu community for enforcement of right to religion guaranteed under [Article 25](#) and right to conserve cultural heritage under [Article 29](#) of the Constitution of India. The petitioners have also prayed to re-establish the idol of goddess Saraswati (Vagdevi) which was established according to them by King Bhoj in the year 1034 AD for the purposes of imparting education of Sanskrit, Literature, Grammer, the education of Astrology, Astronomy, Vedas and Shastra.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [4.3] The destruction of a temple and its continuance in the same form is a continued trauma for the worshippers denying them to achieve spiritual power and in such a situation the life of worshippers remain in jeopardy giving day to day tease and feeling of humiliation done by the invader and such continued wrong has to be rectified under the sweep of [Article 13\(1\)](#) of the Constitution of India to protect the life and religious rights guaranteed under [Article 21](#) and [25](#) of the Constitution of India. The instant case is of one such trauma that Hindus are facing for more than 700 years in respect of the temple of Goddess Vagdevi (Maa Saraswati) established by the celebrated King Bhoja in 1034 A.D; but the Muslim invaders having hatred against idol worship tried to convert the temple complex into a mosque but failed, despite that they're still claiming the temple as Kamal Maula Mosque and Government has conceded to their pressure by illegally allowing them to offer Namaz on Fridays.

[4.4] This Writ Petition is being filed to preserve and protect the cultural heritage of India and also to exercise Right to Religion guaranteed by [Article 25](#) of Constitution of India for issuance of necessary directions to government and its functionaries restraining them from interfering

in the right of worship of Hindus and the protected monument be used only and only for Hindu place of worship and the Pratima/Idol of Goddess Saraswati lying in London Museum since 1903 be re-established.

[4.5] The case of Petitioners is that the members of Hindu community be allowed to re-establish the Pratima of Goddess Saraswati within Bhojshala complex and re-establish the Gurukul education for imparting Sanskrit language for which the complex had been constructed by most celebrated King Raja Bhoj of Parmar Dynasty and further that the members of Muslim community be not allowed to enter into the said place. The Petitioners through this petition are espousing the cause of members of Hindu community to protect the right to religion under [Article 25](#) and right to preserve cultural heritage enshrined in [Article 29](#) and duty cast upon under [article 51-A](#) of the Constitution of India to value and preserve the rich heritage relating to Bhojshala complex.

[4.6] The subject matter of this petition is the ancient temple of Goddess Vagdevi (Maa Saraswati) situated at Land No.604 (Old Land No. 313) in the city of Dhar (State of Madhya Pradesh), commonly known as Bhojshala. In a site plan Bhojshala temple NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 complex has been shown by letters A,B,C,D and the same is being referred to as the „disputed area“ hereinafter. The graves/tombs existing adjacent to the temple complex have also been shown in the site plan.

[4.7] There is an ancient Jal Kund along side Bhojshala temple complex and is part of the temple. This Kund is ancient. There is natural water from ancient times emerging from underground. It is part and parcel of the temple complex. In the Bhojshala temple complex there is place for performing —Havan', which is called Havan Kund. The Havan Kund can never be found in any Mosque. The Hindus perform Havan in Havan Kund on every Basant Panchami day and they cannot perform Havan and other rituals on other days due to the restriction imposed by Director, Archaeological Survey of India vide order dated 07.04.2003.

[4.8] The Petitioners, the devotees of Goddess Saraswati, are asserting their right to re-establish, Idol/Pratima of Goddess Vagdevi i.e. Maa Saraswati and to have Darshan and Pooja of the deity within the temple complex at Land No.604 (Old No.313) situated in the town of Dhar which is being prevented by the respondents without any authority of law and thus the right to religion guaranteed under [Article 25](#) of the Constitution of India is being infringed. The Petitioners are followers of Sanatan Dharm and believe in idol worship. They cherish the Sanskrit language. They admire the Gurukul education system prevalent in India since ancient times. It is the duty of every citizen of the country including the Petitioners to preserve and protect the ancient culture, scriptures, Sanskrit language, astronomy, astrology and ancient ethos due to which India was considered —Vishwa Guru||.

[4.9] It is a historical fact that King Bhoj in the year 1034 A.D at Dhar had established a magnificent temple of Goddess Saraswati alongwith the Gurukul for imparting education of Sanskrit language and grammar, Astronomy, Astrology, Vedas, Shastras, etc. and to educate the disciples regarding Indian tradition, culture as well as Vedic sciences prevalent in the great country of —Bharatvarsha||. The place constructed and established by King Bhoj is known as —Bhojshala' situated within the town' of District Dhar (Madhya - Pradesh). In the temple

complex Sanskrit Vyakran (Grammar) inscribed as Chitra kavi was depicted on the walls of the temple. Vyakran chakra (Grammars shlokas written in circular diagrams) are found in the Bhojshala complex.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 The entire Vyakarana Shastra had been written in verses and charted in the form of wheel. The intention of the original sculptures and builders is obvious that the science of language should be always present through Vyakran (Grammar) in the mouth of the follower of Veda. It is said that a mere glance of the giant wheel would make the vyakran (Sanskrit Grammar) very clear. Vyakaran has the status of an object of reverence and worship, and therefore, the wheel of vyakran was installed in the temple complex.

[4.10] It is pertinent to mention that in Bhojasala (School of Bhoja) Goddess Saraswati was worshipped as a divinity of learning. Bhojasala (School of Bhoja) in Dhar refers both to the centre of Sanskrit studies and temple of Saraswati.

[4.11] The Bhojshala was first attacked by infamous and cruel invader Allauddin Khilji in the year 1305 AD. History speaks that more than 1200 students and teachers of Bhojshala were massacred as they refused to convert into Islam. Hindu King Mahal Dev bravely fought and sacrificed himself in the battle. Thereafter, a portion of Bhojshala was dismantled and the images of God and Goddess engraved in the building complex were severely damaged however, Khilji failed to raise any Islamic building thereat. That in the year 1401 Ruler Dilavar Khan had also tried to convert part of Saraswati temple into mosque but utterly failed. In the year 1514 AD Mahmood Shah Khilji attacked Bhojshala for the 2nd time and unsuccessfully tried to capture Bhojshala complex, however, he captured a portion of land outside Saraswati temple i.e. temple- complex and in the name of 'Kamal Maula' constructed a maqbara 204 years after the death of Maulana Kamaluddin. It is a matter of recorded history that Maulana Kamaluddin had died at 'Karnawati' now known as 'Ahmedabad' in the year 1310 and had been buried at Ahmedabad. Due to Muslim invasion the situation of Bhojshala has been changed and number of tombs/graves have been forcibly and illegally raised at the edge of the sword within the area of Bhojshala. However, the Muslim invaders could not change the religious character of the temple of Goddess Saraswati. The temple- complex could not be converted into a non-Hindu and/or an Islamic building, whereas there are numerous images and sculptures of Gods and Goddess that are still found within the temple-complex and a number of idols are lying beneath the floor as well as a big idol of Lord Hanumanji is still lying there which has been buried under the floor. The unfortunate part is that Muslim invaders in their traditional style of destroying the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 places of learning and worship of Hindus and removing/damaging the idols to show the might of the sword of Islam had damaged the place of worship of Goddess Saraswati at temple complex and tried to convert the same into a mosque but they failed as after destroying the idols they could not raise any mosque thereat. It is a matter of history that there existed a grand temple of Goddess Vagdevi (Saraswati) and learning center established by the most celebrated King Bhoja in 1034 AD. The entire temple complex was dedicated to Goddess Vagdevi. There was provision for imparting education to the disciples. It was a great learning and spiritual center for followers of Sanatan Dharm. The Muslim

invaders damaged the temple complex. The Hindus and worshippers of Goddess Saraswati are not being allowed to perform their daily pooja and thus, the religious rights of the members of Hindu community are being infringed and there is atmosphere of chaos and unrest due to the illegal demand raised by Muslims to use the place in question as Mosque.

[4.12] It is further pleaded that in 1875 AD during British Rule Major General William Kincaid was working as political agent of British Government. He excavated the temple complex and the idol of Goddess Vagdevi (Maa Saraswat') which had been buried there by Muslim rulers was taken out. In the year 1903 AD Lord Curzon took away the idol of Vagdevi found within temple complex and the same has been kept in a museum in England. The full description of Pratima is available on the official website of British Museum i.e. www.britishmuseum.org/collection/object/A_1909-1224-1.

[4.13] That an inscription on the base of a Pratima notes that Vararuci, an official in Paramara kingdom, had made two pratima, together with the pratima of 3 Jinas (tirthankaras): one of Vagdevi and another of Amba. Both forms Vagdevi and Amba represent the divinity of Saraswati. The two Pratima of Saraswati, are both over 1000 years antiquity and are now held in the British Museum. British Museum should return the Pratima for puja (worship) in Saraswati Mandiram (temple), Dhar, Central India. A Pratima is a sculptural representation of divinity. After Pranaprastha, a process including Vedic recitations, the Pratima comes alive, in a temple, as sacred murti for worship, for offering daily puja by devotees. Such a murti renders the Hindu shrine sacred and inviolate. That in 1903, a Sanskrit and Prakrit inscription from the time of Arjunavarman (circa 1210-15) was found in the walls of the building by K.K. Lele, Superintendent of Education in the Princely State of Dhar. The engraved inscription is NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 displayed inside the entrance. The text includes parts of a drama called Vijayasrinatika composed by Madana, the king's preceptor, or 'Balasarasvati'. Other inscribed tablets noted by Lele included a large tablet inscribed with the | Kurmasataka-verses in praise of the Kurma incarnation of Vishnu and a serpentine inscription containing the grammatical rules of the Sanskrit language. These finds, particularly the grammatical inscription, prompted Lele to name the building Bhoj Shala, or 'Hall of Bhoja', in reference to King Bhoja (circa 1000-55), the author of several works on poetics and grammar such as the famous Saraswastikanthabharana or 'Necklace of Saraswati'. The term 'Bhoj Shala' was first published by C.E. Luard in 1908.

[4.14] In order to establish the construction of Bhojshala and temple of goddess Vagdevi (Saraswati) in 1034 AD he referred the Imperial Gazetteer of India 1908, Royal Asiatic Society published journal in 1904, the explanation note given by Mr.K.K. Lele, Superintendent of Education in the Dhar State, Book 'Mandu', the city of Joy written by G.Yazdani, Director of Archaeology in H.E.H, The Nizam's Dominions and Epigraphist to the Government of India for Muslim inscriptions in the year 1929 about Bhojshala, research made by John Malcolm and Michael Willis, Indian Archaeological Review 1972-73.

[4.15] He further referred the legal history of the cases. That one Amiruddin S/o Waziruddin was first to file Civil Suit No.42 of 1962 impleading Union of India, the Government of Madhya Pradesh and later on Thakur Nihal Chandra, President Hindu Mahasabha Dhar and Bhoj Smriti

Utsav Committee were also impleaded as Defendants, praying that the possession of Kamal Maula mosque be handed over to him from Defendants and also for restraining the Defendants from interfering in offering namaz 5 times in Masjid Kamal Maula. Later, the suit was renumbered as 40(A) of 1962 and was sent to the Court of Additional District Judge, Dhar. In the suit the Plaintiff had alleged that there existed a mosque at land No.313 and same was a protected monument under 1904 Act. The suit was dismissed in default vide order dated 27.9.1969 passed by First Additional District Judge, Dhar.

[4.16] That after filing the suit No.40-A of 1962 Thakur Nihal Chandra, President Hindu Mahasabha Dhar and Bhoj Smriti Utsav Committee Dhar were impleaded on their application as Defendants No.3, 4 and 5. All the Defendants filed written NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 statement. The ASI had filed written statement in the Court of Civil Judge and again in the Court of Additional District Judge on 5.7.1969. The written statement was filed by private defendants on 4.5.1964 in Suit No.40-A of 1962. ASI has also filed written statement in Suit No.40-A of 1962 filed on 30.11.1963 and 5.7.1969. The suit was dismissed in default by 1st Additional District Judge, Dhar by order dated 27.9.1969.

[4.17] That one Vimal Kumar S/o Fateh Lal Ji R/o 40 Raghunath Pura, Dhar had filed Writ Petition No.1295 of 1997 challenging order dated 12.5.1997, 13.6.1997 and 29.7.1997 which restricted the rights of Hindus. It was also prayed that _direction be issued restraining Respondents from prohibiting entry of believers of Goddess Saraswati and Hindus for entering into Bhojshala temple of Goddess Saraswati. The copy of Writ Petition No.1295 of 1997 filed by Vimal Kumar before Hon'ble High Court at Indore Bench is annexed with the petition. That on behalf of ASI (Opposite Parties No.6,7 and 9) counter affidavit was filed in Writ Petition No.1295 of 1997. It was pleaded in para 5(h) that:- | —..... the present structure was declared a Protected Monument, of national importance notified as Bhojshala and Kamal Maula Mosque vide AMPA Act No.7 of 1904, AMHARR Act (LXXI) of 1951 and AMAER Act of 1958 that there is no evidence available to prove that the present structure was the original Bhojshala built by great King Bhoja.

Neither it can be asserted that present structure was the Saraswati temple, even though there are evidences in the nature of carved pillars, carved ceiling and stone slabs containing inscriptions.

The Persian inscription states that the mosque was built by one Mummad Shah Khilji in 826 AD or 1457 AD and it was in this nature, the structure was declared protected monument of national importance by virtue of its containing valuable inscriptions pertaining to the of Udayaditya, Maraarwan and Arjuna Deva of the Parmar Dynasty, that it was accurized by the Central Government in 1951 under [Section 13](#) of the Act XXIV of 1958 under nomenclature as Bhojshala and Kamal Maula mosque in which status it remains protected even today. The copy of reply filed on behalf of ASI in Writ Petition No.1295 of 1997 is annexed hereto and marked as ANNEXUREP-15.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [4.18] That later the Petitioner Vimal Kumar filed application in Writ Petition No.1295 of 1997 seeking permission to withdraw the writ petition. The Hon'ble Court vide order dated 28.01.1998 accepted the prayer

and the writ petition was dismissed as withdrawn with liberty to approach before the competent forum.

[4.19] That Director-General of ASI passed an order on 07.04.2003 in exercise of the powers under Rule 4 of The Ancient Monument and Archaeological Sites and Remains Rules, 1959 and partially notifying order No.F No.11/5/97-MCH dated February 5, 1998 making provisions for the entry into the Bhojshala-Kamal Maula Mosque at Dhar. It is provided that Muslim community shall be allowed access to the premises for Friday Namaz between | 1 to 3 pm and Hindus shall be permitted to hold traditional ceremonies on the occasion of Basant Panchami every year and shall be permitted access on every Tuesday from sunrise to sunset and the visitor could take a flower or two and a few granules of rice.

[4.20] That it is relevant to mention that the order dated 07.04.2003 passed by Director, ASI is still operating and is continuing offending the exclusive right of Hindus to worship within Bhojshala complex and Muslims are offering Namaz on the strength of the aforesaid order which is per se illegal and unconstitutional. That it may be pointed out here that one Qazi Zakaullah filed Writ Petition No.4216 of 2003 praying for setting aside order dated 07.04.2003 passed by Director General and Additional Secretary, Archaeological Survey of India by which members of Muslim community were allowed access to the premises for Friday Namaz between | 1 p.m. to 3 p.m. and the members of Hindu community were permitted access to the premises to hold traditional ceremonies on the occasion of Vasant Panchami every year and also to have access free of charge on Tuesday from sunrise to sunset and visitors to come with flower and few grains of rice. In the Writ Petition no member of Hindu community or any Hindu organization were impleaded. That it is relevant to mention that Writ Petition No.4216 of 2003 was dismissed by Learned Single Judge of Hon'ble High Court vide judgment and order dated 18.9.2003 providing that the writ petition was not the appropriate forum to examine the facts and that proper remedy was before the Civil Court.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [4.21] That from the website of the Hon'ble High Court it has been revealed that the Writ Petitioner Shri Qazi Zakaullah had filed LPA No.766 of 2003 at Principal seat Jabalpur and the same was dismissed on 5.9.2005. That it has come to the knowledge that against the order dated 5.9.2005 passed in LPA No.766 of 2003, SLP(C) CC1800 of 2006 has been filed by Qazi Zakaullah before the Hon'ble Supreme Court and same was withdrawn with liberty to take steps for revival of Letters Patent Appeal before the High Court. The further action if any, taken by aforesaid petitioner Qazi Zakaullah is not available.

[4.22] In the petition the petitioners have disclosed source of information stating that the petitioners have collected information from various cases decided and pending before this Hon'ble Court and also from historical books, gazetteers, religious scriptures and information available on internet.

[4.23] They highlighted the nature of injury caused/apprehended that the religious rights of Hindus are being jeopardized and Respondents have no power or jurisdiction to infringe fundamental rights of citizens guaranteed under [Article 25](#) and [29](#) of the Constitution of India. The Government machinery is showing undue favour and bias to the members of Muslim

community and their attitude is hostile towards Hindu community. It is further declared that the issue raised has neither been dealt with nor decided.

[4.24] It is submitted that points involved in the petition have not been finally decided by any Court till date.

[4.25] That some writ petitions in respect of claim over temple complex of Bhojshala are pending before this Hon'ble Court. The description of the pending cases are being given below:-

Sl.No. Writ Petition Parties names Nature of relief No. 1 6514/2013 Antar Singh & Ors. In favour of alleged mosque Vs.Union of India 2 1089/2016 [Arun Singh Vs. Govt. In](#) favour of Temple Of India 3 28334/2019 Maulana Kamaluddin In favour of alleged mosque NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Registered Society Vs. State of Madhya Pradesh [4.26] The petitioners have further stated that number of representations and demands have been made by the similarly situated members of Hindu community before the State authorities for permitting them to reinstall Pratima of Goddess Vagdevi and not to allow Muslims to offer namaz within the temple complex at land No.604 (Old No.313) shown by letters A,B,C,D in the site plan. Therefore, the Petitioners have not filed any separate representation to the Government and the authorities working under it.

ARGUMENT OF PETITIONER IN WP NO.10497/2022 [5] Shri Vishnu Shankar Jain - counsel for petitioner argued that following questions involved in this petition:-

[i] Whether the property once vested in the deity continues to be the deity's property?

[ii] Whether any construction raised after demolishing any temple can be termed as mosque?

[iii] Whether a mosque can be constructed on a non-wakf land ?

[iv] Whether wakf should be the owner of the property and he must dedicate the property to the Almighty ? | [v] Whether Bhojshala temple complex was existing since 1034 A.D. and Muslim rulers destroyed/damaged part of the building?

[vi] Whether any right accrues in favour of Muslim community who have raised any construction at the site of Hindu temple after demolishing it ?

[vii] Whether the Bhojshala complex has all the trappings of a Hindu temple?

[viii] Whether mutilated idols in a religious building offends the religious sentiments of members of Hindu community?

[ix] Whether every citizen has inherent right to attain spiritual power according to tenets of his religion?

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(x) Whether the destruction of religious place is a trauma for the worshippers and continued attack on the spiritual life thereby violating their right to life guaranteed by Article 21 of the Constitution of India?

(xi) Whether all laws, practices, customs or trauma created or continued during pre-independent era affecting the right of the citizens under [Article 21](#), [25](#) and [29](#) have to be nullified following the constitutional injunction embodied in [Article 13\(1\)](#) of the Constitution of India?

[6] The arguments are considered by placing them in different heads.

[I] HISTORICAL AND ARCHEOLOGICAL ASPECTS RELATING TO BHOJSHALA TEMPLE COMPLEX:-

[6.1] Shri. Jain argued that from the pleadings and material, it is clearly established that the property in question was constructed by Raja Bhoj in 1034 AD for Sanskrit School. He argued that a temple of goddess Vagdevi (Saraswati) was also constructed in the said school. In order to establish the construction of Bhojshala and temple, he relied and referred:-

[6.2] He relied and referred the Imperial Gazetteer of India 1908 Vol.XI at page 295 mentions that:-

—The Kamal Maula is a small enclosure containing four tombs. One is said to be that of Mahmud Khilji I, the other is that of Shaikh Kamal Maulvi. Over the doorway is a handsome blue tile with an inscription in Kufic characters. Kamal-ud-din was a follower of the famous saint Nizam-ud-din-Auliya, who lived in the time of Ala-ud-din (1296-1316). This mausoleum was built in 1457 by Mahmud I in honor of his memory. Raja Bhoj's School is another mosque made out of Hindu remains in the fourteenth or fifteenth century. Its present title is a misnomer, derived from the numerous slabs

containing rules of Sanskrit grammar which have been used to pave the floor. It stands on the site of an old temple, probably that mentioned in a play of which a portion was discovered here inscribed in stone slabs fixed in the back of the mihrab. The temple was dedicated to the goddess Saraswati and is described as the ornament of the eighty-four squares of Dharanagiri. On two pillars are a NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 curious epitome of Sanskrit inflexional terminations, cut so as to resemble a snake, and called Sarpabandhi in consequence.¶ [6.3] That Royal Asiatic Society published journal in 1904. In the journal there is some narration regarding Bhojshala school in Article XI in the chapter titled as —Dhar and Mandu'. There are photographs of two inscriptions found in Bhojshala. The description mentioned at page 350, 351 and 352 are being reproduced below:-

"The mosque, contiguous to Kamal-ul-din's tomb, is known among the Hindoo population as "Raja Bhoja ka Madrassa", i.e. Raja Bhoja's School. In its present form, it is contemporaneous with the buildings round it, but, as in the case of the Lat Musjid, all the materials used seem to have been taken from Hindoo buildings. The decoration of the "Mehrab" and the dome are more elaborate than in the Lat Musjid. As confirming the local tradition of the existence of Raja Bhoja's school in this neighbourhood, the two Serpobandhi pillar inscriptions, photographs of which are given below, are extremely interesting.

[6.4] The following explanation of them was given by Mr. K.K.Lele, Superintendent of Education in the Dhar State.

"Inscription No.1, is made up by the windings of one serpent only.

It contains the Sanskrit alphabet in the Nagari characters the 11th or 12th Century A.D., and the chief inflectional terminations of nouns and verbs. The former are given in the body of the serpent, and the latter in the tail. The consonants do not differ very much from those in common use now; but the vowels have quite a different shape. The whole inscription is 2ft.

3 in. in height and 1 ft. in breadth. There are altogether 53 letters and symbols, and 21 nominal and 18 verbal inflectional terminations. As the alphabet plays the chief part in this inscription, it may be called alphabetical.¶ Inscription No.II, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 is bigger in size, 2 1/2 ft. in height and 1.1/2 ft. in breadth, with greater contents. It is made up by the intertwining of two serpents, probably male and female. It contains chiefly the personal terminations of the ten tenses and moods of Sanskrit grammar. There are three numbers in Sanskrit, and two sets of

terminations (Parasmaipada and Atmanepada, transitive and intransive) for each of the tenses and moods: so for the three persons in each there are altogether 18 terminations, 9 of each set, as shown below:-

Parasmai Atmane Sing. Du. Pl. Sing. Du. Pl.

3rd person ... 3rd person ...

2nd person ... 2nd person ...

1st person ... 1st person ...

Inscription Sarpobandha No II Thus, there are altogether 18x10180 verb terminations, 90 of each set, given in the table numbered on the right-side. They are given in slanting columns from the left to the right in the spaces left between the zigzag turnings of the serpents. On the left hand side are marked the names of the two sets of terminations, the three persons: the third or Prathama, the second or madhyama, and the first or uttama; and the three numbers by the figures 1, 2 and 3. The names of the tenses are marked on the top of each column by the initial letter of each. In Sanskrit, besides primitive verbal bases, there are several (not fewer than a dozen) derivative bases of verbs, which show cansation, desire, intensity, etc. These and other details are indicated in the round knots below the principal table. The inscription is based on the Ka-tantra grammar of Sanskrit.

Above the table are two Sanskrit stanzas of the Anustubha metre 32 letters divided into 4 feet of 8 letters each. In the first verse of occur the names of Udayaditya and Naravarman, and in the second that of Udayaditya alone. Now these NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Udayaditya and Naravarman were the almost immediate successors of the Raja Bhoja who ruled at Dhar during the first half of the eleventh century of the Christian era. The probable meaning of the stanzas is as follows:-

—The swords of the king Udayaditya and Naravarman were equally ready for the protection of the varnas (i.e. four castes) and the letters of the alphabet. This pillar inscription has been put here by king Udayaditya for the gratification of poets and princes. —In addition to these evidences, considerable portion of the floor of the mosque is paved with black stone slabs, on which can be distinctly seen traces of the inscriptions which once covered them, but which unfortunately have been almost totally defaced by the Mahomedan conquerors. Finally, a recent close inspection has brought to light the fact that the reverse side of two of the great black stones slabs which form the lining of the —Mehrab|| are covered with similar inscriptions, which happily

by their position have escaped destruction, but of which, owing to that same position, it has only been possible up to the present to take fragmental impressions. These impressions seem to show that the inscriptions are a dramatic composition probably on an historical subject, written in the reign of a successor of Bhoja. || [6.5] The photographs relating to inscription 1 | and 2 mentioned herein published by Royal Asiatic Society journal are annexed in the petition.

[6.6] That in the book 'Mandu', the city of Joy written by G. Yazdani, Director of Archaeology in H.E.H, The Nizam's Dominions and Epigraphist to the Government of India for Muslim inscriptions in the year 1929 has written-about Bhojshala. The relevant portion appearing at page 9-10 are being reproduced hereinbelow:-

—The Bhojshala and Kamal Maula In a picturesque corner well shaded by tall trees he these two buildings.

The Bhojshala or Raja Bhoja's School is a mosque made by the Musalman rulers of Malwa out of the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 remains of a Hindu temple of the 11th or 12th century, This popular title is a misnomer derived from the numerous slabs containing rules of Sanskrit Grammar, placed on the floor of the building so as to be trodden under the feet of the —true believes. On the site of this building there was originally a temple and it was in all probability the temple to Saraswati which is described in the Sanskrit play of Arjunavarma Paramara's day (1210-16) as —the ornament of the eighty-four squares of Dharanagri. || Two slabs were discovered behind the Mihrab one bearing two Prakrit odes of the 11th century (one supposed to have been composed by Raja Bhoja himself and the other the Sanskrit play mentioned, which praises Arjunvarma. These slabs stand on the north side of the building and are beautiful specimens of the stone-cutter's work.

On Two pillars in this building are a curious epitome of Sanskrit inflectional terminations cut to resemble snakes.

In a small enclosure known as Kamal Maula's cemetery near the gate of this building, are four tombs. One is believed to be of Mahmud Khilji (1435-69) another being that of Shaikh Kamal Maula or Malavi so called from his long residence in Malwa. Over the door is a blue tile inscribed in cufic characters.

The oldest inscription in Dhar was found in this cemetery. It states that Dilawar Khan, then only governor in Malwa under Muhammad Shah repaired the ruined mosques of Dhar in 795 A.H. or 1392 A.D. || [6.7] That from the archaeological and historical facts it is

crystal clear that the building in question is a Hindu temple and place of learning of Sanskrit language. The scholars, on the basis of research made by John Malcolm and Michael Willis have further opined regarding grammatical inscriptions that:-

(i) The building also contains two serpentine grammatical inscriptions. These records prompted K. K. Lele to describe the building as the Bhojsala or Hall of Bhoja because king Bhoja was the author of a number of works on poetics and grammar, among them the Sarasvatikanthabharana or "Necklace of Sarasvati". The term Bhojasala was NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 taken up by C. E. Luard and published in his Gazetteer of 1908 although Luard noted that it was a misnomer. That the term Bhojsala is due to Lele is shown by the writing of William Kincaid, in his "Rambles. among Ruins in Central India," published in the Indian Antiquary, in 1888. This makes no mention of the term Bhojsala, noting only the Akl ka kua or "Well of Wisdom" in front of the tomb of Kamal al-Din. Kincaid was a cynical observer but in any case the absence of the term Bhojsala in his text indicates was "no living tradition about the Bhojala in the middle decades of the nineteenth century" among those with whom he interacted. After Lele and Luard had identified the Bhojshala with the Kamal Maula, O. C. Gangoly and K. N. Dikshit published an inscribed sculpture in the British Museum, announcing that it was Raja Bhoja's Sarasvati from Dhar. This analysis was broadly accepted and had a significant impact. The statue in the British Museum was often identified as Bhoja's Sarasvati in the years that followed.

The inscription on the sculpture mentions king Bhoja and Vaagdevi, another name for Sarasvati.

However, later study of the inscription by Indian scholars of Sanskrit and Prakrit languages, notably Harivallabh Bhayani, demonstrated that inscription records the making of a sculpture of Ambika after the making of three Jinas and Vagdevi. In other words, although Vagdevi is mentioned, the inscription's main purpose is to record the making of an image of Ambika, i.e. the sculpture on which the record is incised.

Text and translation:-

—aum! srimadhbhojanarem dracam dranagarividyadhari [*dhal] rmmadhih yo -----
[damaged portion] khalu sukhaprasthapana-(2) v=ap(sa)jrah[*!] vagdevi [*m]
Prathama[*m] vidhaya janami[m] pas[c] aj jinanamtrayim amba[m] nityaphala(d) ikam
vararucih (m) urttim subha [m] ni-(3) rmmame [I] iti subham Il sutradhara
sahirasutama nathalenaghatitam Ivi [jna]nika sivadevenalikhitam itill (4) samvat 100 91
[II*]|| Aum.Vararuci,King Bhoja's religious superintendent (Dharmmadhi) of the
Candranagari and Vidyadhari [branches of the Jain religion}, the apsaras [as it were] for
the easy removal [of ignorance? By..?], that Vararuci, having first NEUTRAL CITATION
NO. 2026:MPHC-IND:8805 WP-10497-2022 fashioned Vagdevi the mother [and]
afterwards a triad of Jinas, made this beautiful image of Amba, ever abundant in fruit.

Blessings! It was executed by Manathala, son of the sutradhara Sahira. It was written by Sivadeva the proficient. Year 1091.

(iv) Iconography:-

The identification of the British Museum sculpture as Ambika is confirmed by the iconographic features which conform to Ambika images found elsewhere. A particularly close comparative example is the Ambika in Sehere dating to the eleventh century. Like the Dhar sculpture, the Sehere image shows a youth riding a lion at the foot of the goddess and a figure with a beard standing at one side.

The inscription on the statute in the British Museum indicates that the Vagdevi at Dhar was dedicated to the Jain form of Saraswati. However, the Vagdevi mentioned no longer exists or is yet to be located. Merutunga, who wrote in the early fourteenth century, indicates that Bhoja's eulogistic tablets in the Saraswati temple were engraved with a poem dedicated to the first Jain Tirthankara, but these tablets too have not been located.

[6.8] That in Indian Archaeology Review 1972-73, it has been mentioned that:-

"EXCAVATION AT BHOJSALA, DISTRICT DHAR In order to ascertain the details of the original plinth. Shri V.K. Tiwari of the Central Circle of the Survey carried out a small scale excavation at Bhojasala. Trenches were laid out to the northern side of the monument. During the course of the excavation following structures, assignable to the medieval period, were encountered: two terraces of concrete, measuring respectively 5x3 and 1.70x10 m; a small structure of low walls, provided with two steps; and a small cell. Another trench, 3x3 m in area, taken on the eastern side of the monument, yielded yellow earth mixed with bricks- bats, assignable perhaps to the Paramara period. Among the finds from this trench may be mentioned potsherds of Paramara period, a few architectural members of temples, a number of iron objects NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 including rings, locks, knives, arrow-heads and nails, a copper ring, porcelain fragments and pre- Mughal glazed pottery. A trench in the western side of the monument —yielded a small mutilated stone sculpture of Vishnu.|| [6.9] He argued that a mosque can only be constructed over the land which belongs to Waqf Board and cannot be constructed on a non-wakf land. It is well established that any religious structure of any type raised or constructed over the area of deity's property cannot be a religious Islamic place. A Mosque can be raised over the land which belongs to waqif. For constructing any religious building, it is necessary that property should be under the ownership of waqf and he dedicates the same for constructing a mosque/religious purposes. That the concept of waqf has been explained

in Mulla Principles of Mahomedan Law composed by Sir Dinshaw Fardunji Mulla (21st edition). The topics have been divided into sections in the book. It mentions that the term waqf literally means detention and further that:-

—The legal meaning of waqf, according to Abu Hanifa, is the detention of a specific thing in the ownership of the waqf or appropriator, and the devoting or appropriating of its profits or usufruct—in charity on the poor or other good objects. According to the two disciples, Abu Yusuf and Muhammad, waqf signifies the extinction of the appropriator's ownership in the thing dedicated and the detention of the thing in the implied ownership of God, in such a manner that its profits may revert to or be applied—for the benefit of mankind. (Baillie, 557-558. See Hedaya, 231, 234). A waqf extinguishes the right of the waqf or dedicator and transfers the ownership to God. The mutawalli is the manager of the waqf, but the property does not vest in him, as it would in a trustee in English law. [6.10] He further submitted that no part of land No.604 (old No.313) is a waqf property and same was neither dedicated nor could be dedicated to waqf. No part of land of 'Bhojshala' was ever under the ownership of any Mahomedan and without creating any waqf the maqbara/graves/dargah (by whatever name it be called) was constructed which is absolutely illegal and an encroachment on the property of Hindus. The construction, whatsoever, that has been raised, was raised only to show the might NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 of Islam and to demoralize and dehumanize Hindu devotees. That one aspect of the case is that no waqf can be created on the property vesting in the deity and another aspect is that a construction raised after demolishing a temple or a Hindu religious structure would not be mosque. It is imperative under Muhammadan Law that property must belong to waqif and the owner must belong to waqif and the owner must dedicate the property to the Almighty. It is apparent that no waqf has been created and therefore, there can be no presumption regarding existence of a mosque at the the property in question. History itself reveals that the respondents have been swayed away under the influence of Muslims to describe the Temple complex as Kamal Maula Mosque whereas in fact there is no mosque. That it is being clarified that in the entire temple structure there is nothing to show that the same was constructed as Mosque whereas there is ample material to establish that the building in question is nothing but a temple/ Hindu religious place. That it is further clarified that the Muslim invaders even though could not convert the temple-complex into a mosque but at the same time a mischief was done by constructing a place for sitting the ruler adjacent to the sanctum sanctorum of the temple and something was scribed in foreign language there. This exercise will not make the temple into a mosque. It is further submitted that mentioning Kamal Maula Mosque in government papers is meaningless and is of no use unless it is found at the spot that the building in question in fact is not a temple but a mosque. That in a stereotypical manner the officers of the government and different agencies presumed that temple complex is 'Kamal Maula Mosque' whereas the same is not. It is also found in every gazetter, historical works and the investigation made by scholars from time to

time that after demolishing Bhojshala temple employing the material of the demolished structure Kamal Maula Mosque had been constructed. The question remains as to whether any Mosque can be constructed without there being any Waqf property and over the property already already vesting in the deity.

[II] LEGISLATIVE HISTORY [6.11] Next he referred the legislative enactments, orders and notifications. There is [Ancient Monuments Preservation Act, 1904](#) (for short hereinafter referred to as —1904 Act') which authorized the Government of India to declare any monument as protected monument. The property in question (‘disputed area’) was taken over under 1904 Act by the Government of India and same was handed over in the management of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Archaeological Survey of India (for short ASI) and since then ASI is exercising its powers to manage being custodian of the property of Bhojshala. The ASI did not permit Muslims to offer Namaz within the Bhojshala complex under 1904 Act. That on 08.08.1910 the Government of India communicated the following order to State of Dhar:-

—Dear Sir, Government of India considers it undesirable that objects of Archaeological Interests should be given away for devotional purpose as has been done in some instances and they have prohibited this for the future in British India.

I communicate this decision to you in case Dhar State may like to adopt the same procedure.

Yours truly Sd/-* [6.12] He urged that it is relevant to mention that under the pressure of Muslims, Dhar State issued an order on 24.8.1935 permitting Muslims to offer Namaz even though Dhar State had no power or jurisdiction to authorize Muslims to offer namaz within the temple complex. It is relevant to mention that Muslims were never offering namaz at the said place before 24.08.1935 and there was no occasion for the Dhar State to permit them for offering namaz thereat. It is further relevant to mention that the property in question within the jurisdiction of the Archaeological Survey of India under 1904 Act and Dhar State had no power or jurisdiction to grant any permission for offering Namaz within the said area.

[6.13] That in view of the fact that property in question was being governed by 1904 Act, the Government of Dhar State had no jurisdiction to pass any order in 1935 permitting the Muslims to offer namaz. It is relevant to mention that there is no specific mention of the temple complex building in the order 1935. The Superintending Archaeologist Mohammed K.K in letter dated 24.08.2005 addressed to Director, Archaeological Survey of India has clearly mentioned that:-

(Para 1) *....Bhojshala and Kamal Maula mosque|| has been declared to be an Ancient Monument of National Importance initially under the provisions of [Ancient Monument Preservation Act,1904....](#)||.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 (Para 3) —...The Gezettee notification of 1935 issued by the Dhar State is also a later notification. Even if it is considered to be a valid one, it mentions the monument as 'Mahfooz Shahi Imarat' which means a protected government building, which can be any type of building, a temple a mosque or any other building.|| [6.14] The copy of letter sent by Superintending Archaeologist Mohammed K.K. to the Director, Archaeological Survey of India on 24.8.2005 is annexed along with the petition.

[6.15] That there is Ancient and Historical Monuments and Archaeological sites and Remains (Declaration of National Importance) Act, 1951 (for short '1951 Act') which came into force w.e.f. 28.11.1951, thereby authorizing the Central Government to declare the Ancient and Historical Monuments mentioned in the Schedule to be of National importance. At serial No.91 of part 1 of Schedule "Bhojshala and Kamal Maula's Mosque' was declared as National Monument.

[6.16] He further submitted that the property in question is being managed by Archaeological Survey of India (for short ASI) under the provisions of '[The Ancient Monuments and Archaeological Sites and Remains Act, 1958](#)' (for short hereinafter referred to as '1958 Act'). ASI cannot allow the members of Muslim community to offer Namaz within the property in dispute. The property belongs to Hindus and same is not a mosque. No Waqf was created for constructing a mosque and therefore, there can be no mosque. The members of Muslim community are claiming that the Temple Complex is a mosque and under their pressure the Government has also conceded to their demand and it has been presumed that the property in question is mosque whereas same was and is a temple. ASI is bound to act in accordance [S.16](#) of the 1958 Act.

[6.17] That in view of the facts narrated herein above it is necessary that carbon dating of the Bhojshala complex be conducted by ASI to find out the truth and by order dated 11.3.2024, this Court directed for scientific survey by ASI to find out:-

[i] Whether the building complex in question was constructed during the regime of King Bhoja (1010-1055 A.D.);

[ii] What was the nature of building originally constructed;

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [iii] Whether the character of the building was a temple or learning center or both;

[iv] Whether the construction/renovation/changes, if any, took place in 1305, 1401 and 1514 A.D or nature of construction raised in between 1300 to 1550 A.D. [6.18] He argued that the order passed by Director General, ASI is perfectly illegal and he did not undertake any exercise to find out as to whether the Bhojshala complex is originally a temple or a mosque. He has passed the impugned order dated 7.4.2003 in an arbitrary manner. He has passed the impugned order mechanically. There is nothing on record to establish that the Bhojshala complex can be presumed to be a mosque. The Director, ASI without any evidence and without any proper investigation has presumed that Muslims have right to offer namaz within the property in question ignoring the fact that the religious character of the building is of temple and Muslims cannot be allowed to offer namaz there. That without any rhyme, reason or justification the Director ASI has curtailed the rights of Hindus to worship and perform rituals within the temple complex daily. The religious rights of Hindus have been restricted by the impugned order in violation of the provisions contained in [Article 25](#) of the Constitution of India. The impugned order dated 7.4.2003 is illegal and without jurisdiction. It deserves to be quashed to the extent it affects the right of Hindus to worship and illegally permits the Muslims to offer prayer on Fridays.

[6.19] That the order passed by Director, ASI allowing the Muslims to pray within the Bhojshala complex is absolutely illegal and same has been passed without applying his mind and without scrutinizing the actual position of the building and overlooking the inscriptions and other signs of Hindu Temple appearing in the Bhojshala Complex. The Director, ASI has illegally allowed Muslims to offer prayers there and curtailed the rights of Hindus to worship there. The Hindus have infeasible right to enter into the premises for Pooja and worship. ASI cannot restrict the right of Hindus to worship there and any restriction put by ASI on Hindus to worship is hit by [Article 25](#) of the Constitution of India.

[6.20] He argued that in view of the above facts this petition is being filed to protect the Right to Religion guaranteed under [Article 25](#) of the Constitution of India and the right to preserve the cultural heritage as envisaged under [Article 29](#) of the Constitution NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 of India relating to one of the oldest places of worship, learning of Sanskrit and also the cultural heritage of India existing at Bhojshala within the temple complex of Goddess Saraswati i.e. Vagdevi since the year 1034 AD connected with the sentiments and pattern of traditional methods of learning prevalent in —Gurukuls|| which was established by celebrated King Bhoj who was a famous patron for promoting Astronomy, Astrology, the study of Vedas, Shastras

and the Sanskrit language and grammar prevailing in the great country of —Bharatvarsha|| from lakhs of years but unfortunately such a great place of antiquity was tried to be damaged and destroyed by Muslim rulers in their traditional style of destroying the places of idol worship of Hindus to show the might of the sword of Islam and with the enforcement of the Constitution of India the inherent right of having faith and worship in religion has revived and become enforceable by virtue of [Article 13\(1\)](#) of the Constitution of India. Now all the misnomers and misapprehensions must be erased and the citizens of the country must feel that they are free from the clutches of invaders and foreigners.

[6.21] He argued that the present petition is a comprehensive writ petition being filed in respect of matter in issue and is different from Writ Petition No.4216 of 2003 and subsequent petitions pending before this Hon'ble Court. In this petition a number of photographs have been placed on record to establish that the Bhojshala complex is temple and therefore, Hindus are entitled to exercise their right to religion guaranteed under [Article 25](#) and [29](#) of the Constitution of India.

[6.22] In view of the above historical and archaeological material, the ASI enactments and subsequent ASI survey report, he argued that it is established that Bhojshala complex was existing since 1034 AD and the same was destroyed and damaged in part. The Bhojshala complex is all the trappings of a hindu temple. The construction raised after demolishing temple was re-used in converting it to a mosque. It is further established that a mosque cannot be constructed on a non waqf land and unless it is proved that the property was owned by the waqf and he must dedicate the property to the Almighty. The aforesaid material, literature and ASI scientific report has established that it cannot be said that any right accrued in favour of muslim community who have raised any construction at the site of hindu temple after demolishing it. It has been further established that a deity of Saraswati was in the Bhojshala complex with Pran Pratishtha and the same was being worshipped by the hindus, therefore, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 once the property vested in a deity, the same continues to be the deity's property. Thus, the right of worship is established by the historical, archaeological and with other material, therefore, the right of worship of hindus guaranteed under [Article 25](#) of the Constitution of India have to be declared and the same has to be restored and protected.

ARGUMENT OF RESPONDENT NO.8 IN WP NO.10497/2022 [7] Shri Salman Khrshid - Sr. Advocate for respondent No.8 in WP No.10497/2022 argued regarding the locus of the petitioner to file present petition. He argued that the Public Interest Litigation has been filed without compliance to the provisions of M.P. High Court Rules. He referred Chapter X of Rule 13, Rule 14 and Rule 27. His submission is that as per Rule 27, a writ petition filed in public interest has to disclose petitioner's social public standing/professional

datos and public spirited antecedence. The petitioner has not disclosed its social public standing, professional status and public spirited antecedence, and, therefore, the petition is liable to be dismissed. In support of his submission he has referred to the judgment passed by the division bench at Jabalpur in the case of [Sanjai Rai Vs. State of MP \[WP No.13216/2019\]](#) in which one of us (Justice Vijay Kumar Shukla) was one of the member of the bench following the judgment passed in [Surendra Pratap Singh Vs. State of M.P. & Others](#) - 2019(1) MPLJ 75 (para 8). He also argued that the writ petition involved disputed question of facts and, therefore, the same cannot be decided under [Article 226](#) of the Constitution of India. The appropriate remedy for the petitioner is to file a civil suit. To bolster his submission he placed reliance on the judgment passed by the Supreme Court in the case of [DLF Housing Construction P. Ltd. Vs. Delhi Municipal Corpn. & Ors.](#) (1976) 3 SCC 160. He referred Para 19 and 20 of [the said judgment](#) where this Court has held that the writ petition is not a remedy. He has also referred to the judgments passed in the case of [Qazi Zakaullah & Ors Vs. State of MP & Ors.](#) WP No.4216/2003 decided by Single Judge on 18.9.2003, [State of Rajasthan Vs. Bhawani Singh & Ors](#) 1993(1) SCC 306, [P.R. Murlidharan & Ors. Vs. Swami Dharmananda Theertha Padar & Ors.](#) (2006) 4 SCC 501, [Municipal Corporation, Aurangabad through its Commissioner Vs. State of Maharashtra & another](#) (2015) 16 SCC 689 (Para 14) in which it has been held that considering the nature of the petition, the same cannot be decided in a writ petition under [Article 226](#) of the Constitution of India and the appropriate remedy is civil suit. Referring to the aforesaid judgments he further NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 contended that question of title cannot be decided in a writ petition under [Article 226](#) of the Constitution of India.

[7.1] He also raised objection regarding res-judicata. He submitted that challenging the same order of ASI filed petition WP No.4216/2003 [[Qazi Zakaullah & Ors. Vs. State of MP & Ors.](#)]. The said petition was dismissed on the ground that disputed question of facts cannot be decided and the petitioner was relegated to resort to the remedy in civil suit. In support of his submission he referred the judgments passed by the Apex Court in the case of [M. Nagabhushana Vs. State of Karnataka & Ors.](#) (2011) 3 SCC 408 (Para 19,20 & 39), [Dr.Subramanian Swamy Vs. State of Tamil Nadu & Ors](#) and other connected petitions (2014) 5 SCC 75 (para 40).

[7.2] Counsel for respondent No.8 Shri Salman Khurshid - Sr. Advocate referred various paragraphs of the judgment in the case of [M Siddiq \(D\) Thr Lrs. vs Mahant Suresh Das & Ors](#) (2020) 1 SCC 1.

[7.3] He further contended that a suit for title or ownership cannot be determined on the basis of the findings in ASI report. In support of his submission he has taken us to the various paragraphs of the judgment passed in the case popularly known as "Ayodhya Case". It is submitted that even if archaeological material suggests existence of an earlier structure (i.e. 12th Century remains beneath a later construction), such findings do not determine title or

ownership. It has been clearly held that the title must be decided on settled legal principles and evidence tested in civil trial, not merely on archaeological inference. He further asserted that in the matters of antiquity, the Court emphasised that no conclusive evidence may exist regarding destruction of earlier structures. Therefore, any claim that a prior structure was demolished must be proved by cogent evidence, not inferred from historical conjecture. He has taken us to paragraph 1209 of the said judgment and argued that the Court must clearly distinguish between historical narratives, travel accounts and scholarly writings and legally admissible evidence. Such materials may provide context but cannot substitute proof required for adjudication of title. He further contended that the Supreme Court has clarified that title must rest on evidence that withstands judicial scrutiny, including cross examination. Faith, belief, or historical probability cannot independently establish legal ownership. He has further referred paragraph 1224 to submit that NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 patterns of worship may indicate possessory right, but they must be evaluated carefully. The Court in the Ayodhya case examined competing claims of worship and possession over different parts of the property, rather than relying on abstract assertions where both communities assert usage, the Court must examine actual evidence of possession and control, not merely claims of religious significance. The issue is one of legal possession and not exclusive belief. He further referred paragraphs 1233-1234 to submit that the Supreme Court held that the disputes over immovable property must be decided on clear evidence of ownership and possession, assessed on the balance of probabilities. Faith based claims alone cannot sustain a decree, therefore, even in cases involving religious sites, the Court applies ordinary principles of civil law, including burden of proof, admissibility of evidence, and evaluation of competing claims. In paragraph 1236 of the said judgment, the Court analysed whether parties had established continuous and exclusive possession. Absence of evidence of exclusive possession over long periods weakens claims of ownership. He reiterated that claim of wrongful dispossession must be supported by clear and contemporaneous evidence. Mere assertion of past control or interruption is insufficient without legal proof. In paragraph 1238 the Supreme Court exercised powers under [Article 142](#) of the Constitution to balance equities between parties, recognizing that strict legal findings may still require equitable relief in complex disputes. However, such extraordinary relief was granted only after full trial, complete evidence, and final adjudication. It cannot be invoked in writ proceedings lacking evidentiary foundation as he submitted earlier while raising the preliminary objection.

[7.4] He argues that the Court has to see that how the property in question has historically evolved, been used, and legally treated over time. The inquiry is not into remote antiquity alone, but into legally cognizable status within the framework of modern era. He referred to paragraphs 87, 91 and 92 of Ayodhya judgment that the Court must refrain from entering theological debates. The correct test is not doctrinal purity but actual practice, belief, and usage by worshippers. He also referred paragraphs 85, 87 that conduct of worshippers is determinative. Even intermittent use for namaz or worship carries evidentiary value and cannot be disregarded. The faith and belief cannot be basis for deciding a title of the parties. He referred the provisions of Places of Worship Act, [Section 4](#). From Ayodhya judgment in paragraph 100-102 the Apex Court considered that the Worship Act was enacted to prevent

revival of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 historical disputes and ensure that communities move forward in a constitutional order based on fraternity and secularism. [Section 4](#) prescribes cut off date and in paragraphs 93 and 97 of the said judgment affirms that the religious character as on 15.8.1947 is frozen. Thus, there is a bar that the Courts cannot adjudicate claims arising from historical wrongs of past regimes. Paragraph 1118 of Ayodhya judgment. He also referred [Section 4\(3\)](#) which is considered in paragraph 93 of the judgment that while monuments under ASI may be excluded from the Act's strict application, but the same does not mean that their character becomes open to unlimited challenge. The exclusion exists because ASI law is a self-contained code, not because parliament intended to permit reopening of religious character based on historical claims. He argued that the contention of the petitioners regarding the idol has been answered in paragraphs 107, 112 and 136 in Ayodhya judgment which clarifies that juristic personality is conferred on idols as embodiments of purpose, not on land itself. The land does not automatically become a legal person. He further referred various paragraphs of the said judgment and submitted that the purpose of Worship Act is not to abstract divinity or land. Divinity is infinite and cannot be confined within legal boundaries. Juristic personality arises from dedication of property for a religious purpose, not merely from belief or assertion. Even if an idol is destroyed or absent, the religious purpose may survive, but this does not imply that land itself becomes the juristic entity. He argued that there is a distinction between faith and legal recognition. A place may be sacred in belief but does not automatically confer legal personality or ownership rights. The Supreme Court rejected the claim that Asthan (place itself) is a juristic person. It held that property cannot be personified merely based on belief. In paragraphs 208, 212 and 237 after critical examination the Supreme Court rejects the argument that the land itself can be treated as a deity. In Ayodhya judgment, the Apex Court has considered the evidentiary value of ASI finding and clarified that the same does not determine title or ownership. He also submitted that in the said judgment it has been held that the past historical wrongs cannot be adjudicated today. Courts cannot provide remedies for actions of earlier regimes.

[7.5] The learned Sr. Counsel further reiterated the submission that even if ASI reports suggest historical layers, they do not resolve present day title or religious character, therefore, the same principle would apply in the present case. There is no conclusive material demonstrating demolition of a specific temple structure at this site.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 General historical narratives cannot substitute for site - specific proof. He further submitted that destruction and reconstruction across eras, from the historical material placed on record, indicates that destruction and reconstruction of religious structures occurred across different regimes, which is not confined to any one community or period. Such historical processes were part of broader political and cultural transitions, and cannot be selectively invoked to establish present legal rights. He vehemently argued that even scholarly and museum based interpretation (ie. regarding Saraswati/Vagdevi idol) show divergent conclusions, demonstrating that such material is not conclusive evidence of title or character. There is a need for legal proof. Unless such material can be directly linked to legal title, dedication, or

continuous possession, it remains of limited probative value. His submission was that as per 1935 notification including royal proclamations and other notifications, may indicate recognition of the structures as a mosque. However, their legal effect must be tested within proper proceedings. Such records must be evaluated in light of subsequent statutory frameworks and constitutional principles and the same cannot alone determine the rights. Finally, he submitted that the consistent principle emerging from Ayodhya case is that title disputes must be adjudicated through civil trial, based on evidence and established legal norms and the same cannot be determined in a writ jurisdiction, issues involving title, possession, and religious character, all of which are unsuitable for writ adjudication. He crystallised his argument that to decide the claim in the present petitions, detailed evidence and trial is required. Hence, writ petition is not maintainable. He emphasised at the time of conclusion of his arguments that faith alone does not determine legal rights, historical wrongs cannot be remedied through courts, religious character is frozen as per statutory mandate, title must be determined independently of archaeology. With this prayer, he prayed for dismissal of the petitions.

[8] Shri N.A. Sheikh - Advocate for intervener in WP No.10497/2022 & WP No.10484/2022 argued that historical title at the relevant time was through sanads and grants. All lands vested in the Ruler and right were conferred through sanads (royal grants). He referred old sanads showing that the land was granted for the mosque and dargah purposes. Documents indicate that land measuring substantial area was granted by rulers such as Mohammed Shah Badshah and subsequent authorities, establishing lawful origin of possession. He referred the lineage to the descendants of Baba NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Nizamuddin and Kamaluddin Chishti, who were associated with the establishment and maintenance of the site. It is submitted that imams and caretakers from this lineage have been continuously performing religious functions for centuries, establishing continuity of usage. He also referred khasra entries and survey numbers which record the land as Masjid and Dargah in official records. Thus, the property has been in continuous, peaceful, and uninterrupted possession of the mosque authorities and their predecessors for several centuries. Religious activities, including offering of namaz and maintenance of dargah, have been carried out without interruption, establishing long-standing customary and possessory rights.

[8.1] He also argued that there is no acquisition notification exists under the ASI Act of 1904, 1951 or 1958 which shows in regard to the transfer of ownership to the State or ASI. In absence of lawful acquisition the pre-existing rights of the intervener's predecessors continue to subsist, and cannot be overridden without due process. He relied on the ASI's earlier reply and argued that historical books and literature cannot be treated as conclusive evidence. There is no definitive proof regarding construction or original claims. He referred that the ASI itself acknowledged the issue is —a mystery yet to be resolved||. Archaeological evidence like ASI report has got limited evidentiary value for determining title. A title can be examined only after evidence in an appropriate forum like civil suit. [Under the Ancient Monuments and Archaeological Sites and Remains Act, 1958](#), rights of persons in religious charge of a monument are protected. Any restriction or regulation of access must be done with concurrence of persons in religious charge. He submits that the interveners are such persons

in charge and no action can be taken without their consent. The intervenor's lineage has been in charge of the mosque and dargah, with imams appointed over generations. He argued that there is a distinction between title and possession. The intervenor has established long standing possession and enjoyment of rights, which are legally protected. The petitioner's case is absolutely rest on faith and historical assertions, without demonstrating actual possession, control, or legal entitlement. Thus, his argument is crystalised as Sanads and grants establish historical origin of rights, revenue records confirm mosque/dargah status, continuous possession and usage is established of the interveners, there is no lawful acquisition or extinguishment of rights, petitioners claim is based on belief and faith and not on evidence, therefore, petition is liable to be dismissed.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [9] Shri Syed Ashar Ali Warsi - Advocate for the interveners in WP No.10497/2022 raised the same preliminary submissions which has been raised by Shri Salman Khurshid - Sr. Advocate on behalf of the respondent No.8 in WP No.10497/2022 submitting that the petition involves disputed questions of facts, hence the writ petition is not maintainable. The appropriate remedy for the petitioners to get adjudicate the present controversy in a Civil Suit. The petition suffers from delay and latches. He argued that the dispute pertains to the same composite property comprising Khasra Nos.313 and 314, forming part of the notified and disputed premises. The petitioners attempt to segregate or reinterpret the nature of the structure is misconceived and contrary to the record. In addition to that he further argued that the petition is barred in view of the provisions of [Section 4,5 and 6](#) of the Waqf Act 1995. His main contention is that a statutory survey of waqf properties has already been conducted and notified. [Section 6](#) mandates that disputes regarding whether a property is Waqf must be adjudicated by a civil court of competent jurisdiction. The proviso to [Section 6](#) bars such challenges after one year from publication. The present petitions, filed decades later, is hopelessly barred by limitation. He further asservated that once the survey and notification attains finality, the rights of parties stand crystallised. The petitioner cannot indirectly challenge the same through writ jurisdiction. The effect of pending proceedings in view of [Section 6\(2\)](#), cannot be stayed merely because of pendency of suits. Thus, statutory mechanisms cannot be bypassed by invoking writ jurisdiction. The petitioners lacks any enforceable legal right to maintain the present petition. The counsel for the intervenor further submits that no party can assert rights contrary to statutory findings without proper challenge within limitation. He submitted that role of ASI is of Custodian, not owner. ASI even in respect of a protected monument, acts only as a custodian and conservator. It does not acquire ownership and, therefore, it cannot alter the essential religious character of the property. His claim is that protected monument status is governed by archaeological and heritage laws. Any claim altering its character must be strictly established in accordance with law. He argued that any disturbance or alteration of a place of worship implicates [Article 25 and 26](#) of the Constitution of India. His submission that the history clearly reveals that the structure has been consistently treated and recognized as a mosque which is clearly established from the government records and conduct affirm such recognition. Thus, the religious character has attained finality in law. All relevant gazette notifications NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 and official documents consistently describe the structure as a mosque/protected monument, which carry

presumptive evidentiary value unless rebutted in appropriate proceedings. He also urged that the structure contains essential features of a mosque, including Qubla orientation, Mihrab, Minbar, Courtyard with ablution facilities. These features reinforce its established usage as a masjid. He rebutted the claim of the petitioners that the structure in question was a temple. The presence of idols, in ASI report or foreign museum material is insufficient. The presence or absence of idols is not determinative, and no continuous, legally recognized temple usage has been established. He argued that the site was originally a temple destroyed in medieval times is unsupported. He referred the literature of the rulers like Dilawar Khan. He also refers the evidentiary value of the ASI reports and adopted the arguments of Sr. Counsel Shri Salman Khurshid to the effect that the ASI reports are not conclusive proof of the character of the site. He also adopted the same argument that the writ court is not the appropriate remedy. The claim is barred by limitation and the civil court is the proper forum and finally submitted that the petition is liable to be dismissed for the reason that the same is not maintainable barred by limitation and statutory provisions and the appropriate remedy is civil proceedings.

KULDEEP TIWARI Versus UNION OF INDIA & ORS..

[10] The present petition is filed under [Article 226](#) of the Constitution of India seeking following reliefs:-

[i] Issue an appropriate writ, order or direction in the nature of mandamus directing the Govt of India and Archaeological Survey of India to photograph all the inscriptions, artefacts and images available in Bhojshala Complex and to preserve and protect them. It.

[ii] Issue an appropriate writ, order or direction in the nature of mandamus directing the respondents to ensure that Pratima of Goddess Vagdevi is restored/re-established within Bhojshala Complex after bringing the same from British Museum at London, UK and to ensure that members of Hindu Community are allowed to perform Pooja and rituals of Goddess Saraswati within Bhojshala Complex NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [iii] Issue an appropriate writ, order or direction in the nature of mandamus restrain the Govt of India, Archaeological Survey of India and all the officers working under them from allowing Muslims to offer Namaaz within Bhojshala Complex.

[iv] Issue an appropriate writ, order or direction quashing Para 1 | of the order dated 07.04.2003 passed by Director General. ASI and also to quash the conditions imposed in the order restricting their right to worship within Bhojshala Complex.

[v] Issue any other writ, order or direction in favour of the Petitioners as may be deemed fit and proper in the interest of justice and for which the Petitioners may be found entitled to:

[vi] Allow the Petition with costs;

[11] This petition is being filed in public interest for protection of religious and cultural rights protected by [Article 25](#) and [29](#) of the Constitution of India as the respondents are interfering in exercise of such right by imposing unreasonable conditions and illegally allowing the members of Muslim community to offer Namaaz on Fridays in Temple Complex commonly known as Bhojshala, situated at Land No 604 in the city and district Dhar and such an order passed on 07.04.2003 by the Director, Archaeological Survey of India (ASP) is ultra vires and in violation of Article 14, 21, 25 and 29 of the Constitution of India. The petitioners are also praying that the Pratima of Goddess Vagdevi kept in London Museum be brought back to India through diplomatic process and same be re-established with all pride and dignity within the Temple complex that is Bhojshala, hereinafter referred to, as the —property in question.

[11.1] That in brief the facts of the case are that Raja Bhoj (1010-1055 AD) one of the most celebrated Hindu King in the year 1034 AD had established Temple of Goddess Vagdevi (Saraswati) along with the learning center for Sanskrit, Sanskrit Grammar, Astrology, Astronomy and learning of Vedas shastras and scriptures and also place for residence of the Gurus and disciples within the complex. The construction so raised is commonly known as Bhojshala Complex which is the subject matter of this petition with the prayer that the cultural heritage of India be preserved and protected acting on the mandate contained in [Article 49](#) of the constitution and the fundamental duty bestowed on the citizens under [Article 51A \(f\)](#) of the Constitution of India and also that NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 the religious rights of Hindus in whatever manner the same was hampered in pre-independent era be restored by allowing them to re-establish the temple and place of learning of Sanskrit so that the glory of the past be revived benefiting the future generation of this country.

[11.2] That the subject matter of this petition is the ancient temple of Goddess Vagdevi (Maa Saraswati) situated at Land No.604 (old Land No. 313) in the city of Dhar (State of Madhya Pradesh) commonly known as Bhojshala. In a site plan Bhojshala temple complex has been shown by letters A,B,C,D and the same being referred to as the ‘disputed area’ hereinafter. The graves/tombs existing adjacent to the temple complex have also been shown in the site plan.

[11.3] That the gazetteer of Madhya Pradesh available on government website <https://dhar.nic.i/en/bhojshala/> mentions that:-

—Raja Bhoja (1000-1055 AD) the greatest monarch of the Paramara dynasty, being a magnificent patron of learning, founded a college at Dhar which subsequently came to be known as Bhojshala, where students from far and near flocked to quench their intellectual thirst. Remnants of this Bhojshala or the temple of Saraswati are still seen in the carved pillars used in the building and delicately carved ceilings of the prayer hall

appear to have belonged to Bhojshala. Valuable compositions have been recovered from engraved slabs of stones fixed to walls of the building complex||.

[11.4] These slabs contain two odes to the Kurmavtara or crocodile incarnation of Vishnu written in Prakrit. Two sarpabandha pillar inscriptions, one containing Sanskrit alphabet and the chief inflectional terminations of nouns and verbs and the second containing personal terminations of the ten tenses and moods of Sanskrit grammar are also at the site. These inscriptions are in the characters of the 11th - 12th Century A.D. above this there are two Sanskrit stanzas in Anustubh metre engraved. The first of them praises Udayaditya and Narvarman the Paramara kings who immediately succeeded king Bhoja. The second stanza states that the pillar inscription was put up by Udayaditya. This leaves no doubt that the king Bhoja's college or temple Saraswati was here and it was developed by his successors. [11.5] Close exploration and inspection has brought to light the fact that the reverse side of two of the great black stone slabs forming the lining of mehrab were found NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 inscribed. These inscriptions are a dramatic composition in classical Sanskrit. It was inscribed during the reign of Arjunavarma Deva (A.D.1299-10 to 1215-18). This drama was composed in poetry by Royal Tutor Madana the disciple of the famous Jain scholar Ashadhara who also adorned the royal court of the Paramaras and taught Madana Sanskrit poetry. The drama is called Karupuramanjari and it was meant for reproduction at Dhara in spring festival. It is in honour of Arjunavarma Deva whom he taught and whose court he graced. The play refers to the wars between the Paramaras and the Chalukyas which were ended by matrimonial alliance.

—A glimpse is given of the high states of civilization and refinement then prevailing in Dhara which is described as the city of palaces having beautiful pleasure gardens on the hills surrounding the city. The people prided themselves on the glories of Bhoja who made Dhara as the Queen of Malwa||. The excellence of musicians and scholars of Dhara is also mentioned. This shala, established probably by Bhoja and patronized by his worthy successors, was converted into a mosque in the 14th Century AD.|| [11.6] It was originally the temple of Saraswati (the goddess of learning) to which poet Madana probably refers to in his said drama. The temple was said to be the ornament of 84 squares of Dharanagari, the city of palaces, temples, colleges, theaters and gardens.

The image of the goddess Saraswati is now in London Museum. The vicinity of Dhar had yielded another image of Saraswati, which views well with the former image of the goddess.

[11.7] That in Bhojasala (School of Bhoja) Maa Saraswati was worshipped as a divinity of learning. Bhojasala (School of Bhoja) in Dhar refers both to the center of Sanskrit studies and temple of Saraswati. King Bhoja's successor Arjunvarman who claimed that he was an

incarnation of Bhoja himself. (E.Hultzsch, 'Dhar Prasasti of Arjunavarman: Parijatamanjari-Natika by Mandana', *Epigraphica Indica* 8(1905-06):

96-122.).

[11.8] K.K.Munshi notes the importance of Raja Bhoja's contribution to Hindu cultural legacy observed that:-

‘during Bhoja's rule civilization in Malwa had risen to a magnificent pitch. Our appreciation of Bhoja for having portrayed a faithful picture of the most glorious period of medieval Indian History [in the Srngaramanjarikatha] is heightened when we take into consideration that he worked and NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 stood for all that was glorious in Hindu Culture'. (K.K. Munshi, ed).

[11.9] That Srngaramanjarikatha, Singhi Jaina pratima of 3 Jinas (tirthankaras): one of Vagdevi and another of Amba. Both forms Vagdevi and Amba represent the divinity, Saraswati. The two Pratima of Saraswati, are both of over 1000 years' antiquity and are now held in the British Museum. British Museum should return the Pratima for puja (worship) in Saraswati mandiram (temple), Dhar, Central India. A Pratima is a sculptural representation of divinity. After Pranapratishta a process including vedic recitations, the Pratima comes alive, in a temple, as sacred murti for worship, for offering daily puja by devotees. Such a murti renders the Hindu shrine sacred and inviolate.

[11.10] That it has been admitted by several historian's gazetteer writers and scholars that Bhojshala complex was demolished by Muslim rulers and then a construction was raised which Muslims call —Kamal Maula Mosque||. In this regard the description stated in —Western States Gazetteer, Volume 5, Part A (Page 498-99)|| are being reproduced hereinbelow:-

— Kamal Maula:- A small enclosure containing four tombs. One is said to be that of Mahmud Khilji II (1436-75), the other is that of Shaikh Kamal Maula, or Malavi from his long residence in Malwa. Over the doorway there is a handsome blue tile with an inscription on it in Coptic characters. Kamal-ud-din belonged to the school of the famous saint Nizam-ud-din Aulia who lived in the time of Ala-ud-din (1256-1316). The Mirat-i-Sikandari says Kamal was buried in Ahmadabad. This mausoleum was built in 1457 by Mahmud II in memory of the saint.

Raja Bhoja's School:- This is also a mosque made out of Hindu remains in the 14th and 15th century. Its present title is a misnomer derived from the numerous slabs containing

rules of Sanskrit grammar which have been used to have the floor. It stands on the site of an old temple. This was probably the temple mentioned in a play of Arjuna Varma's time of which a portion was discovered here inscribed on a stone slab. The temple was dedicated to the goddess Saraswati and is described as —the ornament of the 84 squares of Dharanagari.¶ Two slabs were discovered behind the mihrab, one of the 11th century bearing two odes in Prakrit to the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Kachhavatar of Vishnu, one supposed to be Raja Bhoja's own composition. These odes have no poetical value. The other slab is a prashasti of the 12th century written in Sanskrit and praising Raja Arjuna Varma in whose honour a play had been composed. On two pillars are a curious epitome of Sanskrit inflectional terminations cut so as to resemble a snake and called Sarpabandhi in consequence.¶ [11.11] That historical facts reveal that Bhojshala was first attacked by invader Allauddin Khilji in the year 1305 AD and more than 1200 students and teachers of Bhojshala were massacred while fighting to protect the Bhojshala Complex and they had refused to convert into Islam. Hindu King Mahaldev sacrificed his life for the protection of the Temple Complex. In the year 1401 ruler Dilwar Khan had also tried to convert part of Bhojshala Complex into a mosque but utterly failed. [11.12] That in the year 1514 AD Mahmood Shah Khilji 2nd attacked Bhojshala and unsuccessfully tried to capture Bhojshala complex, however, he captured a portion of land outside Saraswati temple and in the name of 'Kamal Maula' constructed a maqbara after 204 years of death of Maulana Kamaluddin. It is matter of recorded history that Maulana Kamaluddin had died at 'Karnawati' now known as 'Ahmedabad' in the year 1310 and had been buried at Ahmedabad. [11.13] That due to Muslim invasion the situation of Bhojshala has been changed and number of tombs/graves have been forcibly raised within the area of Bhojshala. However, the Muslim invaders could not change the nature of the main seat of Goddess Saraswati and the said complex could not be converted into non-Hindu building, whereas there are numerous images of God and Goddess are still found within the complex and a number of idols are lying beneath the floor and still a big idol of Lord Hanuman is lying there which has been buried under the floor. The petitioner has further pleaded and has filed materials recovered during excavation to submit that in 1875 AD during British Rule Major General William Kincaid was working as political agent of British Government. He excavated the temple complex and the idol of Goddess Vagdevi (Maa Saraswati) which had been buried there by Muslim rulers was taken out. In the year 1903 AD Lord Curzon took away the idol of Vagdevi found within temple complex and the same has been kept in a museum in England. The full description of Pratima is available on the official website of British Museum ie. www.britishmuseum.org/collection/object/A-1909-1224-1. A lot of historians books, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 gazetteer have been filed. Most of them are common which have already been filed in WP No.10497/2022, therefore, the facts are not be written, however, the same will be considered while addressing the issues. The legislative enactments, orders and notifications are also common, however the same is also not being narrated. [12] Shri Manish Gupta, learned counsel for petitioner in WP No.10484/2022, for intervener Kuldeep Tiwari in WP No.28334/2022 and WA No.559/2026 argued that the present

petition is filed as Public Interest Litigation being aggrieved by the order dated 7.4.2023 passed by Director General of ASI so far it relates to restriction of hindu communities right to worship within Bhojshala complex and to quash the part of the order which allows the muslim to offer namaz within Bhojshala complex. They have further sought a direction to the Government of India and ASI to photograph all the inscriptions, artifacts and images available in Bhojshala Complex and to preserve and protect them. They have further sought a direction to the respondents to ensure that Pratima of Goddess Vagdevi is restored/re-established within Bhojshala Complex after bringing the same from British Museum at London, UK and to ensure that members of Hindu Community are allowed to perform Pooja and rituals of Goddess Saraswati within Bhojshala Complex. He argued that the aforesaid order dated 7.4.2003 is in violation of the Articles 14,21, 25 and 29 of the Constitution of India. His submission is that the —disputed area|| was built in the year 1034 AD during the regime of Raja Bhoj who ruled Madhya Bharat during 1010-1055 AD. He was one of the most celebrated Hindu King was known as a great scholar who promoted the learning of Sanskrit, Sanskrit Grammar, Astrology, Astronomy and learning of Vedas, shastras and scriptures. He constructed the said disputed site for the purpose of imparting education in respect of the aforesaid subjects and, therefore, the same was commonly known as Bhojshala. He also submitted that since it was a place of learning (school/shala), therefore, a temple of goddess Vaghdevi (Saraswati) was also established within the said complex. According to him, the ancient temple of goddess Vaghdevi situated in land No.604 (Old Land No.313) in the city of Dhar. He referred the site plan of Bhojshala temple complex which is filed as Annexure P.1 in which the —disputed area|| has been shown to be as A,B,C,D. He also referred gazetteer of Madhya Pradesh available on government website which mentions that Raja Bhoja (1000-1055 AD) the greatest monarch of the Paramara dynasty, being a magnificent patron of learning, founded a college at Dhar which was subsequently came to be known as Bhojshala.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 He submits that various books by historians, articles and literatures clearly show the remnants of this Bhojshala and the temple of Saraswati which is still seen in the carved pillars used in the building and delicately carved ceilings of the prayer hall appear to have belonged to Bhojshala. Valuable compositions have been recovered from engraved slabs of stones fixed to walls of the building complex. These slabs contain two odes to the Kurmavtara or crocodile incarnation of Vishnu written in Prakrit. Two sarpabandha pillar inscriptions, one containing Sanskrit alphabet. He submits that these inscriptions are in the characters of the 11th - 12th Century A.D. He submits that black stone slabs forming the lining of mehrab were found inscribed. These inscriptions are a dramatic composition in classical Sanskrit. It was inscribed during the regime of Arjunavarma Deva (A.D.1299-10 to 1215-18). He referred certain notes of Shri K.K.Munshi on the importance of Raja Bhoja's contribution to Hindu cultural legacy. He also referred the Srngaramanjarikatha, Singhi Jaina gratima of 3 Jinas (tirthankaras): one of Vagdevi and another of Amba. Both forms

Vagdevi and Amba represent the divinity, Saraswati. The two Pratima of Saraswati, are both of over 1000 years' antiquity and are now held in the British Museum. He submitted that several historians gazettiers, writers and scholars clearly stated that Bhojshala complex was demolished by muslim rulers and then a construction was raised which Muslims call —Kamal Maula Mosque. He referred the —Western States Gazetteer, Volume 5, Part A (Page 498-99). He contended that historical facts revealed that Bhojshala was first attacked by invader Allauddin Khilji in the year 1305 AD and more than 1200 students and teachers of Bhojshala were massacred while fighting to protect the Bhojshata Complex. In the year 1401 ruler Dilwar Khan had also tried to convert part of Bhojshala Complex into a mosque but utterly failed. In the year 1514 AD Mahmood Shah Khilji 2nd attacked Bhojshala and unsuccessfully tried to capture Bhojshala complex, however, he captured a portion of land outside Saraswati temple and in the name of 'Kamal Maula' constructed a maqbara after 204 years of death of Maulana Kamaluddin. According to him, Maulana Kamaluddin had died at 'Karnawati' now known as 'Ahmedabad' in the year 1310 and had been buried at Ahmedabad. This clearly established that Bhojshala was pre existing and the muslim invaders damaged the said temple and converted it into a non hindu building. He also submitted that in 1875 AD during British Rule Major General William Kincaid was working as political agent of British Government. He excavated the temple complex and the idol of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Goddess Vagdevi (Maa Saraswati) which had been buried there by Muslim rulers was taken out. In the year 1903 AD Lord Curzon took away the idol of Vagdevi found within temple complex and at present the same has been kept in a museum in England. He submits that the full description of Pratima is available on the official website of British Museum. He has filed the photograph of Pratima of goddess Vaghdevi along with the petition. He also referred the literature written by Shri K.K.Lele, Superintendent of Education in the Princely State of Dhar which reflects that the grammatical inscription, prompted Lele to name the building Bhoj Shala, or 'Hall of Bhoja', in reference to King Bhoja (circa 1000-55). He referred the books published in 1908 called —'Necklace of Saraswati'. He also relied on the Imperial Gazetteer of India 1908 Vol. XI at page 295. He also referred a journal published by the Royal Asiatic Society in 1904. In the journal in the Chapter titled as 'Dhar and Mandu, there are photographs of two inscriptions found in Bhojshala. Photographs and inscriptions were referred by him. He also referred a book called —'Mandu' the city of joy written by G. Yazdani, Director of Archeology in H.E.H. which narrates the history of Bhojshala and to establish that there was a pre existing temple known as Bhojshala having an idol of Saraswati was pre existing which was demolished and rebuilt by conversion into a place for prayer for muslims. The report of Shri K.K. Lele clearly establishes the existence of temple, its demolition and the construction by use of the same material. He further submits that the identification of the British Museum sculpture as Ambika is confirmed by the iconographic features which confirms to Ambika images. He also referred to Indian Archaeology Review 1972-73 wherein a survey was carried out by Shri V.K. Tiwari of the Central circle. He submitted that from the letter dated 30.10.1998 sent by Superintendent of Museum to Shri. Vimal Kumar

Godha, it is clear that the idols were recovered in the year 1989 from Bhojshala Complex. The idols recovered from Bhojshala are under the custody of ASI and are lying in the museum of ASI. He by referring the 13th Jaina Studies Workshop at SOAS held on 18th March 2011 in Brunei Gallery Lecture Theatre, Michael Willis a Curator of the British Museum made a presentation which is based on inscriptions from which it is clear that the sculpture of Ambika was recovered from the site of the old city palace at Dhar in 1875 by William Kincaid and entered the collection of British Museum in the 1880. It further establishes that there was a temple of Saraswati and this shows that the Saraswati of King Bhoja of Dhar was, in fact, a Jain form of the goddess. The entire NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 property of Bhojshala is dedicated to goddess saraswati. He argued that the government authorities, the historians, the gazetter writers and all the scholars have presumed that there exists a Kamal Maula mosque without going into the question as to whether any waqf was created over the property or anybody had right to create waqf of Bhojshala Complex. His submission is that once the idol was established with Pran Pratishtha, the owner of the building continued to be deity and, therefore, no waqf can be created and in absence of any waqf there can be no mosque. There are number of inscriptions, images, artefacts present in Bhojshala complex which revealed that the complex was constructed as a temple and a place of Sanskrit learning.

[13] He also advanced arguments regarding legislative enactments, orders and notifications and adopted the arguments made by Shri Vishnu Shankar Jain - learned counsel appearing in WP No.10497/2022. He vehemently relied on the compilation —Samrangana Sutradhara|| is believed to be compiled by King Bhojdeva himself. He submits that from the legislative enactments, orders, notifications, there was a pre existing Bhojshala prior to the invasion of the muslims during the mughal kaal and damage to the structure and thereafter the said construction was modified as a place for offering namaz.

[14] In view of the aforesaid submissions, he prays for quashment of the order of ASI dated 7.4.2003 imposing restriction on the prayer of the hindus within Bhojshala complex and to permit the muslims to offer namaz on the said Bhojshala complex. He also submits that the aforesaid material clearly established that idol of Vaghdevi (Saraswati) was found in excavation which has been taken to museum of London and despite various representations to the Government of India to bring the said idol to India, but despite that the same has not been brought to India, therefore, the Government of India be directed to take necessary steps to bring the said idol to India.

SALEK CHAND JAIN Versus UNION OF INDIA & ORS.

[15] This petition in the nature of Public Interest Litigation (PIL) is being filed by the petitioner challenging the impugned order bearing No.- F.No.3341/97-M CH dated 07.04.2003 passed by Director General of Archaeological Survey of India allowing only Muslims and Hindu to offer Namaz and worship on a particular occasion within NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Bhojshala premises ignoring the Jain community to perform their

religious function on the pious occasions/days of Jain religion. The petitioner who is filing this Public Interest Litigation (PIL) in the representative capacity of entire Jain community /Jain citizens who have been deprived from the right to religion guaranteed under [Article 25, 26](#) and right to conserve cultural heritage under [Article 29](#) of the Constitution of India. [16] That the petitioner who is public spirited senior citizen and social. activist for the enforcement of legal rights and fundamental rights for those sections who are weaker, unaware and financial unstable. The petitioner who always ready for the rights of those sections who are voiceless and having no political representation. The petitioner who is not only fighting for the rights of human beings but also for the protection of creatures and environment. The Petitioner who believes in democratic values and trying to establish an egalitarian society. [17] That the petitioner who had filed several PIL and writ petitions pertaining to different weaker Sections/historically marginalised section like De-notified Nomadic and Semi-nomadic Tribes (DNT and NT) and other public interest important issues. The petitioner successfully contested the cases pertaining to the different sections of our society and availed the favourable orders/directions in favour of those sections/issues from Hon'ble Delhi High Court and Hon'ble Supreme Court from time to time.

[18] That the petitioner who is filing the present writ petition under [Article 226](#) of the Constitution of India is being filed by way of public Interest Litigation (PIL) in the representative capacity of citizens of 'Jain' community. The impugned order deprived Jain citizens from freedom of right to religion over Bhojshala complex being Jain temples. The petitioner also wants to avail the right to worship to the Jain community being the worshipper of Jain Goddess Ambika. The idol of the said Jain Goddess is evident from the sculpture, archaeologist report, English writers and famous Indian historical books supported the view of the petitioner. The icons of small 'Tirthankars' shown around the idols of Ambika is very clear evidence to be Jain Goddess and this is happening only with Jain Gods and Goddess and it may be very clearly © distinguishable from Hindu Gods and Goddess.

[19] That it would be relevant to state here that this is second writ petition filed by petitioner. First writ petition bearing W.P. (C) No.17333 of 2024 (Sri Salek Chand Jain NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Vs Union of India and others) was disposed of vide order dated 05.07.2024 with liberty to file A afresh. The Hon'ble court pleased to pass the following order as follows:

" Learned counsel for the petitioner prays for withdrawal of the petition with liberty to file a fresh duly constituted petition. Prayer is allowed and the petition is dismissed as withdrawn with the liberty prayed for. [20] That this matter was subsequently reached before Hon'ble Supreme court and the apex court granted stay on 01.04.2024. This matter was connected matter and it was pending before Hon'ble Supreme court till this year (i.e. 22.01.2026). The petitioner was also filed I.A. for intervention bearing Application no.158074 of 2024 and IA for appropriate direction bearing Application no.158088 of 2024 before Hon'ble Supreme court of India with main Special Leave Petition (C) No.7023 of 2024 [(Maulana Kamaluddin Welfare Society Dhar, MP Vs Hindu Front for Justice (Regd. Trust No.976)].

[21] Petitioner through this petition is praying to re-establish the idol of Jain Goddess Ambika (Jain Yakshini) which was established by King Bhoj in the year 1034 A.D. The said Jain Idol is also known as Jain Vidyadevi having four-armed holding rosary (aksamala) and a small book (Pushtak) which is a pious and sacred place for entire Jain citizens of this country. The said Jain Goddess is the symbol of education and in the same premises, imparting the education of Sanskrit, Literature and translation work of Prakrit and other languages were going on by famous Jain Munis/scholars. In fact, there was a Jain Gurukul and Jain Temple in Bhojshala complex. The citizens of Jain religion have the right to worship within the temple complex by virtue of [Article 25, 26](#) and [29](#) of the Constitution of India. [22] The aforesaid Jain temples and connected premises had been destroyed by Muslim rulers in 1305, 1401 and 1541 A.D. but unfortunately, they did not disconnect or kept away the sentiments and religious faith of Jain and other segments of citizens of this country.

[23] It is most unfortunate that Archaeological Survey of India (ASI) allowing only two religious segments Hindu and Muslims to offer religious functions ignoring the Jain citizens to perform their respective religious pious prayers as per their religion in the premises of Goddess Ambika which is claimed to be Goddess Saraswati by Hindu citizens.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [24] It is important to mention that in 1875 the Pratima/idol of Jain Goddess Ambika was found by British Government which is being kept in the Museum of London and efforts have to be made to bring back the said idol/Pratima and to re-establish the same at Bhojshala.

[25] In view of the aforesaid facts and circumstances of the case, the petitioner who is praying to restore the glory of Bhojshala Temple premises by reestablishing the idol of Goddess Ambika and other religious segments may not be allowed to use the religious place of Jain religion for their prayers/Namaz. | [26] That it is very well known and admitted facts of history that Indian civilisation and cultures are continuously attacked by several foreign rulers and all of them looted, destroyed and damaged our culture and spiritual diversities. The said historical tragedy was taken place due to certain accepted principles of our culture not to attack to another and Non-violence prevailing philosophy of countrymen but there are certain exceptions found in our Indian history also. In the beginning, Muslims, Turks and other invaders who had been attacked on our country and destroyed uncounted not only Hindu temples but also Buddhist and Jain temples across the country. [26.1] That the foreign invaders who had attacked on India for destroying our cultural heritage and tried to eliminate our diversity existed in different religions, languages and faiths etc. But ultimately, they could not succeed in their ultimate goal [26.2] That it would be relevant to state here that the Britishers and

other foreign nations who had attacked our country and ruled it approximately more than 300 years (1600-1950). They not only exploited our Indian citizens but also to the natural resources.

[26.3] That it would be relevant to state here that prior to British invaders, the Muslims or Turks or other foreign nations who had attacked upon our country and most of them who only consumed and enjoyed the resources of country and ultimately decided to permanently settled down here [26.4] That it would be important to point here that most of the Muslim invaders who had religious belief against the idol worships. In consequence thereof, they tried to destroy and damaged most of the temples belongs to Hindu, Buddhist and Jain religions.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [26.5] That the subject matter of this petition is the ancient temple of Goddess Ambika (Jain Yakshini) situated at Land no.- 604 (old Land no.313) in the city of Dhar, M.P. commonly popular as Bhojshala.

[26.6] That after the destruction of temple and its continuity in the same form amount to mental agony for the worshipper of Jain religion and depriving them to offer prayers as per the Jain religion is just teasing and humiliation done by invaders which may be rectified under the sweep of [Article 13\(1\)](#) of the Constitution of India to protect the right to life, right to religious rights and protection of interest of minorities guaranteed under [Article 21](#), [25](#) and [29](#) of the Constitution of India. [26.7] The religious idols of Jain Goddess Ambika which was essentially established by Great King Bhoja and protected and preserve by other Kings of Parmar dynasty with the help of Jain Munis and scholars but-the Union of India who had permitted only two segments of Hindu and Muslims religion to perform their respective religious and spiritual prayers but the actual section of Jain religion who had not been allowed in official directives. | [26.8] That this writ petition is being filed to preserve and protect the cultural heritage of India and also to exercise right to religion guaranteed by [Article 25](#) and [29](#) of the Constitution of India for issuance of necessary directions to Government to allow the Jain citizens to perform their religious and spiritual prayers and its functionaries restraining them from interfering in the right of worship by Jain. The idol/Pratima of Jain Goddess Vagdevi laying in London Museum since 1903 may be re-established at appropriate place.

[26.9] Petitioner through this petition is praying to re-establish the idol of Jain Goddess Ambika (Jain Yakshini) which was established by King Bhoj in the year 1034 A.D. The said Jain Idol is also known as Jain Vidyadevi having four-armed holding rosary (aksamala) and a small book (Pushtak) which is a pious and sacred place for entire Jain citizens of this country. The said Jain Goddess is the symbol of education and in the same

premises, imparting the education of Sanskrit, Literature and translation work of Prakrit and other languages were going on by famous Jain Munis/scholars. In fact, there was a Jain Gurukul and Jain Temple in Bhojshala complex. The citizens of Jain religion have the right to worship within the temple complex by virtue of [Article 25, 26 and 29](#) of the Constitution of India.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [26.10] The aforesaid Jain temples and connected premises had been destroyed by Muslim rulers in 1305,1401 and 1541 A.D. but unfortunately, they did not disconnect or kept away the sentiments and religious faith of Jain and other segments of citizens of this country.

[26.11] Archaeological Survey of India (ASI) allowing only two religious segments Hindu and Muslims to offer religious functions ignoring the Jain citizens to perform their respective religious pious prayers as per their religion in the premises of Goddess Ambika which is claimed to be Goddess Saraswati by Hindu citizens. [26.12] It is important to mention that in 1875 the Pratima/idol of Jain Goddess Ambika was found by British Government which is being kept in the Museum of London and efforts have to be made to bring back the said idol/Pratima and to re-establish the same at Bhojshala.

[26.13] In view of the aforesaid facts and circumstances of the case, the petitioner who is praying to restore the glory of Bhojshala Temple premises by re-establishing the idol of Goddess Ambika and other religious segments may not be allowed to use the religious place of Jain religion for their prayers/Namaz. [27] Shri Dinesh P. Rajbhar - learned counsel appearing for the petitioner in WP No.8986/2026 submitted that the dispute regarding the Bhojshala-Kamal Maula complex cannot be confined merely to competing Hindu and Muslim claims, as substantial historical, architectural and archaeological material demonstrates the existence and association of Jain religious structures and Jain scholarly traditions at the site. It was submitted that the Jain community is not attempting to disturb communal harmony, but seeks recognition and protection of the Jain heritage reflected within the disputed complex. Reference was made to the order/notification issued by the Archaeological Survey of India in 2003 regulating access to the monument. It was submitted that the said arrangement permits Muslims to offer Namaz during specified hours, Hindus to perform rituals on Vasant Panchami and Tuesdays, while the Jain community has been completely excluded despite the existence of substantial Jain evidence at the site. The counsel argued that the present arrangement recognizes only two communities, although the archaeological and historical record demonstrates the presence of Jain religious and educational traditions. It was submitted that earlier proceedings concerning the monument had reached the Supreme Court, particularly in relation to challenges to survey orders and access arrangements. Counsel stated that NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 after withdrawal of earlier proceedings and subsequent developments, the present petition

has been filed seeking recognition of Jain interests in the monument. [28] He emphasized that India is a secular democratic republic founded upon coexistence, brotherhood and equal respect for all religions. It was argued that constitutional courts are duty bound to protect every religious denomination, including smaller communities whose voices may otherwise remain unheard. Heavy reliance was placed upon the —Report of Ancient Monuments in Central India published in 1881-82 from Shimla. According to counsel, the report describes Dhar as an old Hindu city, containing remarkable structures erected out of Jain remains, with architectural similarities to the Jain temples of Mount Abu. The relevant portions describing —Jain columns, —Jain remains and architectural resemblance to Mount Abu were strongly relied upon. It was argued that the quadrangles, pillars and ornamental carvings of the disputed structure bear strong resemblance to the famous Jain temple architecture of Mount Abu. Counsel submitted that such similarity is not accidental, and demonstrates that substantial Jain structures previously existed at the site. The Jain community further submitted that the site historically functioned as a Jain centre of learning, a Gurukul-like institution, and a scholarly establishment associated with Sanskrit, astrology and Jain literature. It was argued that Raja Bhoj patronized multiple streams of learning including Jain scholarship. Reference was made to the ASI scientific survey report, particularly portions describing sculptures, iconography and inscriptions. Counsel emphasized that several sculptures identified in the report are not Hindu idols but Jain deities and Jain iconographic forms. [29] The principal contention of the Jain community centered around the idol identified as Ambika. It was submitted that the idol presently being referred to as Saraswati by some parties is in fact Jain Goddess Ambika, and Jain iconography clearly establishes this distinction. Reliance was placed upon museum references, sculptural analysis and iconological studies. The counsel argued that confusion has intentionally or mistakenly arisen between Saraswati and Ambika because both are associated with knowledge and learning traditions. However, according to Jain iconological principles Ambika possesses distinct symbols, posture and iconographic characteristics, which differentiate her from Saraswati worshipped in Hindu traditions. Counsel extensively referred to the disciplines of iconology, archaeology, art history, and epigraphy. It was submitted that trained archaeologists and historians identify religious affiliation of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 sculptures through symbols, hand gestures, mounts, ornaments, and associated motifs. Accordingly, the sculptures found at the site allegedly indicate Jain association. Reference was made to statues and sculptures preserved in museums, including descriptions identifying Jain Vidya Devis and Ambika figures. He argued that idols associated with Jain traditions have been recovered from or linked to the disputed complex, strengthening the Jain claim. It was submitted that during the Parmar dynasty, particularly under Raja Bhoj and later rulers Jainism flourished in the region, Jain temples and educational institutions existed in Dhar, and Jain scholars enjoyed patronage. He relied upon historical writings and scholarly publications discussing Parmar-era religious pluralism. The counsel clarified that the Jain community is not presently claiming the entire structure exclusively as a Jain temple. Rather, the

submission was that Jain religious heritage undeniably exists within the complex, and Jain worship rights deserve recognition. It was specifically prayed that Jain devotees may also be permitted to offer prayers and perform religious observances at the site, in the same manner that access has been granted to Hindu and Muslim communities under administrative arrangements. The counsel argued that historically wherever Jain Gurukuls or educational institutions existed, Jain temples or shrines also existed alongside them. Therefore, if Bhojshala functioned as a centre of learning, Jain temple structures were naturally part of the same complex. Reference was also made to the use of temple materials in later mosque structures. The counsel submitted that pillars, inscriptions, slabs, and sculptural fragments from earlier Jain temple structures were reused in later constructions, similar to other Indo-Islamic monuments including the Qutb complex. Reliance was placed upon several historical writings which allegedly describe Jain pillars, Jain columns, Jain sculptures, and Jain architectural remains within the disputed structure. According to him, such reports predate the present controversy and therefore possess evidentiary significance. He criticized the Archaeological Survey of India for alleged failure to adequately preserve antiquities and scattered artifacts found at the site. Reference was made to audit reports and observations concerning antiquities lying exposed, poor preservation practices, and risk of displacement or loss of historical material. Counsel referred to audit observations concerning implementation of the [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#). It was submitted that archaeological objects require proper NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 preservation, and Jain antiquities connected with the site must be protected from damage or disappearance.

[30] He ultimately submitted that the site historically reflected Hindu traditions, Jain traditions, educational activities, and later Islamic usage. Therefore, the dispute cannot be reduced to a purely Hindu-Muslim controversy. The counsel prayed that the Court acknowledge existence of Jain sculptures, Ambika iconography, Jain architectural similarities, and Jain scholarly association with the site. It was argued that complete exclusion of the Jain community from the present arrangement is arbitrary and historically inaccurate. The counsel submitted that constitutional courts are obligated to protect rights of all religious communities equally, including minority denominations. It was argued that denial of access to Jains despite historical evidence violates principles of secularism, equality, religious freedom, and cultural protection. In conclusion, he submitted that the disputed complex contains substantial Jain religious and cultural evidence, the idol identified as Ambika demonstrates Jain association, the architecture resembles Jain temple structures, and historical reports repeatedly refer to Jain remains. Accordingly, it was prayed that Jain worship rights be recognized, Jain heritage within the complex be protected, and appropriate directions be issued permitting Jain religious access and preservation of Jain antiquities at the site.

MAULANA KAMALUDDIN WELFARE SOCIETY DHAR THR.ITS PRESIDENT ABDUL SAMAD KHAN S/O SIRAJUDDIN KHAN Versus STATE OF MP & ORS.

[31] The present petition is filed under [Article 226](#) of the Constitution of India seeking following reliefs:-

(i) The Hon'ble Court be pleased to direct the respondents to ensure that any puja, Archana, Aarti etc is not held inside the Bhojshala Kamal Maulana Masjid - Dhar in disregard of the order Director General Archaeological sites of India dt. 07.04.2003.

(ii) The Hon'ble Court be pleased to direct the respondents to take appropriate steps for maintaining peace and communal harmony at the city of Dhar and to ensure that no communal violation erupts at Dhar in future.

(iii) Cost of the petition be awarded.

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(iv) Any other relief which the Hon'ble Court deems fit and proper may be awarded.

FACTS IN BRIEF OF WP NO.28334/2019 [32] The petitioner is the society duly registered under M.P. Societies Registration Adhiniyam,1973, The object of the petitioner's society amongst others is to take necessary steps for protection of the monument of Bhojshala Maulana Kamal Masjid - Dhar. The Assistant Registrar Firms and Societies Indore has also approved the executive committee of the Petitioner's society.

[32.1] Bhojshala Moulana Kamal Masjid - Dhar is a Waqf Property duly registered under the [Waqf Act](#) 1954 (Repealed by [Waqf Act](#) 1995). The State Govt has in its gazette dated 18.01.1985 at Gr. No. 612 has notified the said property as Jama Masjid, City Dhar.

[32.2] It has been notified in the gazette of the State of Dhar dated 28.08.1935 that Bhojshala Maula Kamal Masjid shall not be used for any purpose other than offering namaz and any other activity except offering namaz shall not be permitted.

[32.3] By consent deed dated 24.08.1995 it was agreed between the representative of Hindu and Muslim community that Bhojshala Maulana Kamal Masjid - Dhar shall remain open to the people of Hindu Community on Tuesday subject to the following conditions:-

(a) That no slogans shall be raised inside and out side the Mosque while going into and coming from the Bhojshala Maulana Kamal Masjid. |

(b) That no body shall take any puja samagri photographs of Devi Devta, murti etc. into the Bhojshala Maulana Kamal Masjid.

(c) That no puja/aarchana/ Aarti/Ibadat shall be held except as above at the Bhojshala Maulana Kamal Masjid - Dhar. The copy of the consent dated 23.04.1995 is filed as Annexure P/6 .

[32.4] That, thereafter there were instances of transgression of the limited concession extended to hindu community and also there were instance of communal violence because the terms of consent deed dated 23.04.1995 was not strictly complied with.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Therefore Collector Dhar by order dated 23.05.1997 permitted the offering of namaz between 1 to 3 p.m. to muslim community on every Friday and it was directed that the Bhojshala Maulana Kamal Masjid shall remain open for Hindu community every year on the occasion of Basant Panchmi for Bhoj Utsav but he banned the usual entry of the people inside the monument except above.

[32.5] The Respondent No. 7 Director General of Archaeological Survey of India had passed order dated 05.02.1998 and modified the order on 07.04.2003 and directed the respondents for complying and enforcing the terms and condition of said order, Archaeological Survey of India issued order vide his letter dated 07.04.2003 to Respondent No.1 and Respondent No.3 for complying and enforcing the terms and condition of the said order and to ensure that the law and order is effectively adequately maintained.

[32.6] That the people of Muslim community submitted various representation to the respondents humbly requesting them to take action against those people who are guilty disobeying the order dated 07.04.2003 passed by Director General Archaeological sites of India but the respondents have not attended to the said representation . The copy of the said representations dated 12.02.2019, 15.04.2019, 30.08.2019, 01.10.2019, 27.10.2017, 15.4.2017, 04.02.2017, 05.10.2016, 04.11.2016, 16.01.2017, 26.08.2016, 04.09.2015, 15.04.2016.

[32.7] That, there have been reports in the local news paper and T.V. news channel indicating the violation of the order dated 07.04.2003 , the copy of the said news papers report are cumulatively filed as Annexure P/12. There are also the instances of violent assault committed by some member of Hindu Community and president Bhoj Utsav Samiti to the Archaeological officer Dhar which is reported in news paper Dhar Bhaskar dated 03.02.2017.

[32.8] That, there have been instances of harassment by some member of Hindu organization to the Khadim of Dargah Maulanana Hisamuddin Chisti which is located in the same premises. A report by the khadim by also sent to C.S.P. Dhar.

[32.9] It is submitted that the petitioner filed his case as WP.No.22178 /2017 before Hon'ble M.P. High Court Jabalpur and after hearing the case Hon'ble court passed the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 order dated 19.03.2018. After that the petitioner filed W.P.No.1554/2019 before this Hon'ble High Court and this Hon'ble High Court passed the

order dated 20.06.2019 and granted the liberty to petitioner to file P.I.L. [33] Shri Tausif Warsi - Advocate for respondent No.8 in WP No.10484/2022 & for petitioner in WP No.28334/2019 argued that the original petition WP No.28334/2019 was narrowly framed, seeking only implementation of ASI's order dated 7.4.2003 and ensuring that no religious activity contrary to that order takes place within the premises. The core relief was to maintain peace, harmony, and compliance with ASI directions, and not to adjudicate title or declare exclusive religious rights over the property. He argued that inconsistent replies have been filed by the ASI. He submitted that such inconsistent stand in different petitions is wholly improper. The reply reflect contradictory positions, with ASI adopting different stands in different proceedings. In subsequent writ petition WP No.10497/2022 and in WP No.10484/2022 ASI appears to have selectively relied upon one of its earlier replies which is impermissible and indicative of a shifting of stand. He argued that the present petitions go beyond from the pleading of the petition of 2019 as in the present petition the petitioners have also sought installation of idol, exclusive right of worship, retrieval of idol from London. He argued that in all the petitions there is a casual approach of the petitioners and also of the ASI. The petitioners claim that idol in the British Museum is Saraswati from Bhojshala is factually incorrect. He referred official communication in consultation with the British Museum to show that the sculpture is not Saraswati. It is identified as Jain Goddess Ambika. The earlier identification was based on misreading of inscription. He also argued that historical works like V.D. Mahajan, Cambridge publications, Invasion of Malwa (1305 CE), Establishment of governance do not support the contention of the petitioner regarding demolition theory of temple and the construction of mosque with the same material. There is no evidence which suggests that demolition of temple and conversion into a mosque. Historical sources indicate that structures were often built using materials from earlier ruins or structures, which was a common architectural practice. Thus, the petitioners could not establish the destruction of a temple or conversion of religious structure. Inscriptions, architectural fragments, and sculptures found at the site reflect mixed cultural and historical layers. ASI report do not confirm temple conversion. He argued that the petitioners case is based on assumptions, interpretations, and hypothetical reconstruction of history.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 There is no proof regarding the existence of the temple, its demolition and then construction of mosque. He also adopted the same arguments regarding delay, maintainability of petition as PIL under [Article 226](#) of the Constitution of India. He vehemently argued that ASI's historical reports 1902-1903, 1909 etc. referred to the structure as Kamal Maula Masjid, with no reference to it being a Saraswati temple. Thus, his main submission is that there is no historical proof of demolition, no archaeological confirmation of temple conversion, idol claim factually incorrect.

[34] He argued that the earliest authoritative record (Archaeological Survey Report 1881-82) clearly describes Dhar as a historic city where the mosque was constructed using Jaina architectural remains, including pillars and slabs bearing Sanskrit inscriptions. The said report specifically records features such as mihrab, pulpit, columns, and courtyard, all of which are characteristic of a mosque structure, which clearly establish its identity as a mosque from the earliest documentation. He also relied annual reports of ASI of year 1902-03

and 1909 which refers structure as —Kamal Maula Masjid, including references to repairs, inscriptions, and conservation works undertaken. According to him record clearly shows that inscriptions were removed from the mihrab area preserved, demonstrating continuous State recognition of the structure as a protected mosque monument. He vehemently argued that no historical evidence shows the demolition of the temple and its conversion into a mosque. He had referred the historical literature to show that the historical works depict invasion, establishment of rule, and administrative control, but do not support the theory of demolition or forcible conversion. The material further does not indicate the construction from the remains as argued by learned counsel for petitioners. Such use of material cannot legally imply destruction of a temple or conversion of a religious site, as alleged by the petitioners. He referred to the various books. According to him various historians referred that construction was done during Khilji period 1305 AD and establishment of governance in Malwa, but the material does not indicate the claim of temple destruction. He further argued that the history further reveals that Dhar was invaded multiple times even by Hindu rulers, showing that structural changes over time were not exclusive to any one community. He also relied on Sanads which demonstrate that large parcels of land were granted for maintenance and functioning of the mosque and dargah, establishing institutional continuity. The revenue record also shows the long standing recognition of the mosque. Offering of namaz has continued NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 uninterrupted since establishment i.e. 1305 AD and was never restricted by any ruler, authority, or even post-independence State. Dhar State notification dated 24.08.1935 clearly acknowledges the site as a masjid, affirming its religious character. Even post independent position shows that neither the State nor the Union of India has ever issued any order prohibiting namaz at the site, even after it became a protected monument. He also submitted that the contention of the learned counsel for petitioners regarding the Saraswati idol claim is also baseless. He heavily relied on a clarification by the British Museum to be Jain Goddess Ambika, not Saraswati. The claim of the petitioners for restoration of idol is untenable. Their case is based on no documentary proof. They failed to produce any credible documentary or archaeological evidence proving existence of Saraswati temple, its demolition and conversion into mosque. Their claim is based on hypothesis and belief which cannot form the basis of judicial determination. He also referred the inconsistent pleadings by ASI and State authorities in the first petition filed on behalf of the muslim community and then the change of the stand by the ASI and the State. He submitted that they have filed improper additional replies without leave of the Court and without new pleadings.

[35] He concluded that for over 125 plus years of official records, there is no mention of the structure being a Saraswati temple. The claim of Saraswati temple appears only recently and is not supported by historical or official documentation. He submitted that in regard to the preliminary submissions he adopts the submissions made by learned Sr. Counsel Shri Salman Khurshid in respect of the same respondents in the other petitions and prayed for dismissal of the petition.

QAZI ZAKULLAH & ORS.

Versus THE STATE OF MADHYA PRADESH & ORS.

[36] The present writ appeal is filed under [Section 2\(1\)](#) of M.P. Uchh Nyalay (Khand Nyaypeet Ko Appeal) Adhiniym, 2005 seeking following reliefs:-

[i] to requisition the record pertaining to W.P. No.4216/2003 Qazi Zakullah and others V/s. State of M.P. & others; [ii] to set aside the order dated 18/09/2003 passed by the learned Single Judge in the said Writ petition;

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [iii] to quash the order dated 07/04/2003 (Annexure P-1 of the W.P.) issued by Respondent No.4 and be further pleased to quash the order dated 07/04/2003 (Annexure P-2 of the W.P.) passed by Respondent No.4 in so far as they related to para 2 & 3 respectively and to quash the consequential orders issued by the respondents thereof;

[iv] To grant any other relief which this Hon'ble Court deem fit and proper in the facts and circumstances of the case.

[v] To award cost to the appellants.

[37] That, the aforesaid appellants instituted a Writ Petition

capacity, representing the entire Muslim Community of District Dhar (Madhya Pradesh), in the matter of [Articles 14, 25](#) and [26](#) of the Constitution of India, as also in the matter of [Section 16 \(1\) and \(2\) \(a\)](#) of the [Ancient Monuments Archeological Sites and Remains Act, 1958](#) and [Section 3](#) of the Places of Worship (Special Provisions) Act, 1991. The appellants prayed as under:-

[i] This Hon'ble Court be pleased to issue appropriate writ/order or direction, setting aside _the order No 3347/97-MCP dated 7.4.2003 (Annexure P-1 of W.P), passed by respondent No. 4 and be further pleased to quash order dated 7.4.2003 (Annexure P-2 of the W.P.) as also the consequential orders/action taken by respondents in pursuance to the said orders (Annexures P-1 and P-2 of W.P) or in the alternative, the impugned orders Annexures P-1 and P-2 in so far as they relate | to paras No.2 and 3 are concerned, the matters contained in Paras No.2 and 3 may kindly ordered to be expunged and/or deleted therefrom. [ii] The Hon'ble Court be also pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction commanding respondents No. 1 to 5 to see| and keep a vigil that the existing nature and character of Bhojshala - Kamal Maula Mosque situated at Dist. Dhar (M.P) is not changed into a different place of | worship of Hindu denomination or any of the section of the section of hindu denomination.

[iii] Any other Writ/order or direction etc. as deemed fit and proper looking to the facts and circumstances of the case.

[37.1] That, the appellants complained in the aforesaid petition that the customary rights guaranteed to them under [Article 25](#) of the Constitution of India, in the matter of enjoying a religious faith and performance of religious practices and observances by way of continuous offering of atleast Friday Namaaz Prayers in Kamal Maula Masjid of Dhar (M.P) for several decades, have not only been put under serious jeopardy but they have also been infringed by the Director General, Archeological Survey of India, Government of India due to issuance of the impugned orders dated 7.4.2003 (Annexures P-1 and P-2 of the Writ Petition) at the behest and instance of Government NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 of India i.e. the Respondent No. 4 and its Ministry of Tourism and Culture and by conniving and colluding with respondents 1 & 2 respectively. [37.2] That, the appellants have an existing and/or established religious rights under [Article 25](#) of the Constitution of India, in view of overwhelming documentary evidence filed by them in the Writ Petition and judicial admissions made by respondents 4 & 5 in their respective returns filed by them in W.P. No.1295 of 1997: Vimal Kumar Versus State of M.P. and 9 Others, before the Hon'ble High Court of Madhya Pradesh (Indore Bench), marked as Annexures P-22 and P-23 of the Writ Petition. [37.3] In support of pleadings and relief, the petitioner relied on the following documents:-

A-[i] Jama Masjid Maula Kamal is a registered Wakf, at Serial No. 612 of the list of Wakfs, published in M.P. Rajpatra dated 18.01.1985 (See Annexures P-19 and P-20 at Para No.5.6 of the Writ Petition).

[ii] Dhar State's Notification dated 24.8.1935 (Annexure P-32 at Para 5.12 of the W.P).

[iii] Dhar Collector's letter dated 22.9.1951 (Annexure P-3 and Para 5.13 of W.P).

(iv) Madhya Bharat Government's letter dated 15.10.1991 Annexure P-34, Para 5.14 of W.P).

[v] Madhya Bharat Government's letter dated 1.5.1952 (Annexure P-36, Para 5.16 of W.P).

[vi] Voluntary Agreement executed by the Hindu and Muslim Communities on 23rd April, 1995 (Annexures P-38, Para No.523 of W.P).

[vii] Dhar Collector's letter dated 12.5.1997 (Annexure P-39, Para No.524 of WP).

[viii] | Dhar Collector's Letter dated

May 1997 (Annexure P-40, Para No.5.24 of W.P).

[ix] Director General, Archeological Survey of India, Government of India's letter/order dated 28.11.1997 (Annexure P-41, Para 5.26 of W.P).

[x] Collector Dhar's Order dated 31.1.1998 (Annexure P-42 Para 5.27 of W.P).

[xi] | Director General, Archeological Survey of India, Govt. of India"s Order dated 5.2.1998 (Annexure P-3, Para No.528 of W.P).

[xii] Director General, Archeological Survey of India, Govt. of India"s Order dated 7.4.2003 (Annexure P-1, Para 3(1) of W.P).

B-[i] State of M.P. and Other's return dated 30.11.1998: Annexure P-22, Para No. 15 of the Return - See Para 5.5 of W.P;/ Para 17, 22, 46 and NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Paras 20, 35, 36 and 37 of Return: Annexure P-22 (See Para No. 5.28 (i) and (ii) of W.P).

[ii] Union of India and Other's Return dated 22.6.1088 Annexure P-23, Para 5(c) at Pages 21 and 22 of the Return, Para 5(n) at Page 50 of the Return, Para 5(o) at Page 63 and 64 of the Return, Para 5(n)(b), paras 52 and 53 of the Return, Para 5(j) at Page 30 of the Return, Para 5(n) Pages 54 and 55 of the Return and Para 5(o) at Page 58 of the Return.

[37.4] In a similar case reported in: AIR 1981 SC 2198 (3 JJ8) " Ghulam Abbas and Others Vs State of U.P. and Others, their Lordships of the Supreme Court not only entertained the Writ Petition under [Article 32](#) of the Constitution of India but also enforced the Existing/Established Religious Rights of the Petitioners (Members of Shia Community) by issuing a Writ of Mandamus against the respondents, vide paragraphs 3, 7 and 34 thereof.

[37.5] Under our Constitution, right to worship is a fundamental right. Any interference with it or its deprivation can be challenged in a Court of Law. Even in England, the Courts extend protection regarding archaeological matters if they affect the right as is clear from paragraph 337 of Halsbury's Laws of England, Fourth Edition, Volume 14.

[37.6] That, it is further submitted that according to Mohammadan Customs all members of the Mohammedan Community have a right to use the Mosque for devotional purposes whenever the Mosque is open. Everyone who has such a right is entitled to exercise it without hindrance and has a right of action against anyone who interferes with its exercise. It is not a joint right. It is a right which belongs to many people. The prepositions of Law have been laid down by a Full Bench of 5 JJS decision reported in (1884) 7 Allahabad 178: Jawahara Versus Akhter Hussain, which has been referred to and followed in: AIR 1938 Lahore 369 (FB) 3 (JUS): Masjid Shahid Ganj Versus S.G.P Committee, at Page 42 (left hand column). So long as a Mosque exists as a Mosque, every Muslim has a right to offer his prayers in its. [37.7] That, the orders (Annexures P-1 and P-2 of W.P) were also challenged as they contravened the provisions of [Ancient Monuments Preservation Act, 1904](#), as also the Ancient Monuments and Archeological Sites and Remains Rules of 1959. It is not out of place to mention here that the underlying object | and spirit of —[The Ancient Monuments Preservation Act, 1904](#)|| inter alia, was not only to preserve to India its NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 ancient monuments, etc. but it was also to maintain them as well as to see that they are not used for any purpose inconsistent with its character or with purpose of its foundation. For all such purposes, [Section 13](#) was incorporated therein and under Sub- Section (1) thereof, it was expressly provided that;

"13 (1): A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character."

[37.8] It is in the background of the above provisions of law that the State of Dhar had promulgated an —Ailan' (Order) No. 973 in its Official Gazette dated 24th August, 1935, notifying thereby that from the first word —Bhojshala|| being prefixed thereat, it be not at all thought of that |—MEHFOOZA SHAHI IMAARAT|| SHALL BE CHANGED TO ANY OTHER SHAPE. It was also notified thereby that as at present Namaaz is being offered there and for which there is no prohibition, likewise, in future as well, there shall be no prohibition for offering Namaaz therein. It was also clearly notified in the said —Ailan' that it is a Mosque and even in future it shall remain as a Mosque, vide Annexure P-32 dated 24.8.1935.

[37.9] The above action of the erstwhile State of Dhar is further maintained and reflected from the letter of the Assistant Secretary, Education and Local Self Government (Urban) Madhya Bharat, to the Collector, Dhar, wherein it was clearly mentioned that the request of Hindu Sabha that the building called —Bhojshala|| situated at Dhar cannot be given for converting it into a Temple. In the above letter it was, however, further stated that the Muslims may continue to say their Friday Prayers in the building vide Annexure P-36 (dated 1.5.1952) of the Petition. [37.10] Similarly, in the year 1952, the Hindus of Dhar had approached the Joint Director of Archeology, seeking permission for celebrating —Bhoj Diwas' but it was once again denied to the Hindus, vide D.O.No. 15-MB/5/52-2928 dated 17.2.1953, a copy whereof was filed by the Respondent No.6,7 & 9 as Annexure R-22 as per Para No. 5(n)(f), Page 54 of their Return: ANNEXURE P-23, before the M.P. High Court (Indore Bench) in W.P. No.1295 of 1997.

[37.11] Over and above, vide his letter dated 21.1.1955, addressed to the President, Hindu Maha Sabha, Dhar, the Collector of Dhar had further reiterated his stand that the monument is neither a —Pathshala' nor a —Temple' nor there exists any _Moorti', NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 therefore, the necessity of taking flower, gulal, etc. cannot be permitted, vide ANNEXURE P-37 of W.P. [37.12] Further thereafter, when the above Act of 1904 was repealed | by passing of "[The Ancient Monuments and Archeological Sites and Remains Act, 1958](#)", the above mentioned object of preserving the Ancient Monuments, their maintenance and their character was kept intact in the latter Act of 1958, by incorporating provisions like [Section 5\(6\)](#) and [Section 16\(1\)](#) of the Act of 1958, which read thus:-

"[Section 5\(6\)](#): Nothing in this Section shall effect the use of any protected monument for - customary religious observances." | "[Section 16 \(1\)](#): A protected monument maintained by the Central Government under this Act, which is a place of worship or shrine shall not be used for any purpose inconsistent with its character".

[37.13] Besides the above substantive provisions, even under the Rules of 1959, (framed under the Act of 1958), a provision containing prohibition of certain acts within the monument, by way of Rule 8, was incorporated therein, which prescribes thus:-

"Rule 8(f): Prohibition of Certain Acts within monuments - No person shall, within a protected monument -- (f): Violate any practice usage of custom applicable to or observed in the monument".

[37.14] Even in the recent past, the Parliament passed —The PLACE OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991|| which also provides for maintenance of the religious character of all places of worship as they existed prior to August 15, 1947, wherein; provisions such as [Section 3](#) and [Section 7](#), were also incorporated keeping in view the perseverance of ancient monuments and so as to keep intact their nature and character, which read as under:-

"[Section 3](#): Bar of Conversion of Places of Worship - No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof".

"[Section 7](#) -- Act to Override Other Enactments

- The provisions of this Act shall have effect notwithstanding anything, inconsistent NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 therewith contained in any other law for the time being in force or any instrument have in effect by virtue of any law other than this Act.

[37.15] Even after passing of the Act of 1958, framing of Rules of 1959 there under, and also after the enactment of the Act of 1991 (as referred to above), the Collector of Dhar (Respondent No.3) Superintendent Archaeologist, ASI, Bhopal Circle, Bhopal (Respondent No.5) and the Director General, ASI, Government of India (Respondent No.4) from time to time, issued orders/letters for up-keeping and preserving the object and spirit of the Laws and Rules enacted and framed by Parliament/Central Government, which is evident from their orders/actions highlighted below:-

[i] In the order of 12.5.1997, as per the restrictions and prohibitions as detailed out by the Collector, Dhar, it was made clear that Muslim would offer their Namaaz on every Friday between 1 to 3 PM and on every year, the occasion of "Basant Panchmi Utsav" would be celebrated. In the above order, it is also stipulated that no postures, slogans, etc would be pasted in the premises of Bhojshala Kamal Masjid. The above order of Respondent No.3 was sent for necessary approval by the Collector to Respondent No.4, vide his letter of May, 1997 (Annexure P-40 of the W.P).

[ii] The Superintending Archeologist, ASI, Bhopal Circle, Bhopal (Respondent No.5), vide his letter No.9/3/96-M8924 dated 28.11.1997, addressed to Collector, Dhar: (Respondent No. 3) enclosed therewith a Notice for declaring that the Centrally protected monument - Bhojshala Kamal Maulana Masjid, Dhar, will continue to, remain closed upto 28.11.1998 for visitors and public except for prayers on every Friday between 1.00 PM to 3 P.M and Basant Panchami, vide Annexure P-41 of the Writ Petition.

[iii] After when necessary approval was granted by the competent authority i.e. Director General, Archeological Survey of India, Govt. of India (Respondent No.3) issued an Order No.138/98 dated 31.1.1998 and imposed thereby certain restrictions on Hindu Community for doing „Pooja Path“ etc., inside the Ancient Monument: "Bhojshala Kamal Maula Masjid" vide Annexure P-42 of the W.P. [iv] The Director General, ASI, Government of India (Respondent No.4) in exercise of the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 powers conferred upon him under Rule 4 of the said Rules of 1959, passed an order dated 5.2.1998 and directed that the Centrally protected monument: "Bhojshala - Kamal Maulana Mosque at Dhar" shall remain closed with immediate effect and until further orders to any person other than specified officials of the ASI assigned on duty by the Collector, Dhar, EXCEPT FOR NAMAAZ ON FRIDAYS BETWEEN 1.00 TO 3.00 P.M AND ON BASANT PANCHAMI DAY.

[37.16] That, it was further contended that the appellants were seeking reliefs, either for the period prior to the enforcement of [Places of Worship \(Special Provisions\) Act, 1991](#) or for the enforcement of their rights of offering of Namaz, prayers in the Kamal Maula Mosque - the ancient monument being duly accepted and admitted by Respondent No. 1 to 5 vide Annexures P-22 and P-23 to the Writ Petition since 1910 and/or atleast the year 1935 vide Annexure P-32 of the W.P continuously, as such, by virtue of [Section 4\(3\)\(d\)](#) and (e) of the Act of 1991, it is not barred rather it is maintainable under [Article 226](#) of the Constitution of India.

[37.17] That, the respondents 4 & 5 had entered Caveat and had not submitted any reply in the Writ Petition. The Learned Single Judge, after hearing the Counsels for respective parties on record dismissed the said Writ Petition vide order dated 18.9.2003.

[37.18] Aggrieved by the order dated 48.9.2003, passed by Learned Single Judge, in W.P. No. 4216/2003, a Letters Patent Appeal No.766 of 2003 was instituted, which was admitted by the Division Bench of this Hon'ble Court vide order contained in the Order Sheet dated 19.12.2003, which is reproduced hereinafter:-

"19.12.2003. Mrs Shobha Menon, Learned Sr. Counsel for appellants.

Mr. K.C. Ghildyal, G.A. takes notice on behalf of Respondent No. 1,2 &3.

Mr. N.S. Kale, Sr. Advocate takes notice for Respondents 4 & 5.

| Mr. K.N. Pethia, learned Counsel takes notice on behalf of Caveator. | The appeal is admitted.

Post interim application alongwith the main appeal on 7.1.2004.

Sd/-
(Kumar Rajaratnam)
Judge
Chief Justice

Sd/-
(Shantanu Khemkar,
Judge

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[37.19] Subsequently thereafter, respondents were called upon to submit the return. Division Bench of this Hon'ble Court, vide order contained in the Order Sheet dated 5.12.2005, in pursuance to the decision of the Hon'ble Supreme Court, in Jamshed N. Guzdar Versus State of Maharashtra, whereby, validity of —Madhya Pradesh Uchcha Nyayalay (Letters Patent Appeal Samapti) Adhiniyam, 1981 was upheld, resultantly, the aforementioned L.P.A was held to be not maintainable. [37.20] Appellant preferred Special Leave to Appeal (Civil) before the Apex Court, disposed of by the Apex Court vide order contained in the Order Sheet dated 17.8.2006, granting permission to withdraw the Special Leave Petition with liberty to appellants to move this Court.

ARGUMENT OF COUNSEL FOR APPELLANT IN WA NO.559/2026 & FOR INTERVENER IN WP NO.10497/2022 & WP No.10484/2022 [38] Ms.Shobha Menon - learned Sr. Counsel for interveners in WP No.10497/2022 and WP No.10484/2022 and for appellant in WA No.559/2026 submitted that the petitions which are filed in the nature of public pro bono is not maintainable as the same is not a genuine Public Interest Litigation. The genesis of PIL clearly shows that the present petition lacks bona-fide and is a glaring example of whims of process of law. Public Interest Litigation (in short 'PIL') is a summary jurisdiction evolved to protect rights of the underprivileged and marginalised people and not to advance private, ideological, or sectarian claims. The present petitions deviated from the aforesaid foundational principle. The petitioners in both the petitions have prayed the same reliefs for one cause which is also abuse of the PIL. They have invoked PIL jurisdiction to obtain exclusive religious control and ownership over a disputed property, which is fundamentally a private civil dispute in disguise of Public Interest language.

[39] Another objection which has been canvassed regarding the locus standi of the petitioners. It is submitted that petitioners have claimed to be social workers, yet no material or documentary evidence has been placed on record to demonstrate any prior social work or public service. The petitioner has to disclose credentials and past work. A mere self - serving assertion of being a social worker is insufficient to invoke PIL jurisdiction. She referred the provisions of Chapter X of High Court Rules particularly Rule 27. She also referred the judgments in which it has been held that PIL cannot be NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 entertained unless the petitioners establishes genuine public interest and credibility, failing which the petition is liable to be dismissed at threshold.

[40] The next objection was regarding maintainability of writ petition under [Article 226](#) of the Constitution of India. It is argued that writ jurisdiction is summary in nature and the proceedings under [Article 226](#) are not suited for adjudication of complex disputed facts especially where title, possession and historical claims are involved. The High Courts will not exercise original civil jurisdiction to adjudicate the title of the parties. She argued that the reliefs sought in both the petitions are of the nature of claiming title by way of exclusive right of one community, creation of a trust, restoration of idol and exclusion of another community. These are purely civil and declaratory reliefs and the issues squarely falls [u/S.9](#) of the CPC, therefore, the petition is liable to be dismissed.

[41] Sr. Counsel for the interveners argued that right to worship is a civil right though linked with the [Articles 25](#) and [26](#), but the same is recognized as a civil right enforceable through civil proceedings. The civil Courts have jurisdiction over disputes involving religious practices and worship rights, especially when they involve property or access.

She argued that earlier a writ petition was filed WP No.1295/1997 claiming civil reliefs was withdrawn with liberty to approach civil court, therefore, the present petition is not maintainable as in a PIL, if one petition is withdrawn, the subsequent petition is barred considering the doctrine of judgment in rem. She submitted that the petition suffers from delay and laches as well as the petitioner is challenging the arrangements dating back 1997-2003 without explaining the delay. She argued that the delay defeats equity and the doctrine of laches also applies to PIL. The petition is further not maintainable in view of the aforesaid objections in view of the public policy consideration. The PIL must espouse the cause for public good, not private claims. PIL jurisdiction is rooted in public policy, intended to protect those who cannot approach courts themselves. It cannot be invoked to assert exclusive religious claims over property. The Court must exercise caution in the matters involving inter- community disputes, particularly where the petition seeks to alter long-standing arrangements. She referred the ASI report earlier filed in [WP No.1295/1997 Vimal Kumar](#) (supra) which was later withdrawn to submit that the stand of the ASI is inconsistent in the present petitions with the stand taken in the said petition. The earlier NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 ASI records and pleadings treated the structure as a protected monument without declaring exclusive religious character, whereas current submissions appear inconsistent.

[42] Learned Sr. Counsel for the intervener referred the constitutional framework and referred [Article 13](#) of the Constitution of India in support of her submission that —law|| includes notifications, orders, and statutory instruments. Therefore, 1935 Gazette Notification recognizing the structure as a mosque carries legal force unless set aside by a competent court. It is submitted that invocation of [Article 21](#) by the petitioners is totally misplaced as they failed to demonstrate any direct, tangible infringement of life or personal liberty. Though [Article 21](#) has an expanded scope, it cannot be invoked in abstract without showing specific violation affecting individuals or community rights. A reference has also been made to [Article 25](#) of the Constitution of India. It is submitted that right to religion under [Article 25](#) is not absolute, but subject to public order, morality, and health. It is a right available to all persons equally and cannot be invoked to exclude another community or claim exclusively over a disputed site. She repeated that the present public interest litigation is nothing but misuse. A PIL cannot be community specific. A PIL must serve the larger public interest, not the interest of a particular religious group. A dispute confined to one community's claim against another cannot be elevated to public interest litigation. She again reiterated that the present PIL lacks bona-fide and sufficient material to establish credentials of the petitioner of a social worker. She further submitted that historical material like books, travelogues, and historical writings must be treated with circumspection. As held in Ayodhya judgment, such material may provide context but cannot determine title or ownership without evidentiary scrutiny. She also submitted that archaeological findings may indicate existence of earlier structures, but they do not establish legal ownership of right to

possession. Title must be decided on legal evidence tested through cross-examination in a civil trial. Faith and belief may explain patterns of worship, but they do not translate into legal title or juristic rights over property. She further argued that since serious disputed question of facts is involved, therefore, the only remedy for the petitioners is to seek remedy under civil law from a competent court of law as the same falls within the ambit of [Sec.9](#) of the CPC.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [43] The learned Sr. Counsel had again referred the provisions of Act of 1904 and submitted that the same does not provide for automatic vesting of property in the government. A monument becomes —protected only through notification under [Section 3](#). [Section 4](#) and other provisions of the Act provides for procedure for acquisition, guardianship or control. Without following such procedure, no legal vesting or ownership arises automatically. [The Act](#) of 1951 introduced a deeming fiction, whereby certain monuments are treated as protected. However, they cannot resolve questions of title or ownership between competing parties The scope of deeming provision is to ensure protection and preservation, not adjudication. Counsel further referred the provisions of 1935 Act and submitted that the said notification clearly records the structure as —Masjid Kamal Maula and states that it shall continue as a mosque. The said document is a legal document under [Article 13](#). The said notification has never been challenged or set aside. The Rules framed under the Act called Ancient Monument Rules, 1959 confers limited powers to the Director General regarding access and regulations, primarily restrictive in nature. The Rules do not authorise the authority to create or alter religious rights, or to permit exclusive use contrary to statutory scheme. She vehemently argued that the petition suffers from delay and laches. She sum up her arguments repeating the grounds again for consideration that PIL is not maintainable due to lack of bona-fide and locus, dispute involves title and civil rights, serious disputed facts require trial, relief sought is exclusive and community-specific. Hence, no PIL and, therefore, the same is liable to be dismissed.

ANTAR SINGH & ORS.

Versus UNION OF INDIA & ORS.

[44] The present petition is filed under [Article 226](#) of the Constitution of India seeking following reliefs:-

[i] writ, direction or order of or in the nature of CERTIORARI to quash Notifications ANNEXURES P/18, P/17, P/16 and P/8 but only subject to relief claimed in para 7.2

hereunder;

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [ii] A writ, direction or order of or in the nature of MANDAMUS to direct the Union of India and the State of Madhya Pradesh to consider legislative measures or statutory rules;

[iii] A writ, direction or order of or in the nature of MANDAMUS to appoint a National Commission for examining the above issue and report or propose to this Hon'ble Court a solution to the problem of potential clashes at Bhojshala-Kamal Maula's Masjid between Hindus and Muslims on Vasant Panchmi days falling on Fridays;

[iv] On the basis of the report of the Commission, issue an appropriate writ, direction, writ, direction or order of or in the nature of MANDAMUS;

[v] A writ, direction or order of or in the nature of MANDAMUS to restrain entry of any outsider into Bhojshala- Kamal Maula's Masjid on Vasant Panchmi days falling on Fridays; and [vi] Such further or other writ, direction or order as may be deemed appropriate in the circumstances of the case.

[45] The petitioners are all residents of Dhar, District Madhya Pradesh. Some of the petitioners are Hindus and the others are Muslims. Their names have been arranged in the cause title alphabetically and not for indicating any sequence of importance. All the petitioners have the common concern of peace, tranquility and harmony between Hindus and Muslims in the City of Dhar and the State of Madhya Pradesh in particular and the country in general. This writ petition is aimed at achieving this objective in the context of an ancient and historical protected monument in Dhar called Bhojshala-Kamal Maula's Masjid.

[45.1] India perhaps has the richest heritage and presence of religions than in any country in the world and aims at peaceful co-existence and equal treatment to adherents of all religions. Lives of adherents of the two great ancient religions of India, that is Hinduism and Islam, are inextricably interlinked in their day to day lives. The relationship between Hindus and Muslims in India has generally been harmonious but unfortunately becomes fragile sometimes and on rare occasions, tends to be violent. In this writ petition, the petitioners do not wish to analyse and explore the complex NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 religious, emotional, cultural, historical, sociological, educational and economic causes for the tension between adherents of Hinduism and Islam but seek relief which is purely secular and

aimed at better management of relationship between Hindus and Muslims as civilized and social human beings.

[45.2] There is the aforesaid ancient historical monument at Dhar which the Hindus call —Bhojshala|| and the Muslims call —Kamaal Maula Maszid|| and the official Government calls Bhojshala-Kamal Maula's Mosque or Maszid. A model site plan showing the said monument is filed as ANNEXURE P/1A. Some photographs of the monument are also filed as ANNEXURE P/1B. A site plan prepared by the Superintending Archaeologist, Archaeological Survey of India, Central Circle, Bhopal on 02.03.1970 is annexed as ANNEXURE P/2A. A map of Nagar Palika of Dhar showing the Bhojshala - Kamal Maulana Mosque at mark —I|| and another monument called Lath Maszid at mark —II|| is filed as ANNEXURE P/2B.

[45.3] The said monument was declared an —ancient and historical monument|| by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (Act No. LXXI of 1951) which has now been repealed by the [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (Act No. 24 of 1958). A copy of the said Act is annexed as ANNEXURE P-73. It would be seen that the Bhojshala and Kamal Maula's Mosque are shown at Serial Number 41 of the List of Ancient and Historical Monuments in Madhya Bharat State in District Dhar. The same list shows at Serial Number 92 the other ancient and historical monument called —Lath Maszid||.

[45.4] [The Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (Act No. 24 of 1958) was enacted by Parliament on 28.08.1958. The objective of enactment of the said Act is to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. [Section 4](#) of the said Act runs thus:

"[Section 4](#). Power of Central Government to declare ancient monuments, etc. to be of national importance.-- (1) Where the Central Government is of opinion that any ancient NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 monument or Archaeological Sites and Remains not included in [section 3](#) is of national importance, it may, by notification in the Official Gazette, give two months" notice of its intention to declare such ancient monument or Archaeological Sites and Remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or Archaeological Sites and Remains may, within two months after the issue of the notification, object to the declaration of the monument, or the Archaeological Sites and Remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the Archaeological Sites and Remains; as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the Archaeological Sites and Remains to which it relates is of national importance for the purposes of this Act."

[45.5] The consequence of a notification declaring a monument as an ancient monument under [section 4](#) of the Ancient Monuments and Archaeological Sites and Remains Act can be gathered from the following provisions:

"[Section 2](#). Definitions.-- In this Act, unless the context otherwise requires,--

(a) "ancient monument" means any structure, erection or monument, or any structure, erection or monument or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes--

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(i) the remains of an ancient monument,

(ii) the site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of an ancient monument;

(e) "Director-General" means the Director-

General of Archaeology, and includes any officer authorised by the Central Government to perform the duties of the Director-General;

(f) "maintain", with its grammatical variations and cognate expressions, includes the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing convenient access thereto;

(g) "owner" includes--

(i) a joint owner invested with powers of management on behalf of himself and other joint owners and the successor-in-title of any such owner; and

(ii) any manager or trustee exercising powers of management and the successor-in-office of any such manager or trustee;"

"Section 5. Acquisition of rights in a protected monument.--

(2)Where a protected monument is without an owner, the Director-General may, by notification in the Official Gazette assume the guardianship of the monument.

"Section 14. Maintenance of certain monuments.--

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(1) The Central Government shall maintain every monument which has been acquired under section 13 or in respect of which any of the rights mentioned in section 5 have been acquired.

(2) | When the Director-General has assumed the guardianship of a monument under section 5, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agents, subordinates and workmen, for the purpose of inspecting the monument and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof."

"[Section 16](#). Protection of place of worship from misuse, pollution or desecration.--(1) A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.

(2) Where the Central Government has acquired a protected monument under [section 13](#), or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of a protected monument under [section 5](#) and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or part-thereof, from pollution or desecration--

(a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, 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."

"[Section 18](#). Right of access to protected monument.-- Subject to any rules made under this Act, the public shall have a right of access to any protected monument."

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 "[Section 39](#). Repeals and saving.-- (1) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, and [section 126](#) of the States Reorganisation Act, 1956, are hereby repealed.

(2) [The Ancient Monuments Preservation Act, 1904](#), shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respects things done or omitted to be done before the commencement of this Act."

[45.6] The above provisions of the [Ancient Monuments and Archaeological Sites and Remains Act](#) can be summarized as under:

(a) [The Act](#) aims at "preservation" of ancient and historical monuments of national importance (vide Preamble.

(b) The Director General of Archaeology assumes "guardianship of the monument" (vide

sections 5(2) and 14(2).

(c) The Central Government is clothed with the duty to "maintain" the monument (vide sections 14(1) and (2), 16(1).

(d) In regard to a protected monument which is also a place of worship or a shrine, the only role of the Central Government is to ensure that it is not used for any purpose inconsistent with its character.

(e) The Collector is empowered, in relation to a protected monument used for observance by any community, to make provisions for protection of the monument from pollution or desecration in the manner indicated in section 16 (2) (a) and (b), that is:

(a) by prohibiting entry therein, except in accordance with conditions prescribed with the concurrence of the persons, if any, in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 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.

[45.7] However, for the situation to which this petition relates, that is when religious activities of adherents of Hinduism and Islam fall on the same day and a clash is likely or inevitable, the [Ancient Monuments and Archaeological Sites and Remains Act](#) does not provide any procedure, forum or mechanism and is silent.

[45.8] In the erstwhile Dhar State, the Monument was considered as an ancient monument. Over several decades of history of the Monument, the monument also came to be used for worship by Hindus as a temple of goddess Saraswati on Vasant Panchami and also for offering Namaz by Muslims on every Friday.

[45.9] The issue that arises in the present writ petition is about those Fridays, in different years, from time to time, which coincide with Vasant Panchami. On Vasant Panchami, a large number of Hindu devotees congregate at the monument and perform puja. The number of devotees from outside Dhar gathering has been increasing and it is becoming more and more difficult for the law enforcement agencies that is the Collector/ District Magistrate and the Police, to avoid clash. The result is that volatile situation takes place leading to clashes

between Hindus, Muslims and law enforcement agencies on Fridays on which Vasant Panchami also falls.

[45.10] Considering clashes between two communities, on 05.02.1998, the Director General of Archaeology, New Delhi also passed an order under Rule 4 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 directing as under:

—Bhojshala - Kamal Maulana Mosque at Dhar shall remain closed with immediate effect and until further orders to any person other than an archaeological officer, his agents, subordinates and workmen and any other Government servant assigned on duty by the Collector, Dhar except for namaz on Fridays between 1.00 pm to 3.00 pm and on Vasant Panchami day. || [45.11] By another Order No. F.33-41/97-M.C.(M) dated 07.04.2003, the Archaeological Survey of India fixed time upto 1.00 P.M. for worship by Hindus and from 1.00 P.M. to 3.00 P.M. for Muslims to offer Namaz on every Friday. The NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 monument was open to visitors and tourists the rest of the time as a historical and archaeological site.

[45.12] After the above order, by an order No. F.20/1/2006 M dated 25.01.2006, in view of the fact that 03.02.2006 would be a Friday on which Vasant Panchami would also fall, a letter was issued by the Director General of Archaeology, New Delhi to the Collector, Dhar and the Superintendent of Police.

[45.13] Despite number of orders by ASI, the clashes between both the communities continued. Unfortunately, in February, 2013, history not only repeated itself but much more violently. There were clashes between police and certain persons from outside Dhar. Tensions arose and the Bhojshala Kamal Maula's Mosque controversy became even more serious than in the past. Life at Dhar came to a standstill and Hindu-Muslim relationship became even more threatened.

[46] Shri A.K. Chitale - Sr. Advocate for the petitioner in WP No.6514/2013 submitted that the State Government and its law enforcement agencies, namely the Collector/District Magistrate and the police, are also unable to effectively deal with the situation under the [Indian Penal Code](#), the [Code of Criminal Procedure](#), or any other statute. They can only make earnest efforts to maintain peace, albeit with limited success.

[47] The petitioner has prayed for quashment of the Orders ANNEXURES P/18, P/17, P/16 and P/8, since that will merely create a vacuum and worsen the situation and it will be a certainty that there will be clashes when Vasant Panchami falls on Fridays at all times in future.

In the above circumstances, the only options left are:

(a) an enactment of Central or State Legislature which will not clash with constitutional rights;

or

(b) making of Rules under [section 18](#) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, which will not clash with constitutional rights;

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(c) intervention of this Hon^{ble} Court, by which a mutually acceptable or legally binding formula is worked out to avoid clashes between the two communities on Vasant Panchami falling on Fridays, by taking into confidence both the communities, the Union of India, the Director of Archaeology, Archaeological Survey of India, the Collector-District Magistrate, the Superintendent of Police and the State Government.

[48] For this purpose, the petitioner prays for issuance of a notice to the respondents. If option (a) above is acceptable to the Union of India and/or the State Government, they may take the appropriate legislative measures. —If option (b) above is acceptable to the Union of India it may take the appropriate subordinate legislation. If options (a) or

(b) are not feasible or acceptable to the Union of India and/or the State Government, after notice to the respondents and hearing them, this Hon'ble Court may kindly pass the appropriate order, writ, direction or appoint a high powered and responsible Commission for hearing the respondents and everyone concerned and working out a formula which is mutually acceptable to all the parties.

[49] Shri A.K. Chitale - Sr. Advocate for the petitioner argued that the present petition is a different kind of petition from the other petitions filed by both the communities.

[50] He argued that in order to maintain the communal harmony, the Union of India and the State of MP be directed to consider legislative measures and Statutory rules and to appoint a National Commission for examining the issue and report or propose a solution to the problems of potential clashes at Bhojshala-Kamal Maula's Maszid between Hindus and Muslims on Vasant Panchmi days falling on Fridays. It is further submitted that on the basis of the report of the Commission, appropriate directions be issued. Learned Sr.Counsel further argued that a writ of mandamus be issued to restrain entry of of any outsider into Bhojshala-Kamal Maula's Maszid on Vasant Panchmi days falling on Fridays and any other directions.

[51] Many suggestions have been given by the learned Sr.Counsel in IA No.3031/2026. The relief claimed by the petitioner in the instant petition would depend on the fate of the petitions filed by both the communities. In case if the Court fails to adjudicate the petitions filed by either of the community on merit, then the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Court will consider the suggestions made in the present petitions in

regard to the use of the —disputed area|| for the time being. Thus, the suggestions given by learned counsel for petitioner would be given due weightage by this Court in case if this Court finds that the writ petitions or the cases filed by both the communities cannot be decided on merit.

COMMON ARGUMENT OF SHRI SUNIL JAIN, SR. ADVOCATE & ADDITIONAL SOLICITOR GENERAL FOR ASI & UNION OF INDIA IN ALL PETITIONS [52] Shri Sunil Jain - learned Additional Solicitor General on behalf of ASI & Union of India has referred various provisions of Act of 1904. He submitted that the Act was enacted to provide for the preservation of ancient monuments and objects of archaeological, historical or artistic interest. The object of the Act was to provide for the preservation of ancient monuments for the exercise of control over traffic in antiquities and over excavation in certain places and for the protection and acquisition in certain cases of ancient monuments and objects of archaeological, historical or artistic interest. He also referred the definition [u/S.2\(1\)](#) of 'ancient monument' which has already been reproduced in the preceding paragraphs while considering the contentions of the learned counsel for petitioners. He submitted that [u/S.3](#), the Central government was conferred power to declare an ancient monument to be a protected monument within the meaning of the Act. The 'protected monument' is not defined, however, an 'ancient monument' is defined and if an ancient monument is notified by the Central government as per [Section 3\(1\)](#) it becomes protected monument. He also submitted that as per sub-section (4) of [Section 3](#), 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 definition of this Act. The other provisions of the Act confers powers on the Central government to acquire the rights in or guardianship of an ancient monument. In pursuance to the above, a notification was issued that the —disputed area|| was shown to be Bhojshala temple, Kamal Maula mosque. After the independence, the Parliament had enacted an Act to declare certain ancient and historical monuments and archaeological sites and remains in Part A States and Part B States to be of national importance and provided for certain matters connected therewith. The said Act called Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 (for short '1951 Act'). He further submitted that the disputed area was included in Schedule 1 of Part 1 and it was mentioned as Bhojshala Mosque at Sl.No.10 of Madhya Bharat State. Thereafter another Act was enacted by the Parliament within a short span called [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (for short '1958 Act'). The source of legislation was provided in Entry 67 of Union List, Entry 12 of State List and Entry 14 of Concurrent List. [This Act](#) was enacted to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance for the regulation of archaeological excavation and for the protection of structures, carving and other like objects. [Section 2\(a\)](#) defines Ancient Monument. The definition was changed by adding that a structure which has been in existence for not less than 100 years and including other ancient monuments were defined as ancient monument. Archaeological sites and remains were first time added in this Act and were defined [u/S.2\(d\)](#). Protected monument was defined [u/S.2\(j\)](#) means any ancient monument which is declared to be of national importance by or under this Act. He referred

[Section 3](#) of the 1958 Act where certain ancient monuments etc. were made deemed to be of national importance. By this, he argued that as per this provision, the —property in question|| shall be deemed to be an ancient monument. He referred the provisions of [Section 39](#) which deals with repeal and saving. He submitted that as per sub-section (2) of [Section 39](#), The Ancient Monuments Preservation Act 1904 (for short ‘1904 Act’) shall ceased to have effect in relation to ancient and historical monuments and archaeological sites and remains declared or by under this Act to be of national importance except as respect things done or omitted to be done before the commencement of the Act.

[53] He argued that the ASI has been associated with the monuments since 1902- 1903 onwards as reflected in annual archaeological reports placed on record. These documents establish early State recognition and conservation efforts. The 1905 report describes Dhar as the capital of Hindu Rulers (Parmars), and notes that later Islamic rulers constructed mosques using materials from earlier Hindu temples, including at the disputed site. Thus, ASI relies on the findings such as Sanskrit inscriptions, Sculptural elements and temple style pillars and slabs. These indicate that materials from a pre- existing Hindu structure were used. Certain reports (1905, 1910-11) mention that the structure stands on the site of a temple believed to be dedicated to Goddess Saraswati, based on inscriptions and local tradition. Reports from 1902-03 and thereafter classify NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 the structure as an important historical and archaeological building, including —Bhojshala Kamal Maula||. Records show continuous repair and conservation work undertaken by ASI, reinforcing its role as custodian of a protected monument. Under [Section 2](#) of the Ancient Monuments Preservation Act, 1904 (for short ‘1904 Act’), the structure qualifies as an ancient monument due to its historical and archaeological significance. It is argued that the monument falls within the ambit of [Section 3](#) of the 1904 Act and was treated as protected even prior to later enactments. Under the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (for short ‘1951 Act’), the monument is listed (Entry No. 90) as one of national importance. [Section 3](#) of the 1951 Act creates a deeming fiction, giving retrospective effect-treating such monuments as protected under the 1904 Act at all relevant times. [The Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (for short ‘1958 Act’) continues this protection, vesting control and management with ASI. ASI asserts that it is the statutory authority responsible for regulation, preservation, and management of the monument. ASI refers to archival records showing that in 1935, the structure was treated as an archaeological building of the State, with disputes arising regarding its use. The 1935 proceedings show recognition as an archaeological structure, restrictions on religious use and attempts to maintain communal balance. He argues that provisions of the [Government of India Act, 1935](#) regarding federation and authority were not fully operational in relation to princely states like Dhar. Thus, it is contended that reliance on the 1935 notification to determine religious character is legally questionable. Under [Section 4\(3\)](#) of the Places of Worship (Special Provisions) Act, 1991 (for short ‘1991 Act’), monuments governed by the 1958 Act are excluded from its operation. Hence, the 1991 Act does not apply to this monument, and cannot be used to claim fixed religious status. ASI relies on Rule 4 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (for short ‘1951 Act’), which allows closure of monument or parts thereof

and regulation for specified periods. The 2003 ASI order regulating access (timings for communities) is defended as a valid administrative arrangement under statutory powers. ASI submits that earlier pleadings were based on general observations, not on detailed scientific study. The recent court-directed scientific survey report (using modern techniques) should be treated as the most reliable and conclusive material. Core submission of ASI is that Monument Status is Undisputed. ASI emphasizes that NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 across all records the structure is consistently treated as an ancient monument and it is under ASI control. The central question is not title but statutory protection and management, which vests in ASI. Final Position and legal conclusion of ASI is that the monument has been protected since 1904 (deemed), 1951 (declared), and 1958 (continued). ASI has full authority to regulate access and usage. Thus, the Prayer of the ASI that the Court should recognize ASI's statutory control, rely on scientific survey findings and reject challenges based on historical disputes or selective records. The core Essence of ASI Argument is that from 1900 onwards, it has always been treated as an ancient monument. 1951 Act gives retrospective protection -- making it protected since 1904. 1991 Act does not apply to protected monuments and ASI has full authority to regulate access, including the 2003 order. By referring the provisions of [Sections 2 and 3](#) of 1951 Act he submitted that the disputed area was as that time in Madhya Bharat State and the same was included in Part 1 of the Schedule and as has ancient and historical monuments the same is mentioned at Sl.No.90 of District Dhar as Bhojshala and Kamal Maula's Mosque. He submits that by virtue of [Section 2 and 3](#) of the 1951 Act, the said ancient monument has become protected monument by deeming Clause. Thus, the disputed area became protected monument since 1904 Act. He also submits that by virtue of [Section 39\(2\)](#) of the 1958 Act, the disputes area is a protected monument since 1904 i.e. 18.3.1904.

[54] The learned counsel for ASI has further argued by placing reliance on the detailed order of the High Court directing scientific investigation, which was subsequently affirmed by the Supreme Court with minor modifications, while maintaining status quo of the monument. Pursuant to these judicial directions a multi- disciplinary scientific survey was conducted and a committee of experts (7-8 members) representing both communities was constituted. The survey culminated in a comprehensive report in 10 volumes, including introduction, structural description, scientific analysis, epigraphy, archaeology, photographic & videographic documentation. Importantly, representatives of both contesting sides were present throughout, ensuring transparency and eliminating allegations of bias. The ASI emphasized that the survey was not a routine exercise, but a scientifically rigorous investigation, involving archaeologists, epigraphists, chemists, conservators, surveyors, photographers, use of modern techniques such as GPR (Ground Penetrating Radar) and GPS mapping Examination of Walls, pillars, floors, ceilings, structural layers and NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 stratigraphy artefacts and inscriptions. The site (including 50-meter peripheral area) was systematically divided into 5×5 meter grids, and every structural component was numbered and documented. Excavation was conducted carefully and minimally invasive, without disturbing the standing structure, with continuous documentation (video + photography), followed by restoration of trenches to original condition. It is specifically asserted that no change in the character of the monument occurred

during excavation. The core conclusion of ASI is based on scientific excavation and stratigraphic analysis. The site shows multiple structural layers (stratigraphy). The upper layer is a later construction, while beneath it lies a pre-existing large structure extending up to 4-5 meters below present level. The findings clearly state the existing structure is constructed over a pre-existing structure, whose remains still exist in site. This earlier structure was built with brick and later expanded with basalt stone dates back to Paramara period (10th-11th century CE). The ASI report records extensive material indicating temple architecture and iconography, Sculptural Evidence. Total 94 sculptures and fragments recovered. Depictions include Ganesha, Brahma, Narasimha, Bhairava, Animal and mythological figures such as Lion, elephant, horse, snake, tortoise, etc. Presence of Kirtimukha motifs and divine imagery. It is specifically noted that such human and animal figures are not permissible in a mosque, and several were defaced. Pillars and architectural members structure contains 106 pillars 82 pilasters. Many pillars are of temple style reused from earlier structure. Some composed by stacking multiple shafts. Inscriptions - crucial evidence, the report records More than 150 Sanskrit and Prakrit inscriptions. Literary and religious texts linked to Paramara rulers. The ASI relies on inscriptional and structural evidence to argue that the earlier structure was a center of learning and religious activity associated with Saraswati worship (Sharda Sadan). Subsequently the structure was modified, damaged, and reused, leading to its conversion into a mosque. A significant inscription (15th century, Khilji period) refers to destruction of idols, conversion of temple into mosque. Scientific Conclusion of ASI based on combined evidence are Stratigraphy, Archaeological excavation, Architectural analysis and epigraphy. ASI concludes that the present structure was built over a pre-existing temple structure of the Paramara period, which was later modified and reused as a mosque. ASI further relies on earlier excavation (1972-73), which also found temple architectural fragments, sculptures (including Vishnu fragment) and Iron tools and artifacts. This reinforces continuity of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 findings across decades. ASI strongly places reliance on the judgment passed by Apex Court in [M Siddiq \(D\) Thr.Lrs v Mahant Suresh Das](#) (supra). Key propositions relied upon are; Para 629 - Standard of proof for ASI reports, Paras 727-731 - Evidentiary value of archaeological findings, Paras 732-735 - Issue of temple beneath structure, Paras 855-870 - Limits of travelogues and secondary material, Paras 1204-1223 - Title based on evidence, not faith.

[55] The ASI argument is that Archaeological evidence is admissible, relevant, and can form basis of judicial conclusions, even if it does not conclusively prove demolition. The submissions culminate in the following core propositions. The monument is a protected monument of national importance under statutory control of ASI. Scientific survey conclusively shows the existence of pre-existing temple structure, later conversion/modification. Earlier inconsistencies in ASI replies are irrelevant, must give way to latest scientific report. The Court must rely on Scientific archaeological evidence and not on speculative historical narratives. In substance, ASI's case is that —the dispute must be resolved on scientific evidence. The ASI report establishes a pre-existing temple structure, whose remains form the base of the present monument. || COMMON ARGUMENT OF SHRI PRASHASNT SINGH, ADVOCATE GENERAL FOR STATE IN ALL PETITIONS [56] Shri Prashant Singh - Advocate General for the respondent State. His preliminary submission is regarding

role of the State. The learned Advocate General submitted that the State of Madhya Pradesh is a welfare and secular State governed by constitutional values. The State is committed to maintaining communal harmony, public order and constitutional governance. The State does not approach the present dispute from the standpoint of any particular religion, but from the perspective of ensuring peace, order and effective administration. It is submitted that Madhya Pradesh has historically remained peaceful, and the recurring controversy surrounding the present monument has repeatedly created communal tension affecting not merely the district administration but the State as a whole. The Advocate General placed before the Court the serious law-and-order consequences arising from disputes concerning the monument, particularly around Vasant Panchami and related occasions. Reference was made to incidents in 2003, 2006, 2013, 2016 and subsequent years up to 2023, where NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 communal tension and violence allegedly arose. It was submitted that curfews had to be imposed, FIRs were registered, government officers were injured, and extensive police deployment became necessary. The State informed the Court that approximately 3,200 personnel were deployed in 2013, around 6,000 personnel in 2016, and nearly 8,000 security personnel in later years, including 27 Superintendents of Police, 78 Deputy Superintendents of Police, and several companies of Central Paramilitary Forces. The Advocate General further submitted that the administration was compelled to requisition public buildings, hostels, lodges, hotels, and marriage halls to accommodate security personnel during the sensitive period. According to the State, the dispute has wide ramifications and requires final adjudication so that a stable legal framework may govern the situation instead of continuing temporary arrangements. It was submitted that the arrangement dated 07.04.2003 was intended as an interim arrangement and cannot continue indefinitely. The State administration requires a clear judicial determination so that recurring uncertainty and administrative burden may come to an end. The Advocate General emphasized that the issue before the Court concerns not merely individual religious claims, but continuing public order concerns affecting governance and communal harmony.

[57] Addressing objections regarding maintainability and disputed questions of fact, the learned Advocate General submitted that the jurisdiction of the High Court under [Article 226](#) is extremely wide. Reliance was placed upon the wording of [Article 226](#) itself, particularly the expression —for the enforcement of any of the rights conferred by Part III and for any other purpose. It was argued that unlike [Article 32](#), which is confined to enforcement of fundamental rights, [Article 226](#) empowers the High Court to issue directions as well even for —any other purpose. Accordingly, merely because disputed questions of fact arise does not automatically bar exercise of writ jurisdiction. [58] The Advocate General relied upon several judgments to contend that disputed questions of facts do not create an absolute bar to writ jurisdiction. Reference was made to [Gunwant Kaur\(Smt\) & Ors. Vs. Municipal Committee, Bhatinda Vs. Municipal Committee, Bhatinda & Ors.\(1969\) 3 SCC 769](#), [Real Estate Agencies v State of Goa \(2012\)12 SCC 170](#), [International Export Corporation v Union of India \(FB AIR 1954 GAU 234\)](#), and decisions of the Gauhati High Court. It was submitted that where facts are capable of determination from existing material, where documentary evidence exists, or where larger constitutional or public issues arise, the High Court may still NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 exercise jurisdiction under [Article 226](#). The State

contended that [Article 226](#) jurisdiction is discretionary but not excluded merely because factual controversies exist. The Advocate General further submitted that the High Court possesses power to grant declaratory relief where necessary. Reliance was placed on principles that the powers of the High Court under [Article 226](#) are broader than ordinary civil jurisdiction and are not confined by technical limitations applicable to civil suits. It was argued that where constitutional or public law issues arise, declaratory relief can validly be granted by the High Court.

[59] The State heavily relied upon the judgment of the Supreme Court in [M Siddiq \(D\) Thr.Lrs v Mahant Suresh Das & Ors. \(Ayodhya Case\)](#) and attempted to summarize broad principles emerging from the decision. The first principle emphasized was that disputes concerning religious character and historical structures are to be tested on the civil standard of proof, namely preponderance of probabilities, and not proof beyond reasonable doubt. The Advocate General submitted that courts are required to assess the cumulative effect of evidence rather than insist upon mathematical certainty. It was submitted that modern courts while adjudicating such disputes examine continuity of worship, historical assertions, faith and belief, existence of endowments, conduct of devotees, and consistency of religious usage. The Court is not expected to undertake theological examination but rather assess evidence relating to continuity and genuineness. The Advocate General referred to principles relating to juristic personality and religious endowments recognized in the Ayodhya judgment. It was submitted that the destruction or absence of an idol does not extinguish the religious purpose, the legal personality survives through the endowment and continued faith, and courts are obligated to protect the underlying religious purpose and interest of devotees. He argued that faith and belief are matters personal to devotees and need not always be proved by direct documentary evidence. Reliance was placed upon the proposition that consistency and continuity of belief, coupled with corroborative material, constitute relevant considerations. The Court, according to the State, is not required to test the rationality of belief but only its genuineness.

[60] The Advocate General emphasized the evidentiary value of government records, administrative descriptions, official nomenclature, correspondence, and archaeological records. It was argued that consistent official descriptions over decades carry substantial evidentiary value regarding the character and historical understanding NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 of the structure. The State referred to the principle of —user|| discussed in the Ayodhya judgment and submitted that mere user by one community cannot automatically extinguish competing religious claims of another community. The Advocate General argued that competing claims must be examined in light of historical continuity and cumulative evidence. The Advocate General strongly defended the evidentiary worth of the ASI report and submitted that courts ordinarily should not discard expert archaeological findings unless serious infirmities are shown. It was argued that archaeology is a multidisciplinary science involving excavation, epigraphy, structural analysis, inscriptions, and scientific examination, and courts lacking technical expertise ought to accord due weight to such reports.

[61] The State placed before the Court a chronology of historical developments concerning Dhar and the monument, including invasions and dynastic changes, the period of Paramara

rulers, Gujarat Sultanate rule, Mughal administration, Maratha rule, British treaties, and subsequent archaeological protection. Reference was made to archaeological reports from 1902-1904 describing the structure as constructed from remains of Hindu temple structures, incorporating Sanskrit inscriptions, and suggesting deliberate reuse of temple material. He specifically relied upon findings recorded in the recent ASI scientific survey.

[62] The conclusions were highlighted are that the present structure stands over a pre-existing structure remains dating to the Paramara period survive beneath the existing monument. Inscriptions, sculptures and architectural fragments indicate earlier temple structures. Sanskrit and Prakrit inscriptions predate Arabic and Persian inscriptions, and the existing structure incorporates reused temple components. Special emphasis was laid upon inscriptions referring to educational and literary activity, —Sharda Sadan,|| Sanskrit invocations, and references associated with King Bhoja and the Paramara dynasty. He submitted that these inscriptions support the existence of an earlier educational and religious complex associated with Saraswati worship. He also referred to inscriptions interpreted by ASI as mentioning destruction of idol structures and conversion of the earlier structure into a mosque during the medieval period. According to him, these inscriptions, coupled with archaeological findings, reinforce the conclusions drawn by ASI. The Advocate General submitted that the dispute involves competing assertions of religious continuity and historical worship. The State argued that such claims must be examined comprehensively through archaeological NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 evidence, official records, inscriptions, historical continuity, and consistent user. [63] Continuing his submissions, the learned Advocate General referred extensively to the scientific survey report submitted by the Archaeological Survey of India. It was submitted that the ASI report records the existence of numerous sculptures, architectural fragments and iconographic depictions which are indicative of a pre-existing Hindu religious structure beneath the present monument. Reference was made to various entries in Volume VI of the ASI report, including depictions of Narasimha, Vishnu, Kuber, Ardhanarishwar, Nayika figures, Kirtimukha motifs, Shikhara structures, floral scroll designs, and temple water spouts (pranala). He emphasized that many sculptures depicted mutilated or broken deities, defaced iconography and reused temple architecture incorporated into the present structure. The State referred to descriptions in the ASI report noting an image of Narasimha shown tearing Hiranyakashyap, Vishnu images holding Chakra and Shankha, temple-style Shikhara motifs, richly ornamented temple water drainage systems, and several decorative features characteristic of temple architecture. It was argued that these findings corroborate the conclusion that the present structure was erected using components of earlier Hindu temple structures.

[64] The Advocate General then referred in detail to the proceedings dated 24.08.1935 conducted by the Dhar Darbar. It was submitted that the proceedings were drawn by a special committee constituted due to communal tension arising from installation of a Public Works Department board bearing the inscription —Bhojshala Kamal Maula||. The proceedings were authored and supervised by Mr. Nadkar, Diwan and President, judicial members, consultative officers, and other officials of the Dhar State administration. The controversy arose after a board describing the structure as —Bhojshala Kamal Maula|| was allegedly removed and

communal objections were raised. The proceedings recorded that the structure had long been treated as an archaeological building. The State had undertaken conservation since 1902-03, and substantial expenditure had been incurred for preservation. It was emphasized that the authorities repeatedly referred to the monument as —Bhojshala||. He highlighted portions of the proceedings stating that had Lord Curzon and the Dhar Darbar not intervened, the monument would have fallen into ruin, and the Government of India had granted substantial funds for conservation. The proceedings also recorded references to archaeological officers, reports of Lord Curzon, Captain Barnes, political NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 agents, and other historians who consistently described the structure as —Bhojshala||. The State further referred to rules framed by the Government of India concerning preservation and protection of monuments, which were adopted by the Dhar State in 1908. According to the proceedings, protected monuments were not to be used for public or private religious purposes, though prayers had nevertheless been permitted for some years. He emphasized that even the 1935 proceedings recognized the monument primarily as an archaeological structure. Reliance was placed upon observations recorded in the 1935 proceedings that prayers had allegedly commenced only around 1919-1920, initially by only a few persons and only once annually. The proceedings further noted that prayers were being offered —only since recently||. He relied on these observations to argue that continuous or ancient exclusive mosque usage was not established in the official record. The State emphasized that the Dhar authorities expressly refused to remove the name —Bhojshala|| from the official board. The proceedings recorded that —Bhojshala|| was the traditional name of the building, the demand for removal was considered unreasonable, and even the political agent opposed deletion of the name. Reference was also made to observations in the proceedings stating that an idol of a Hindu deity had been removed from within the structure, the signboard had been disturbed, and both were later recovered from within the compound. He submitted that these observations support the historical presence of Hindu religious symbols within the monument. The State further relied upon the portion of the proceedings where the political agent recorded the view that the building was believed to have been a Saraswati temple or school associated with Raja Bhoj. Although the proceedings noted that this represented the opinion of historians and tradition, the Advocate General submitted that the official records themselves acknowledged the historical understanding linking the structure to Bhojshala. [65] The Advocate General then addressed the arguments advanced by the opposite side based upon the —Ailan|| dated 24.08.1935 and [Section 82](#) of the Government of India Act, 1935. It was argued that such reliance was legally unsustainable. The State submitted that the [Government of India Act, 1935](#) came into force only on 01.04.1937, whereas the Ailan relied upon was issued on 24.08.1935. The Ailan could not derive legal sanctity from provisions of the 1935 Act which were not yet operational. [Article 13](#) of the Constitution. It was submitted that [Article 13](#) invalidates laws inconsistent with fundamental rights, and defines —law|| only for the purpose of [Article 13](#) itself. He NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 argued that the definition under [Article 13](#) is contextual and cannot automatically validate every executive order or notification issued prior to the Constitution. The Advocate General argued that not every order issued by a princely ruler survives as —law|| under the Constitution. Reliance was placed upon [State of Gujarat v Vora](#)

[Fiddali Badruddin Mithibarwala](#) (1964 SCC OnLine 126). It was submitted that a distinction exists between executive or administrative orders, and laws enacted through legislative authority. Only those measures having the character and force of legislation survive under [Article 372](#) of the Constitution. The State contended that for a pre- Constitution instrument to survive it must possess legislative character, emanate from lawful legislative authority, and satisfy the requirements of [Articles 366](#) and [372](#). According to the Advocate General, the 1935 Ailan was merely an executive or administrative arrangement and not a legislative enactment. The Advocate General further argued that even assuming such an Ailan existed, it cannot survive if inconsistent with constitutional guarantees under Part III. It was submitted that no executive arrangement predating the Constitution can override constitutional rights, and any such arrangement inconsistent with fundamental rights would become void under [Article 13](#). The State maintained that the 1935 proceedings themselves demonstrate existence of competing claims, historical recognition of the structure as Bhojshala, archaeological significance of the monument, and only limited and recent prayer usage. The proceedings, according to the State, cannot therefore conclusively establish exclusive mosque character. The Advocate General submitted that the historical records of 1935 align with the findings of the modern ASI survey, namely existence of earlier temple structures, reuse of temple materials, mutilated sculptures, Sanskrit inscriptions, and continuity of historical association with Raja Bhoj and Saraswati worship. The State emphasized that from Lord Curzon's period onward, through colonial archaeological reports, and subsequently under statutory protection laws, the structure continuously remained recognized as an archaeological monument of national importance. The Advocate General ultimately submitted that the ASI report, archaeological evidence, historical records, the 1935 proceedings, inscriptions, sculptures, and continuity of official recognition, collectively establish the existence of a substantial pre-existing Hindu religious and educational structure associated with Bhojshala. It was further submitted that the 1935 Ailan cannot override constitutional principles, cannot be treated as binding legislative law, and cannot extinguish NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 competing constitutional and religious claims.

[66] Accordingly, he prayed that the Court may adjudicate the dispute in light of constitutional principles, archaeological evidence and the broader public interest involved in maintaining lasting communal harmony and legal certainty. The Advocate General ultimately submitted that the controversy has serious implications for public order and communal harmony, the High Court possesses ample jurisdiction under [Article 226](#), disputed questions of fact do not bar adjudication, and the principles [laid down in](#) the Ayodhya judgment, together with the ASI findings and historical records, provide the appropriate framework for adjudication of the present dispute. The State prayed that the Court may finally determine the issues so that a permanent legal framework may replace recurring temporary arrangements and continuing uncertainty. IN REJOINDER SHRI VISHNU SHANKAR JAIN, ADVOCATE FOR PETITIONER IN WP NO.10497/2022 [67] At the outset, learned counsel for petitioner in WP No.10497/2022 clarified the scope of the proceedings pending before the Supreme Court in the batch of matters led by Ashwini Kumar Upadhyay v. Union of India & Ors. (WP(Civil) No.190/2023), wherein the constitutional validity of the [Places of Worship Act, 1991](#) particularly [Sections 3](#) and [4](#) is under challenge. It was submitted that the interim order dated 12.12.2024 passed in the said batch

must be understood in its correct context. The said order primarily directed that no new suits shall be registered, and in pending suits, no effective or final orders including orders for survey shall be passed. However, the present writ petition stands on a distinct footing. Counsel submitted that the present petition was instituted in the year 2022, i.e., prior to the interim order dated 12.12.2024. Therefore, the embargo placed by the Supreme Court does not operate retrospectively so as to affect proceedings already instituted and pending before the High Court.

[68] A crucial submission advanced was that the [Places of Worship Act, 1991](#) itself is inapplicable to the present case. Reliance was placed on [Section 4\(3\)](#) of the Act, which excludes from its ambit monuments and sites covered under the [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#). It was thus contended that since the disputed site is a protected monument under the 1958 Act, the statutory bar under the 1991 Act does not apply at all.

[69] Counsel further submitted that there is no conflict between the Supreme Court's orders dated 12.12.2024 (in Ashwini Upadhyay batch), and 22.01.2026 (in SLP No. NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 7023/2024 relating to the present dispute). It was emphasized that on 22.01.2026, the Supreme Court, in the presence of all parties, considered issues arising from the present dispute (including Basant Panchami arrangements), and permitted the matter to be considered by the High Court. Thus, the earlier order of 12.12.2024 does not create any embargo on adjudication of the present proceedings. Addressing the objection regarding maintainability, counsel submitted that the present petition is not a civil title dispute, but a writ petition seeking enforcement of fundamental rights of worshippers. It was argued that violation of religious rights under [Articles 25](#) and [26](#) is directly in issue, and therefore, the High Court is fully empowered under [Article 226](#) to adjudicate the matter. The plea that the petitioner must approach a civil court was strongly opposed. Counsel rejected the argument that the matter involves disputed questions of fact. It was submitted that the core issue pertains to statutory compliance by ASI, particularly under the 1958 Act, and not to determination of title through oral evidence. Thus, the writ jurisdiction remains appropriate. Counsel placed reliance on the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951.

[70] His Key submissions included [Section 2](#) declares specified monuments as of national importance. [Section 3](#) deems such monuments to be protected under the 1904 Act (and subsequently under the 1958 Act). The disputed monument is specifically included in the Schedule (Serial No. 90). Thus, the legal status of the monument is firmly governed by statutory provisions. It was argued that by virtue of [Section 3](#) of the 1951 Act, protection granted under the 1904 Act continues, and is carried forward into the 1958 Act. Therefore, the entire regulatory regime applicable to the monument flows from this statutory continuity. The core of the petitioner's case was articulated as follows [Section 16\(1\)](#) of the 1958 Act mandates that a protected monument which is a place of worship shall be used in a manner consistent with its religious character. Thus ASI is under a statutory obligation, not merely administrative discretion. Counsel submitted that the administrative order dated 07.04.2003 regulating access and usage of the site, is in direct violation of [Section 16\(1\)](#) of the 1958 Act. It

was argued that the order alters or restricts the religious character of the site, which is impermissible under the statute. It was clarified that the petitioner is not seeking adjudication of title, nor raising a conventional civil dispute. Instead, the relief sought is enforcement of statutory duties of ASI, and protection of the established religious character of the site.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 The counsel emphasized that the right to worship is a fundamental right, and any arbitrary restriction violates constitutional guarantees. Thus, intervention by the High Court is warranted. It was reiterated that the present matter does not require filing of a civil suit, as no declaration of title is sought. The grievance is confined to statutory non-compliance, and violation of religious rights.

[71] Counsel summarized the legal framework in sequence; (i) Declaration under 1951 Act (Section 2 and Schedule), (ii) Deemed protection under 1904 Act, (iii) Applicability of 1958 Act, (iv) Statutory duty under Section 16(1). This statutory chain governs the present dispute. It was strongly emphasized that —religious character|| is the decisive statutory concept, and ASI cannot act contrary to it. Any administrative arrangement inconsistent with such character is ultra vires. Counsel rejected the suggestion that the petition is cleverly drafted to bypass civil remedies. It was submitted that the petition is bona fide, and raises genuine constitutional and statutory violations. It was reiterated that there is no necessity to institute a civil suit, since the issue is not one of title but of statutory compliance. The primary direction sought is to compel ASI to act strictly in accordance with Section 16(1), and to ensure that the religious character of the site is preserved. In conclusion, it was submitted that the bar under the Places of Worship Act does not apply, the Supreme Court's interim orders do not restrict the present proceedings, the writ petition is maintainable under Article 226, and ASI has violated its statutory duty under Section 16(1) of the 1958 Act. Accordingly, the petitioner seeks appropriate directions to enforce statutory compliance, protect the religious character of the monument, and set aside the impugned administrative arrangement dated 07.04.2003.

SHRI MANISH GUPTA - ADVOCATE FOR PETITIONER IN WP 10484/2022 , FOR INTERVENER KULDEEP TIWARI IN WP NO.28334/2022 AND WA NO.599/2026 - IN REJOINDER [72] Learned counsel appearing for the petitioner in WP No.10484/2022 submitted rejoinder arguments primarily addressing the nature and identity of the deity associated with the site, the distinction between Saraswati and Ambika claims, the character of Bhojshala as a temple and centre of learning, the ASI findings regarding temple architecture, and the historical evidence demonstrating conversion of a pre-existing temple structure into a mosque. Counsel referred to Sanskrit inscriptions and translations placed on record, particularly concerning the formal consecration of the deity by Raja Bhoj. It was submitted that the inscription clearly records formal NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 consecration in Vikram Samvat 1091, corresponding approximately to the 11th century CE, thereby establishing the antiquity and religious nature of the structure. An objection raised by the opposite side was addressed, namely that the idol/statue may have originated from the Dhar City Palace. Counsel rebutted this contention by submitting the City Palace itself was constructed only in the 17th-18th century, whereas the inscription dates back to Vikram Samvat 1091, therefore, the statue could not possibly have originated from the later-built palace structure. The petitioner strongly opposed the contention advanced by the Jain side that the idol in question is of

Goddess Ambika. It was submitted that the inscription itself refers to the deity as —Devi,|| and the interpretation sought to be imposed by the Jain intervenors is incorrect. Counsel stated that reliance on isolated iconographic similarities cannot override the inscriptional and contextual evidence. Addressing the Jain submissions, counsel argued that guardian figures, attendants, Yakshas, Yakshinis, or decorative carvings around temples do not determine the principal identity of the shrine. An analogy was drawn with Hindu temples containing figures of celestial beings or attendants, which do not alter the identity of the principal deity worshipped therein. Thus, even if Ambika-like figures appear in carvings, that does not establish the structure as a Jain temple. Counsel argued that under Hindu religious traditions temples, educational institutions, Dharamshalas, and centres of Sanskrit learning often functioned together as part of a unified religious complex. Therefore, the argument that Bhojshala was merely a school and not a temple was termed fundamentally misconceived. Reference was made to inscriptions dealing with grammar, Sanskrit teachings and educational activities. Counsel submitted that existence of educational inscriptions does not negate temple character, since Sanskrit learning frequently occurred within temple premises. Examples of temples at Ujjain and Mahadev Mandir were cited where religious and educational functions coexisted. Reliance was placed on the text Chintamani written around 1304 CE. Counsel submitted that the text refers to —Saraswati Kanta Bharana|| or Saraswati Temple, thereby affirming that the structure was regarded as a temple and not merely a school. Counsel for the petitioner relied upon the proceedings and minutes of meetings held in 1935. According to counsel even the official discussions at that time acknowledged existence of an earlier temple at the site, and the issue before authorities was whether the mosque had been constructed over a prior temple structure. Counsel framed the principal issue as follows; whether the original structure reflected NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 characteristics of a Hindu temple, or whether it was originally conceived as a mosque. [73] The petitioner submitted that the architectural and archaeological evidence overwhelmingly supports temple origin. Reference was made to descriptions contained in literary works attributed to Parmar rulers. It was argued that these writings describe temple architecture, temple libraries, sanctum arrangements, and ritual layouts, which allegedly correspond with features found at the disputed site. Counsel relied upon findings in the ASI scientific survey report. It was submitted that the bricks and foundational remains recovered from different portions belong to the same 11th century period, and demonstrate existence of a unified earlier structure beneath the present monument. The petitioner argued that the structure contains numerous features associated with temples rather than mosques. Reference was made to central sanctum- like areas, elevated platforms, temple-oriented structural design, inscriptions, sculptural remains, and architectural motifs. It was further argued that Islamic architectural elements were later additions made to an already existing temple structure. Specific reference was made to the Mihrab, Qibla orientation, western wall alterations, and modifications made for Namaz purposes. Relying upon Volume 5 of the ASI report, counsel submitted that the western wall had been cut and modified, the Mihrab was subsequently inserted, and these alterations indicate conversion rather than original mosque construction. The petitioner emphasized ASI findings stating that mosque components were inserted into a pre-existing structure, and that the structure had undergone modifications to facilitate Islamic

worship. This was argued to support the case of temple conversion. Counsel referred to principles laid down in the Ayodhya judgment, particularly paragraphs dealing with archaeological findings, structural modifications, and interpretation of demolished or altered religious structures. It was argued that the evidentiary approach adopted by the Supreme Court supports reliance upon ASI findings in the present matter.

[74] The counsel for the petitioner strongly disputed the assertion that Namaz had been offered continuously and uninterruptedly for seven centuries. Reliance was placed upon the 1935 proceedings, wherein according to counsel, Muslim representatives themselves admitted that regular prayers had commenced only in comparatively recent periods. Thus, the plea of uninterrupted ancient mosque usage was challenged. It was submitted that when the British authorities and later the administration took over the structure, the premises were not under exclusive NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 possession of the Muslim community. This was argued to negate claims of uninterrupted exclusive mosque character. Counsel addressed objections raised against reliance on writings concerning temple destruction during medieval invasions. It was submitted that historical records and court chronicles repeatedly describe temple destruction by invading rulers, and such accounts cannot be ignored merely by labeling them ideological. The petitioner argued that the opposite side selectively relied upon historical material while ignoring court records, inscriptions, and references contemporaneously describing temple destruction and conversion. Counsel submitted that historical evidence demonstrates that destruction and conversion of temples during certain invasions formed part of recorded historical events, and the present structure reflects precisely such a pattern. Reliance was placed on inscriptions allegedly dating up to around 1280 CE. It was argued that these inscriptions establish continued existence of the temple structure prior to later conversion. In conclusion, the petitioner submitted that the structure originally functioned as a Saraswati temple and centre of learning. The ASI report conclusively establishes existence of a pre-existing Hindu temple, mosque features were later insertions, the Ambika theory advanced by the Jain intervenors is misplaced, and the plea of uninterrupted mosque usage is unsupported by historical records.

[75] Accordingly, it was prayed that the Court recognize the temple character of the structure, the statutory obligations of ASI, and the petitioner's right to worship consistent with the religious character of the monument.

MS. SHOBHA MENON, SR. ADVOCATE FOR APPELLANTS IN WA NO.559/2026 & FOR INTERVENER IN WP NO.10497/2022 & WP NO.10484/2022 - IN REJOINDER [76] Learned senior counsel submitted at the outset that the present proceedings involve deeply disputed questions of fact relating to title, religious character, historical usage, and nature of the disputed complex. It was argued that the Madhya Pradesh High Court does not exercise original civil jurisdiction for adjudication of such disputes. Reliance was placed on the distinction between the present proceedings and the Ayodhya litigation, where evidence was recorded after a full-fledged civil trial, witnesses were examined, documentary evidence was proved, and the matter reached the Supreme Court in appellate jurisdiction. It was submitted that the Ayodhya judgment cannot become a —license‖ for every disputed religious claim to

be raised NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 directly in writ jurisdiction under [Article 226](#).

[77] Counsel referred to pleadings in W.P. No. 10497/2022, particularly paragraph 3.70, wherein the petitioners themselves sought scientific investigation to determine whether the structure was a temple, school of learning, or some other structure, and what changes took place between 1305-1550 CE. It was therefore argued that the petitioners themselves are uncertain regarding the original character of the complex, and in absence of conclusive proof, [Section 16\(1\)](#) of the 1958 Act cannot be mechanically invoked. It was contended that there is no concrete evidence on record proving existence of a Hindu temple in the legally recognized sense, no material regarding Prana Pratishtha ceremony, no evidence of continuous temple worship, and no conclusive proof identifying the exact religious character of the complex. According to counsel, the claims remain speculative and historically contested. Counsel argued that [Section 16\(1\)](#) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 applies only when the religious character of the place is already established. Where the very nature of the disputed complex is under challenge by multiple communities, no statutory obligation under [Section 16\(1\)](#) can arise without adjudication by a competent civil court. It was submitted that before imposing obligations upon ASI, the character of the structure must first be conclusively established through evidence. It was submitted that the petitioners, though styling the matter as a writ petition, are in substance seeking declaration of religious character, and prohibitory injunctions. Such reliefs, according to counsel, fall squarely within the jurisdiction of civil courts and cannot ordinarily be granted in writ proceedings. Reliance was placed upon several judgments holding that writ courts do not adjudicate disputed questions of title or ownership, particularly where oral and documentary evidence is necessary. Counsel emphasized that comparative assessment of technical reports, archaeological findings, and historical evidence cannot properly be undertaken in [Article 226](#) proceedings.

[78] Counsel strongly disputed the contention that the disputed complex stood protected under the 1904 Act from inception. It was argued that no notification under [Section 3](#) of the 1904 Act has been produced, no declaration process has been shown, and no statutory acquisition or protection notification prior to 1951 exists on record. Accordingly, it was submitted that the monument became protected only for the first time under the 1951 Act, and not retrospectively as claimed by the petitioners and ASI.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Counsel submitted that [Section 3](#) of the 1951 Act merely creates a legal fiction for applicability of provisions of the 1904 Act, but does not retrospectively convert the monument into a protected monument from 1904 itself. It was argued that retrospective application of provisions does not erase prior sovereign acts, nor does it invalidate prior administrative or executive decisions of the princely state. It was argued that reliance placed on annual archaeological reports, registers, and departmental publications is legally misconceived. According to counsel such documents do not possess statutory character, cannot substitute mandatory notification procedure, and cannot confer status of protected monument in absence of statutory declaration. Counsel highlighted that ASI had earlier filed a different stand in W.P. No. 28334/2019, whereas in the present

proceedings it adopted a diametrically opposite position after the survey report. It was argued that the earlier records and annual reports were always available, yet ASI changed its stand only after the present litigation.

[79] Counsel defended the validity of the Ailan dated 24.08.1935 issued by the Dhar ruler. It was submitted that the ruler possessed sovereign legislative, executive and judicial powers, and the declaration had force of law within the princely state. The argument advanced by the petitioners and State challenging the validity of the Ailan under [Article 13](#) was opposed. Counsel argued that [Article 13](#) uses the expression —laws in force,|| and [Article 366\(10\)](#) gives an inclusive definition covering laws made by competent authorities. Therefore, according to counsel the 1935 Ailan qualifies as —existing law|| protected under [Article 372](#) of the Constitution. It was submitted that publication of the Ailan in the State Gazette, its binding effect upon the public, and its regulatory nature demonstrate that it possessed legislative character rather than being a mere executive order. Counsel referred to constitutional decisions explaining distinction between executive orders, administrative directions, and legislative acts of princely rulers. It was submitted that sovereign declarations of princely rulers can survive under [Article 372](#) if they possess legislative character. Counsel opposed the petitioner's interpretation of Rule 4 of the 1959 Rules. It was argued that the rule merely empowers ASI to regulate or prohibit entry, and cannot be used to alter religious character or create worship rights. It was submitted that the petitioners approached the Court only in 2022, despite the arrangement of 07.04.2003 continuing for decades, and after withdrawal of earlier proceedings. According to counsel, the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 present PIL is an abuse of process. Counsel argued that the Ayodhya judgment arose from a completely different procedural background, after trial, evidence, and appellate scrutiny. It was submitted that precedents must be read in the context of their facts and jurisdictional setting, and cannot automatically govern writ proceedings involving unresolved factual controversies.

[80] In conclusion, it was submitted that the present PIL involves complex disputed facts, adjudication requires civil trial, [Section 16\(1\)](#) cannot apply absent established religious character, the 1935 Ailan continues to operate as existing law, and the writ jurisdiction under [Article 226](#) cannot be converted into a substitute for a civil suit. Accordingly, it was prayed that the petition be dismissed with costs. SHRI SALMAN KHURSHID, SR. ADVOCATE FOR RESPONDENT NO.8 IN WP NO.10497/2022 - IN REJOINDER [81] Learned senior counsel submitted at the outset that the present petitions essentially challenge the restrictions imposed by ASI through its administrative orders regulating access and worship at the disputed site. It was argued that no party before the Court is seeking a declaration of title in the present writ proceedings, nor can such declaration properly be granted in [Article 226](#) jurisdiction. Counsel strongly distinguished the present case from the Ayodhya litigation. It was submitted that in the Ayodhya matter the deity —Ram Lalla Virajman|| itself was a juristic person and a party to the proceedings, title claims were directly adjudicated, and the proceedings arose out of civil suits after full trial. In the present case no deity is a party to the proceedings, no juristic personality has been pleaded or established, and therefore claims based upon title or proprietary religious rights cannot be presumed. It was argued that [Article](#)

25 protections are available equally to all communities, and no single group can claim exclusive religious rights merely on assertions of faith. According to counsel, the present controversy cannot be converted into a declaration of exclusive ownership or religious domination over the site.

[82] Counsel submitted that despite extensive historical material, ASI reports, and survey documents there is no direct evidence that a specific temple existing at the present site was demolished and replaced by the present structure. It was argued that reuse of materials from older ruins does not establish demolition of a temple at the exact disputed location. Reference was made to the Supreme Court directions regarding scientific survey. It was argued that the Supreme Court permitted limited scientific investigation, but physical excavation altering the character of the monument NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 was not intended. According to counsel, ASI adopted an overly broad interpretation of the survey directions. Counsel submitted that objections were raised periodically during the survey process, but many objections were not properly addressed. It was further argued that survey activities occurred simultaneously at multiple places, making effective supervision by party representatives impossible. It was contended that ASI damaged portions of the existing flooring, platforms, and structures during excavation, contrary to assurances that the character of the monument would remain unchanged. Counsel argued that preservation--not alteration was ASI's statutory obligation. Serious doubts were expressed regarding certain artefacts allegedly recovered during the survey. Counsel submitted that some objects appeared unnaturally clean, modern materials such as plastic bottles and newspapers were allegedly found, and proper archaeological methodology was not followed. It was argued that artefacts genuinely recovered from ancient layers would ordinarily contain soil deposits and stratigraphic consistency. It was specifically argued that carbon dating, OSL dating, and other definitive scientific methods were not properly conducted by ASI. According to counsel, absence of such tests weakens conclusions regarding chronology and antiquity. Counsel submitted that once the monument became protected under ASI supervision ASI was legally bound to preserve the character in which the monument existed at the time of protection. It was argued that [Section 16](#) of the 1958 Act requires preservation of the existing character, and does not authorize ASI to rediscover, reinterpret, or alter the character of the monument. Counsel clarified that respondent's case was never that no earlier material from ancient structures was used in the present complex. It was accepted that stones, pillars, and fragments from older structures may have been reused. However, according to counsel. Such reuse by itself does not establish destruction of a specific temple nor justify altering present religious character. It was argued that references to Saraswati, learning, literary inscriptions, dramatic compositions, and educational activity are equally inconsistent with a centre of learning or cultural institution. Counsel submitted that Saraswati symbolism is common in educational institutions, and such references cannot conclusively establish existence of a Hindu temple. Reference was made to the interpretation of inscriptions and literary works such as Parijata Manjari. It was argued that literary inscriptions are often aesthetic, cultural, or political in nature, and cannot automatically be treated as architectural proof of a temple structure. According NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 to counsel interpretation advanced by the petitioners is speculative and inferential. Counsel objected to

reliance on inscriptions located approximately 1-1.5 km away from the disputed site. It was argued that references to monasteries, learning centres, or destruction elsewhere cannot conclusively establish facts concerning the disputed complex itself. It was pointed out that several ancient temples in the region continue to survive, including temples associated with the Paramara period. According to counsel if systematic destruction was intended, such surviving temples would not have remained intact. Counsel argued that ASI fundamentally misread [Section 16](#) of the 1958 Act. According to the submission [Section 16](#) requires preservation of existing character, not rediscovery of alleged prior character. Therefore, ASI cannot rely on archaeological findings to justify alteration of the presently protected character of the monument. Counsel submitted that the videography of the survey demonstrates inconsistencies in excavation, handling of recovered materials, and possible contamination of the archaeological process. It was stated that detailed objections based on the videographic material would be placed on record. [83] In conclusion, learned senior counsel submitted that no direct evidence of demolition of a temple at the disputed site exists, the survey process suffered from procedural and methodological irregularities, ASI exceeded its statutory mandate, and the petitioners cannot seek exclusive religious claims without adjudication of title. It was therefore prayed that the writ petitions seeking alteration of the present arrangement be rejected, and the protected character of the monument be maintained in accordance with law.

SHRI TAUSIF WARSI - ADVOCATE FOR RESPONDENT NO.8 IN WP NO.10497/2022 & WP NO.10484/2022 - IN REJOINDER [84] Learned counsel assailed the ASI survey report on the ground that the investigation lacked proper scientific methodology and could not be treated as reliable archaeological evidence. It was argued that despite specific directions of the Court in paragraph 29(b) of the order dated 11.03.2024 directing scientific investigation through carbon dating and allied methods, ASI failed to conduct proper dating analysis. Counsel submitted that carbon dating, Optical Stimulated Luminescence (OSL), thermo-luminescence, and other accepted archaeological dating methods were not properly undertaken. According to him, without scientific dating of the structures, stones, bricks, and basal formations, no definitive conclusion regarding antiquity or NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 chronology could have been reached.

[85] Counsel specifically objected to the ASI conclusion that the brick structures belonged to the Paramara period. Reference was made to the ASI report where the conclusion was stated to be based merely on —artefacts found during investigation. It was argued that artefacts alone cannot conclusively determine the age of foundational structures, and without proper dating methodology such conclusions remain speculative. Reference was made to old photographs of the disputed complex showing the water tank. Counsel argued that earlier photographs clearly showed that no stairs existed inside the tank, whereas later photographs revealed newly introduced steps on both sides. It was submitted that if scientific dating had been carried out, the period of construction of such stairs could have been ascertained. According to counsel, this indicated post facto alterations in the structure. Counsel submitted that ASI merely employed total station survey, GPRS, and XRF elemental testing. It was argued that these techniques may assist mapping or compositional analysis, but cannot determine

antiquity or historical dating of the structure. Therefore, according to counsel, the very foundation of the ASI conclusions was scientifically defective. Counsel contended that the ASI survey was conducted in a manner intended to support the petitioners' narrative. It was argued that objections raised by respondent no.8 during the survey were ignored, no meaningful responses were given to their objections, and the investigation lacked neutrality.

[86] A major objection was raised regarding artefacts allegedly recovered from a room under ASI control since 1997. Counsel submitted that the room had long been used as a CCTV surveillance and storage room by ASI, yet many artefacts were allegedly shown as recovered from that very location during excavation. According to counsel the room earlier contained garbage, plastic waste, bottles, and modern materials, thereby casting serious doubt on the authenticity of the alleged recoveries Counsel went to the extent of alleging that certain artefacts appeared to have been —implanted. Reference was made to CCTV footage, newspaper reports, RTI responses, and photographs. It was argued that ASI was unable to provide prior inventory records, original recovery locations, or documentary evidence regarding several artefacts marked during the survey. Counsel submitted that RTI replies admitted absence of such records. Reference was made to photographs allegedly showing plastic bottles, disposable cups, cloth, cigarette packets, newspapers, and NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 modern waste material during excavation. According to counsel such materials demonstrated that excavation layers were disturbed and unreliable, thereby undermining the evidentiary value of the survey. Counsel submitted that complete videography of excavation was not supplied. It was argued that instead of continuous recording, only short clips of a few seconds were provided. According to counsel, this prevented proper scrutiny of the excavation process. Counsel referred to video recordings allegedly showing the District Magistrate and Superintendent of Police being present during excavation activities. It was argued that such presence itself reflected the contentious nature of the process and supported respondent's apprehensions regarding irregularities. Counsel submitted that many artefacts relied upon by ASI were not recovered from within the four walls of the monument, but from surrounding areas within the broader 50-meter survey zone. It was argued that findings from outside the monument premises cannot conclusively establish the character of the disputed structure itself.

[87] Counsel replied to arguments regarding architectural features. It was submitted that the west-facing orientation of the structure is consistent with mosque architecture, since worshippers in India face west towards Mecca. Similarly, the existence of the water tank was explained as an ablution facility necessary for Islamic prayer practices. Counsel argued that petitioners had failed to establish the existence of a Saraswati temple at the site, any historical demolition, or any direct evidence of conversion of a temple into a mosque. It was submitted that the entire case of the petitioners rests largely on mythology and assumptions rather than concrete historical proof. Counsel submitted that historians consistently indicate the mosque structure was completed during the reign associated with Kamaluddin Chishti around the 14th century. According to counsel while petitioners refer to earlier historical periods, no direct evidence establishes demolition of a temple at the disputed location. [88] Counsel criticized ASI for allegedly taking contradictory stands in different proceedings. It was argued

that ASI appeared to be implicitly supporting the petitioners, despite being expected to maintain neutrality as a statutory authority. Counsel repeatedly emphasized that the ASI report suffers from technical, scientific, procedural, and methodological defects. According to him the report cannot be treated as reliable evidence for adjudicating the religious character of the site. It was argued that even assuming reuse of ancient materials, ASI cannot alter or reinterpret the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 present protected character of the monument. Counsel submitted that preservation-- not transformation is ASI's statutory duty.

[89] In conclusion, learned counsel prayed that the petitions be dismissed with exemplary costs, the ASI report be rejected as unreliable, and no alteration in the existing character or usage of the monument be permitted. SHRI SYED ASHAR ALI WARSI - ADVOCATE FOR INTERVENER IN WP NO.10497/2022 - IN REJOINDER [90] Learned counsel submitted that the present arguments were in continuation of the earlier submissions advanced on behalf of intervenors Jibran Ansari, Ayaq Qureshi, Firoz Sheikh in WP No.10497/2022. Counsel stated that certain constitutional and legal issues arising from the arguments advanced by the petitioners, the State, and ASI required clarification. A principal submission was advanced regarding the legal sanctity and continued operation of the 24.08.1935 Ailan issued by the Dhar State. Counsel submitted that merely because the [Government of India Act, 1935](#) stood repealed under [Article 395](#) of the Constitution, or constitutional transition took place after independence, the pre-constitutional legal instruments and notifications did not automatically lose their force.

Reliance was placed upon [Article 372](#) of the Constitution, [Article 366\(10\)](#), and constitutional provisions relating to continuation of existing laws. It was argued that all laws, rules, orders, regulations and instruments existing immediately before commencement of the Constitution continue in force unless repealed or altered by competent authority. According to counsel the 1935 Ailan continued to remain legally operative, and its legal sanctity survived constitutional transition. Reference was made to [Edward Mills Co. Ltd. v. State of Ajmer](#), (1954) 2 SCC 426. Counsel submitted that the Supreme Court had recognized continuity of pre-constitutional laws and instruments through constitutional adaptation. It was argued that the Dhar State notification continued to govern the status and character of the disputed premises, and there had been no lawful repeal or extinguishment thereof. Counsel argued that the disputed premises had consistently been recognized in official notifications and gazette records as a mosque, and such recognition remained legally operative. It was submitted that no material had been produced to show that the mosque character was ever legally extinguished.

[91] A major contention advanced was that both the State Government and ASI NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 had failed to maintain constitutional neutrality. Counsel submitted that instead of acting as neutral constitutional authorities, the State and ASI appeared to be supporting the petitioners' narrative. Reliance was placed upon [Article 12](#) of the Constitution to contend that instrumentalities of the State are constitutionally bound to act fairly, impartially and in accordance with constitutional discipline. Counsel relied upon [Ajay Hasia v. Khalid Mujib Sehravardi](#), (1981) 1 SCC 722, and [E.P. Royappa v. State of Tamil Nadu](#), (1974) 4 SCC 3. It was argued that arbitrariness violates [Article 14](#), equality is a

dynamic constitutional concept, and State instrumentalities cannot act in a partisan or discriminatory manner. According to counsel the conduct of the State and ASI during the present proceedings reflected lack of neutrality. Counsel referred to historical materials and publications, including Dhar Aur Uska Gupt Itihaas, and other historical works. It was argued that the city of Dhar had already suffered devastation due to invasions, political conflicts and natural calamities including earthquakes, and reused architectural material cannot automatically establish demolition by Muslim rulers. Counsel submitted that use of pre-existing stones and fragments in later Construction was historically common, particularly in cities already lying in ruins. Counsel specifically opposed the theory that a Hindu temple was demolished for construction of the mosque. It was argued that historical evidence merely reflects reuse of available materials, not deliberate destruction attributable to any specific community. Reliance was placed on historical writings suggesting that Dhar had already become a —city of ruins|| before later Islamic construction activities. Counsel reiterated the earlier submission that the idol relied upon by petitioners was not recovered from the Bhojshala/Kamal Maula premises itself, but from the Rajwada / City Palace area. According to counsel this fact substantially weakens the petitioners' reliance upon the idol for claiming temple character of the disputed site. Counsel referred to historical studies and publications discussing evolution of the structure, reuse of architectural material, and later Islamic reconstruction. It was submitted that structural differences in the mosque architecture demonstrate reconstruction rather than mere conversion of an existing intact temple. Counsel argued that Sanskrit inscriptions, literary tablets, and educational references do not conclusively establish existence of a Hindu temple. According to counsel such materials are equally consistent with a centre of learning or scholarly activity. It was submitted that inscriptional and literary material had been collected from different parts of Dhar city and not necessarily from NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 the disputed structure alone. Counsel submitted that educational and literary activity in medieval India existed across multiple religious traditions, and references to Sanskrit learning cannot by themselves establish temple ownership or temple character. Counsel referred to the [Ancient Monuments Preservation Act, 1904](#), particularly [Section 13\(2\)](#). It was argued that guardianship and management rights had historically been recognized and relinquished in favour of the concerned community, thereby strengthening the continuity of religious usage. Counsel further submitted that the legal status of the site as a mosque and place of worship stood protected through historical recognition and continued practice. Counsel repeatedly emphasized that the entire controversy involves complex disputed questions of fact, including title, religious character, historical usage, and alleged demolition. According to counsel such issues require full-fledged trial with oral and documentary evidence before a competent civil court. It was submitted that petitioners have failed to conclusively establish existence of a temple, demolition thereof, or absence of mosque character. Counsel informed the Court that civil proceedings concerning the dispute had already been instituted, parties had already been served, and therefore adjudication ought to take place before the competent civil forum.

[92] In conclusion, learned counsel prayed that the writ petitions be dismissed, the parties be relegated to appropriate civil remedies, and the disputed historical and religious claims be adjudicated only upon proper evidence before a competent civil court.

[93] Learned counsel appearing for the Archaeological Survey of India submitted that the entire scientific investigation, survey and excavation were conducted strictly in compliance with the orders passed by this Hon'ble Court. It was argued that ASI acted only as an expert body, the survey was carried out by specialists and technical experts, and whatever findings emerged during the course of investigation were truthfully placed before the Court by way of reports. Counsel submitted that allegations of bias levelled against ASI are completely baseless, unfounded and liable to be rejected. Replying to the arguments advanced regarding the 1951 notification, learned counsel submitted that the monument was being treated and maintained as a protected monument much prior to 1951. It was argued that various historical records, departmental references, and documents placed on record clearly establish that the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 monument was under protection and preservation even before enactment of the 1951 Act. Counsel referred to records including references in Hindi translations using the expression —Rakshit Smarak,|| maintenance expenditure incurred by the Archaeology Department, and repeated references to preservation activities undertaken before 1951. According to counsel, the contention that prior to 1951 the structure remained merely —state-owned property|| is contrary to documentary material already placed before the Court. Learned counsel specifically responded to objections raised concerning non- adoption of carbon dating. It was submitted that carbon dating is useful only where organic material is available, and it is not suitable for determining the age of stone structures. Counsel argued that the alternative scientific methods suggested by the other side are generally used to determine the age of the material itself, and not necessarily the construction period of the architectural structure. Counsel explained that Archaeological dating is ordinarily undertaken through absolute/scientific dating methods, and typological or stylistic analysis. It was submitted that architecture, inscriptions, sculptures, stylistic features, palaeography, and material composition are accepted archaeological methods for determining the age and period of structures. According to counsel the expert committee adopted these accepted archaeological methods, and the conclusions were reached only after detailed expert examination. Reference was made to Volume 5 of the ASI report, including analytical studies conducted through XRF spot analysis, compositional testing, and examination of construction material. Counsel submitted that the analysis revealed similarities in basalt composition, indicating use of material from the same geological source and similar construction phases. Similarly, analysis of bricks from different locations demonstrated similarities in elemental composition suggesting contemporaneous construction patterns. It was argued that these findings scientifically supported the conclusions recorded in the report. Counsel submitted that in archaeological practice comparative study of architecture and remains is a widely accepted method for dating ancient structures, especially where sufficient structural evidence exists. According to counsel the expert body inspected the site, analysed the material and stylistic characteristics, and thereafter arrived at conclusions regarding chronology and structural phases.

[94] Learned counsel addressed allegations regarding recovery of plastic bottles and modern waste during excavation. It was submitted that such material was found only in NEUTRAL

CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 the uppermost heterogeneous debris layers, which already consisted of modern dumped material, conservation debris, ceramic pieces, wrappers and assorted waste. Counsel emphasized that the ASI report itself records existence of heterogeneous upper layers, and therefore there was complete transparency in documenting the same. According to counsel the presence of modern waste in upper debris layers does not invalidate the excavation process. Reference was made to excavation findings showing stone blocks, plaster layers, reused architectural members, and extensions made during later phases. Counsel submitted that structural examination demonstrated modifications and additions over different periods, including later constructions adjoining the original walls. Learned counsel submitted that certain structures now relied upon as mosque features were found to be later constructions. Reference was made to the courtyard platform and surrounding extensions, which according to the report were constructed in comparatively recent times. Counsel categorically denied the allegation that any Gautam Buddha idol was found and deliberately omitted from the report. It was submitted that no such idol was recovered, and the concerned artefact referred to by the other side was in fact a Jain statue, which was duly recorded and catalogued. Counsel submitted that all artefacts recovered during investigation were separately numbered, documented, photographed, and incorporated in the report. It was argued that there was complete transparency in the recovery and recording process.

[95] Replying to allegations that objections filed by respondent no. 8 were not answered, counsel submitted that the expert team was engaged in scientific survey work, functioning in its expert capacity, and was not expected to individually adjudicate every objection raised during excavation. According to counsel the survey was conducted independently by experts under Court directions. Counsel strongly opposed allegations of communal or institutional bias. It was submitted that representatives of all parties were present during the survey, members from different communities formed part of the expert and oversight process, and even the committee included Muslim members. According to counsel the excavation and survey process was transparent throughout, leaving no occasion for allegations of bias. Learned counsel emphasized that ASI functioned only as an expert technical body assisting the Court, and not as an adversarial litigant supporting any side. The report merely records the findings emerging from scientific investigation, expert examination, and NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 archaeological analysis.

[96] In conclusion, learned counsel prayed that the scientific survey and expert findings be accepted as credible, and the objections raised against the ASI report be discarded as unfounded and unsupported by material evidence. [97] After hearing learned counsel for parties at length, the following issues arise for consideration:-

- [1] Whether the petitions filed by the Hindu Front WP No.10497/2022, WP No.10484/2022 filed by Kuldeep Tiwari, WP No.8986/2026 filed by Salek Chand Jain on behalf of Jain community and WP No.6514/2013 filed by Antarsingh are maintainable as Public Interest Litigation? [2] Whether the petitioners in these petitions have locus to maintain the present petition ?

[3] Whether these petitions filed under [Article 226](#) of the Constitution of India are maintainable in view of availability of alternative and efficacious remedy of Civil Suit and remedy under [Waqf Act](#) ?

[4] Whether the petitions are barred by doctrine of res-judicata and constructive res-judicata ?

[5] Whether the petitions are liable to be dismissed on the ground of delay and laches ?

[6] Whether the reliefs claimed in the aforesaid petitions can be considered in the light of the provisions of Place of Worship Act, 1991 ? [7] Whether the reliefs claimed in the aforesaid petitions can be considered in view of the order passed by the Apex Court in the case of Ashwini Kumar Upadhyaya (supra) where the hearing of the matters involving issues of Place of Worship Act have been directed not to be entertained and if pending have been directed to be deferred ?

[98] After dealing with the aforesaid preliminary issues, we shall advert to the rival contentions of the parties on merit.

[99] Learned Sr. Counsel for respondent No.8 in WP No.10497/2022 Shri Salman Khurshid - Sr. Advocate, Ms. Shobha Menon - learned Sr. Counsel for intervener in WP No.10484/2022 & 10497/2022, Shri N.A. Sheikh - Advocate for respondent No.8 in WP No.10484/2022, and Shri S.A. Warsi - Advocate for the intervener in WP No.10497/2022 submitted that the aforesaid petitions filed as PIL is not filed as per the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 provisions of M.P. High Court Rules. They referred Chapter X of Rule 13, Rule 14 and Rule 17. As per rule 27, a writ petition filed in PIL has to disclose petitioners social public standing/professional datas and public spirited antecedents. It is argued that petitioners have not disclosed their social public standing, professional status and public spirited antecedents and, therefore, petition is liable to be dismissed. [100] As per the facts pleaded in WP No.10497/2022 - Hindu Front for Justice (Regd.Trust No.976) Through Its President Ms. Ranjana Agnihotri & Ors. Vs. Union of India & Ors., the present petitioner No.1 is a registered trust in the name and style of —Hindu Front for Justice|. Aim and object of the Trust has been stated in the petition in detail which is to cherish the noble and great ideals in Vedas, Shastras, Upanishads, Ramayana and various Hindu scriptures. They have espoused the cause of the Hindu community. The Resolution dated 20.2.2022 of the Trust has been filed authorising the Trustee towards file the present petition. Petitioner No.2 Ms. Ranjana Agnihotri is the founding Trustee. She is practising as an Advocate. It is stated that she has been an Advocate in Ayodhya case for Ram Janma Bhumi. She is involved

for restoration of religious and cultural places of hindus. Petitioner No.3 Ashish Goyal is the President of District Unit, Dhar. He is an active member of a recognized political party and member of number of organisations like Akhil Bharatiya Vidyarthi Parishad, Hindu Jagran Manch, Vishwa Samvad Kendra, etc. He has been working for re-establishment of Pratima of Goddess Vagdevi at Bhojshala. Petitioner No.4 Ashish Janak has also pleaded regarding his public and social work being involved in number of various organisations. The petitioner No.5 is a Law Post Graduate and he has also pleaded that he is associated with number of social organisations and actively involved in social services by providing education and financial assistance. Petitioner No.6 is an agriculturist and social worker. He is founder Trustee of Vishwa Vedic Sanatan Sangh. He has espoused the cultural heritage of India and to work for securing the right to religious under [Article 25](#) and [26](#) of the Constitution of India. In the same manner, petitioner No.7 is a Journalist and had worked in Hindi Dainik Bhaskar since 2008. He is running his own printing press. He has also pleaded that he is involved in number of organisations concerning public cause.

[101] WP No.10484/2022 Kuldeep Tiwari Vs. Union of India & Ors. is filed by Kuldeep Tiwari. He has also filed the present petition espousing public cause of the hindu community for protection of religious and cultural rights guaranteed under NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [Article 25](#) and [26](#) of the Constitution of India. In fact the reliefs claimed, pleading and material are almost similar to the petition filed by Hindu Front (WP No.10497/2022), therefore, if the petition filed by the Hindu Front is found to be as genuine PIL, then this petition filed by Kuldeep Tiwari is nothing but an offshoot of the said petition. [102] During the course of arguments learned counsel for petitioner in WP No.10484/2022 Shri Manish Gupta fairly submitted that the petitioners in the Hindu Front and in the present petition are espousing the same cause and the petitioners in the present petition have filed only additional material and grounds in addition to the material and grounds placed before this Court in the petition filed by Hindu Front. [103] [WP No.8986/2022 Salek Chand Jain Vs. Union of India & Ors.](#) is another petition filed by Jain community in the nature of PIL challenging the order dated 7.4.2003 passed by Director General of Archaeological Survey of India whereby only muslims and hindu community has been allowed to offer namaz and worship on the particular disputed area within Bhojshala premises ignoring the Jain community's right to perform religious function on the pious occasions of different days of Jain religious.

[104] [WP No.6514/2013 Antar Singh & Ors. Vs. Union of India & Ors.](#) is another petition claimed to be filed on behalf of the residents of Dhar by some of the members belong to Hindus and some from Muslim community. The petition is also in the nature of a PIL challenging the notifications issued by the ASI time to time in regard to notifying the disputed area as Bhojshala cum Kamal Maula Mosque and the orders of ASI permitting the communities to offer namaz and prayer in the disputed area which is always a cause of clash between both

the communities and results into disturbance of peace, tranquillity and harmony between the Hindus and Muslims in the city of Dhar. The relief is prayed that a National Commission be appointed to frame a legislation to solve the problem of potential clashes at Bhojshalas Kamal Maulas Masjid between hindus and muslims on Vasant Panchmi days falling on Fridays and to completely restrain the entry of both the communities into the said disputed area. [105] Considering the facts, grounds and the reliefs claimed in the present petitions which clearly concerned with the 'right of worship' on the disputed area of all the three communities, the aforesaid petitions cannot be dismissed merely on the ground of technical objections raised by learned counsel for respondent and interveners that the petition is not filed as per the High Court Rules. We find that the petitioners have disclosed their public standing, professional status and public spirited antecedents.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Their right to worship has to be tested on the anvil of the constitutional provisions and fundamental rights guaranteed under [Article 25, 26](#) of the Constitution of India. Even otherwise as we have narrated, the facts, pleadings in the foregoing paragraphs it fulfils the test which has been [laid down by](#) the co-ordinate bench of this Court in the case of [Surendra Pratap Singh Vs. State of M.P. & Others](#) - 2019(1) MPLJ 75. Thus, it is held that the petitioners have adequately disclosed their credential, antecedents etc. as required under the law dealing with the PIL. The other objection is regarding locus of the petitioners. The petitions are filed representing cause of a large number of members of different communities claiming their right to worship guaranteed under the Constitution, therefore, these petitions cannot be thrown on the ground of the locus when petitioner represents a cause of a large numbers of a community in regard to a fundamental right guaranteed under the Constitution of India. Even otherwise the credentials, antecedents pleaded in the aforesaid petitions clearly show that the petitioners have locus to espouse the cause of their community. The respondent No.8 and the interveners have not filed any adverse material in regard to the credentials, antecedents of the petitioners social public standing, and public spirited except mere assertions and submissions, therefore, the objection regarding locus is rejected. [106] Regarding third objection, it has been vehemently argued by learned counsels for respondent No.8 and interveners that the present petitions involved disputed questions of facts regarding claim of a title of a property and the appropriate remedy for the petitioners is to seek remedy in a civil suit and under [Waqf Act](#) and not under [Article 226](#) of the Constitution of India.

[107] The learned counsel for respondent No.8 and interveners referred various judgments. The judgment referred in the case of [DLF Housing Construction P. Ltd. Vs. Delhi Municipal Corpn. & Ors.](#) (1976) 3 SCC 160 was not dealing with a right of fundamental right like Right to Worship. They also relied on the order passed in the case of Qazi ZakAullah WP No.4216/2003 decided on 18.9.2003 as also the judgments passed in the case of [State of Rajasthan Vs. Bhawani Singh & Ors](#) 1993(1) SCC 306, [P.R. Murlidharan & Ors. Vs. Swami Dharmananda Theertha Padar & Ors.](#) (2006) 4 SCC 501, [Municipal Corporation, Aurangabad through its Commissioner Vs. State of Maharashtra & another](#) (2015) 16 SCC 689 in which it is held that considering the nature of the petition the same cannot be decided under [Article 226](#) of the Constitution of India. The appropriate remedy is civil suit. The NEUTRAL CITATION NO.

2026:MPHC-IND:8805 WP-10497-2022 present petitions involve a question of right of the communities of their prayer/worship in the disputed area referring to the various books by historians, writers, gazettiers, notifications, orders by erstwhile rulers, government, pre-independence, the post independence and the survey report of ASI. This Court has to examine their right of worship/prayer with reference to consideration of the aforesaid materials, legal provisions and constitutional rights. Ms. Shobha Menon - Sr. Advocate for respondent No.8 also relied on the judgments to submit that the present petition is not a Public Interest Litigation as the petitioners have no locus and also that the issues involved in the present case are of civil nature involving disputed questions of facts which cannot be adjudicated in a writ petition under [Article 226](#) of the Constitution of India. It is also stated that it is settled law that a claim for ownership cannot be decided in a writ petition under [Article 226](#) of the Constitution of India and the appropriate remedy is civil suit for the parties. To bolster her submissions she has relied on following judgments:-

[i] Civil Appeal No.2848/2021 dated 20.7.2021. [Shubas Jain Vs. Rajeshwari Shivam & Ors.](#) (Para 26) [ii] SLP(C) No.16483/2015 dated 19.3.2026. Prem Porwal & Ors. Etc. Vs. Jagdeesh Chandra Prajapati & Ors. (Para 6 to 6.4).

[iii] 1954 SCC Online Gau 42. Hiranmoy Bhattacharjee & another Vs. State of Assam & another (Para 23,87,90,174, 175 & 177).

[iv] AIR 1970 SC 802. Smt. Gunwant Kaur & Ors.

Vs. Municipal Committee, Bhatinda & Ors. (Para 14) [v] 2025 INSC 1340. P.U. Sidhique & Ors. Vs. Zakariya (Para 40).

[vi] 2025 INSC 1408. Vineeta Srinandan Vs. High Court of Judicature at Bombay on its own motion (Para 9 to 9.3) [vii] 2025 INSC 1480. [State of U.P. & another Vs. Mohd. Arshad Khan & another](#) (Para 12 to 14).

[108] The aforesaid judgments, declining to entertain the writ petition on the ground of involving disputed questions of facts in a writ petition under [Article 226](#) of the Constitution of India as the appropriate remedy being civil suit were on consideration of the facts of the aforesaid case. The powers under [Article 226](#) of the Constitution of India is extra ordinary and wider power than [Article 32](#) of the Constitution of India which confers power on the Supreme Court only for enforcement of fundamental rights. The power under [Article 226](#) of the Constitution of India conferring powers on NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 the High Court is not confined only for the enforcement of the rights conferred by Part III (Fundamental Rights) but for any other purpose. —For any other purpose|| expression itself make clear that powers under

[Article 226](#) is wide and not only to enforce the fundamental rights guaranteed by the Part III for Fundamental Rights but to issue directions as well even for any other purpose. It is settled law that there is no absolute bar for the High Court to entertain a writ petition under [Article 226](#) of the Constitution of India even if it involves questions of facts. In this regard, a reference may be made to the judgment passed by the Apex Court in the case of [Gunwant Kaur\(Smt\) & Ors. Vs. Municipal Committee, Bhatinda Vs. Municipal Committee, Bhatinda & Ors.\(1969\) 3 SCC 769](#), [Real Estate Agencies v State of Goa \(2012\)12 SCC 170](#) and also the judgment of the Full Bench of Gauhati High Court in the case of [International Export Corporation v Union of India](#) (supra) in which it is held that where facts are capable of determination from existing material where documentary evidence exists, where there larger constitutional or public issues arise, the High Court may still exercise jurisdiction under [Article 226](#) of the Constitution of India. The jurisdiction under [Article 226](#) of the Constitution of India is a discretionary but not exercised merely because factual controversies exists. Even otherwise in the present petitions, the facts which have been canvassed by the parties have to be decided on the anvil of the historians, writers, gazetteers, notifications, orders by erstwhile rulers, government, pre-independence, the post independence and the survey report of ASI and not on the basis of the oral evidence which are to be led by the parties. [109] After going through the petitions extensively on facts, pleadings and record, we noted that the petitions do not relate to the claim to 'title of the property' but it deals with the fundamental right of worship guaranteed under the Constitution of India. Preliminary objections regarding the maintainability of the writ petition on the ground that certain disputed questions of facts are involved which according to the respondents cannot appropriately be adjudicated in exercise of jurisdiction under [Article 226](#) of the Constitution of India. We are conscious of the settled proposition that ordinarily a writ Court does not entertain petitions involving seriously disputed questions of facts requiring elaborate evidence, however, such principle is not an inflexible rule of exclusion. Extra ordinary jurisdiction of this Court under [Article 226](#) is wide enough to be invoked where the matter concerns enforcement or protection of fundamental rights guaranteed under the Constitution of India. In the present case, the controversy raised NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 by the petitioners substantially touches upon the constitutional rights to freedom of religion guaranteed under [Article 25](#) and [26](#) of the Constitution of India. Alleged infringement of such fundamental rights cannot be rendered immune from judicial scrutiny merely because certain ancillary disputed questions of facts are involved where the pleadings, documents on record and surrounding circumstances enable the Court to examine the legality of the impugned action, the writ petition cannot be rejected at threshold solely on the ground of existence of disputed facts, particularly where constitutional protections are alleged to have been violated, we are, therefore, of the considered opinion that present writ petition is maintainable and deserves to be entertained for adjudication on merits notwithstanding the disputed factual aspects raised by the respondents. Accordingly, the preliminary objection regarding maintainability is rejected.

[110] Another objection has been raised by counsel for respondent No.8 and counsel for interveners that the petition is barred by doctrine of res-judicata. It has been argued by learned counsels for respondent No.8 and counsels for the interveners in these petitions that the petition is barred by res-judicata on the basis of order passed by Single Judge in the case of Qazi Zakaullah and Vimal Kumar (supra) and orders passed in the case of petitions filed by one Vimal Kumar (WP No.1295/1997) The said petition was dismissed on the ground that disputed questions of fact cannot be decided and the petitioner was relegated to resort to the remedy in civil suit. In support of his submission, he placed reliance on the judgment passed in the case of [Nagabhushana Vs. State of Karnataka & Ors.](#) (2011) 3 SCC 408 (Para 19,20& 39), [Dr.Subramanian Swamy Vs. State of Tamil Nadu & Ors](#) and other connected petitions (2014) 5 SCC 75. In the case of Qazi Zakaullah (supra), a challenge was made to the order passed by ASI. The learned Single Judge confining himself to the validity of the said order and considering the facts of the said case dismissed the petition on the said ground and relegated the petitioner to resort to the remedy. Admittedly, the said petition was not filed by any of the petitioner who are before this Court in the aforesaid petitions espousing either the cause of hindu community, muslim community or jain community. The law relating to the res-judicata or constructive res judicata is no longer res-integra as held in number of judgments that res-judicata will operate amongst the same person and in respect of an issue which has been raised and substantially decided by the Court. The order passed in the case of Qazi Zakaullah NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 and Vimal Kumar (supra) cannot be held to be a judgment in rem for dismissing a subsequent petition espousing cause of members of large community for enforcement of their fundamental right to worship. The said issue has neither been raised nor decided. In the said petition of Qazi Zakaullah (supra), a challenge was made to the validity of the order passed by ASI as we held that in these petitions a challenge is not only to the order of the ASI but constitutional issues have been raised for enforcement of fundamental rights and constitutional rights. The petition filed by one Vimjal Kumar was withdrawn and was not decided on merit. Even otherwise, considering the orders passed by the Supreme Court in the proceedings arising out of the present cases on 22.1.2026 and subsequent orders, these petitions cannot be dismissed on the ground of principle of resjudicata or constructive res judicata. [111] The doctrine of res-judicata is founded upon constructions of finality in the litigation and public policy. However, before the bar can be invoked, the Court must be satisfied; (i) the material directly and substantially in issue in the previous proceedings; (ii) the previous proceedings were between the same parties; (iii) the matter was heard and finally decided by a competent Court. In this regard, a reference may be made to the judgment passed by the Supreme Court in the case of [Sheodan Singh Vs. Daryao Kunwar \(Smt.\)](#) AIR 1966 SCC 1332, explained that the Rule of res- judicata applies only when the matter in issue has been heard and finally decided in earlier proceedings. The similar view was taken in the case of [State of UP Vs. Nawab Hussain](#) (1997) 2 SCC 806. In the case of [Forward Construction Co. Vs. Prabhat Mandal](#) (1986) 1 SCC 100, the Supreme Court held that principle cannot be applied mechanically and must depend on the facts and scope of earlier litigation. The similar

view has been reiterated in the case of Hope Plantations Ltd. Vs. Taluk Land Board (1997) 5 SCC 590. On a complete perusal of the writ petition as also the interlocutory application filed on behalf of the petitioners, this Court is of the firm opinion that the nature of relief sought for in the present proceedings is differently drawn from the one sought for in the previously filed W.P. No. 4216/2003 at the Principal Seat at Jabalpur.

Both the parties informed the Court in the course of arguments that the matter is pending consideration before the Division Bench vide W.A. No. 784/2006 with no effective interim order staying the operation and effect of the impugned circular cum office order dated 07.04.2003 by the Division Bench. While dismissing the writ petition, the Single Bench has left the question of territorial jurisdiction also open, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 which implies that issue of maintainability of the writ petition on the ground of jurisdiction was never adjudicated, for which reason also this Court is of the firm view that the present proceedings shall not be barred on the grounds of res judicata. [112] Having considered the pleadings and the earlier proceedings placed on record, we find that the issue raised in the present petition were not directly and substantially adjudicated in the earlier proceedings, therefore, the contention raised by learned counsels for respondent No.8 and counsels for interveners regarding res-judicata is rejected. We find that the said order was passed by Single Judge considering the facts of the said case without adverting to the larger issues like in the present petitions involving 'right of worship' under the Constitution of India, challenge to the order of ASI, notifications issued by ASI seeking survey by ASI through scientific method etc., therefore, the order of the Single Judge passed in the case of Qazi Zakaullah (supra) and Vimal Kumar, cannot be a ground for dismissing the present petitions on the said ground.

[113] Another objection is regarding delay and laches. It has been vehemently argued that the petitions suffer from delay and laches. It has been argued that the order was passed by the ASI on 7.4.2003 and the petitions have been filed by Hindu Front and Kuldeep Tiwari in the year 2022. The petition patently suffers from delay and laches, and, therefore, deserves to be dismissed on the ground of delay and laches. The reliefs claimed in these petitions are not confined only to the validity of the order passed by the ASI but they have sought declaration of their right of performing pooja, rituals under [Article 25](#) of the Constitution of India. Further the order dated 7.4.2003 passed by ASI which restricts the right of hindu community to worship within the disputed area and to perform it only on a particular day is a continuing cause of action. The said order is still operative and the restrictions are continuing. Even otherwise in view of the subsequent orders passed by the Supreme Court in the present case itself after the order passed by this Court directing for conduction of scientific survey by ASI and upholding the said order and remanding the matter for deciding the case, the petitions cannot be dismissed on the ground of delay and laches. On a specific query being put to the counsel the ASI for pointing out the material taken into consideration by them, or the State Government, prior to passing of the order dated 07.04.2003, there was no satisfactory answer meeting the mandatory, indispensable requisites of Section 16 the Monument Act, 1958. The Court therefore cannot be oblivious to the deliberate NEUTRAL CITATION NO. 2026:MPHC-

IND:8805 WP-10497-2022 dereliction of duty on the part of ASI, especially when the controversy has been brewing for decades now. The Court finds substance in the argument of the petitioners that even though the impugned order was issued in April 2003, the constant inaction and disdainful attitude of the ASI in neglecting the spite of Bhojshala Temple cum Kamal Maula Mosque and violation of the provisions of Section 16 the Monument Act, 1958, specifically [Section 16\(2\)](#) constitutes a continuing cause of action. If any place of worship or a shrine is subjected to a usage through an order issued contrary to the statutory provisions to the mandate of the Ancient Monuments Act, 1958, then the continuation of the activity by any community (Hindu or Muslim), amounts to a continuing illegality falling in the category of perpetual wrong and thus, a continuing cause of action. Therefore the plea of limitation, delay and laches as raised by Mr. Bagadia seems prima-facie unpalatable to the Court. A lot will turn upon the outcome of the survey or study to be undertaken by the ASI, which would further scan the spine of the impugned order dated 07.04.2003. The objections relating to the delay and laches raised by the respondents is also not sustainable and is hereby rejected. [114] The learned Sr. Counsels for respondent No.8 and counsels for intervener raised an objection that the present petition is not maintainable in view of the provisions of [Place of Worship \(Special Provisions\) Act, 1991](#). To consider the aforesaid, it is apt to refer the Object and Provisions of the Act, 1991.

—Parliament enacted the [Places of Worship \(Special Provisions\) Act 1991 Sections 3, 6 and 8](#) of the legislation came into force at once on the date of enactment (18 September 1991) while the other provisions are deemed to have come into force on 11 July 1991. The long title evinces the intent of Parliament in enacting the law, for it is:

—[An Act](#) to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of anyplace of worship as it existed on the 15th day of August, 1947, and for matters connected therewith or incidental thereto.|| The law has been enacted to fulfil two purposes. First, it prohibits the conversion of any place of worship. In doing so, it speaks to the future by mandating that the character of a place of public worship shall not be altered. Second, the law seeks to impose a positive NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 obligation to maintain the religious character of every place of worship as it existed on 15 August 1947 when India achieved independence from colonial rule.

The expression place of worship_ is defined in [Section 2\(c\)](#) thus :

—2.(c) — —"place of worship" means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.|| In Section 2(a), the Places of Worship Act provides that the commencement of this Act|| means the commencement on 11 July 1991.

[Section 3](#) enacts a bar on the conversion of a place of worship of any religious denomination or a section of it into a place of worship of a different religious denomination or of a different segment of the same religious denomination:

—3. Bar of conversion of places of worship.--No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof. || [Section 4](#) preserves the religious character of a place of worship as it existed on 15 August 1947:

"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.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority:

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious 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 not so abate and every such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

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;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.¶ (Emphasis supplied) The Places of Worship Act however contains an exemption from the application of its provisions to the place of worship —commonly known as —Ram Janam Bhumi-Babri Masjid¶ and to any suit, appeal or proceeding relating to it. [Section 5](#) stipulates:

—5. Act not to apply to Ram Janma Bhumi-Babri Masjid.--Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 other proceeding relating to the said place or place of worship¶.

[Section 6](#) provides for a punishment of three years_ imprisonment and a fine for contravening the provisions of [Section 3](#) and for an attempt or act of abetment:

—6. Punishment for contravention of section

3.--(1) Whoever contravenes the provisions of [section 3](#) shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever attempts to commit any offence punishable under sub-section (1) or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

(3) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under sub-section (1) shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in [section 116](#) of the Indian Penal Code, be punishable with the punishment provided for the offence. || [Section 7](#) confers upon the Places of Worship Act overriding force and effect:

"7. Act to override other enactments.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act. || The law imposes two unwavering and mandatory norms:

A bar is imposed by [Section 3](#) on the conversion of a place of worship of any religious denomination or a section of a denomination into a place of worship either of a different section of the same religious denomination or of a distinct religious denomination. The expression —place of worship|| is defined in the broadest possible terms to cover places of public religious worship of all religions and denominations.

The law preserves the religious character of every place of worship as it existed on 15 August 1947. Towards achieving this purpose, it provides NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 for the abatement of suits and legal proceedings with respect to the conversion of the religious character of any place of worship existing on 15 August 1947. Coupled with this, the Places of Worship Act imposes a bar on the institution of fresh suits or legal proceedings. The only exception is in the case of suits, appeals or proceedings pending at the commencement of the law on the ground that conversion of a place of worship had taken place after 15 August 1947. The proviso to sub-section(2) of [Section 4](#) saves those suits, appeals and legal proceedings which are pending on the date of the commencement of the Act if they pertain to the conversion of the religious character of a place of worship after the cutoff date. Sub-Section (3) of [Section 4](#) however stipulates that the previous two sub- sections will not apply to:

(a) Ancient and historical monuments or archaeological sites or remains governed by Act 24 of 1958 or any other law;

(b) A suit or legal proceeding which has been finally decided settled or disposed of;

(c) Any dispute which has been settled by the parties before the commencement of the Act;

(d) A conversion of a place of worship effected before the commencement of the Act by acquiescence; and

(e) Any conversion of a place of worship before the commencement of the Act in respect of which the cause of action would be barred by limitation.

Section 5 stipulates that the Act shall not apply to Ram Janmabhumi - Babri Masjid and to any suit, appeal or any proceeding relating to it. Consequently, there is a specific exception which has been carved out by the provisions of the Places of Worship Act in respect of the present dispute. [115] 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. The 'conversion' has been defined [u/S.2\(b\)](#) with its grammatical variations, includes alteration or change of whatever nature. To NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 deal with the aforesaid objection, it is appropriate to consider the Statement of Objects of the Act which is reproduced as under:-

—Statement of Objects and Reasons.—In view of the controversies arising from time to time with regard to conversion of places of worship, it is felt that such conversions should be prohibited.

2. In order to foreclose any controversy in respect of any place of worship that existed on 15th day of August, 1947 it is considered necessary to provide for the maintenance of the religious character of such place of worship as it existed on the 15th day of August, 1947. As a consequence thereof, all the suits or other proceedings pending as on 11th day of July, 1991 with respect to any of such places of worship, may abate and also further suits or other proceedings may be barred.

3. However, since the case relating to the place commonly called Ram Janma Bhumi-Babri Masjid forms a class by itself, it has become necessary to exempt it entirely from the operation of this Act.

4. Moreover, in order to maintain communal harmony and peace, matters decided by Courts, tribunals or other authorities, or those settled by parties amongst themselves or through acquiescence, between 15th day of August, 1947 and the 11th day of July, 1991 are also exempted from the operation of this Act.

5. The 11th day of July, 1991 is proposed as the commencement date of the Act as on that day the President addressed the Parliament making such a declaration.

6. The Bill seeks to achieve the above objectives||.

(Emphasis supplied [116] Para 2 of the Statement of Objects clearly says that the Act is enacted to foreclose any controversy in respect of any place of worship that existed on 15th day of August, 1947 and it has been considered necessary to provide for the maintenance of the religious character of such place of worship as it existed on the 15th day of August, 1947. As a consequence thereof, all the suits or other proceedings pending as on 11th day of July, 1991 with respect to any of such places of worship, may abate and also further suits or other proceedings may be barred. The provisions of [Sec.3](#) and [Section 4](#) of the Act, 1951, the bar [u/S.3](#) deals with the conversion of places of worship and NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [Section 4](#) says that the religious character of a place of worship existing on the 15 th August, 1947 shall continue the same existed on that day. Sub Section (2) of [Section 4](#) says that any such appeal or other proceedings with respect to conversion of religious character of any place of worship existing on 15th August 1947 pending before any Court, Tribunal or Authority, the same shall abate and no suit, appeal or other proceeding with respect to any such matter shall lie or after such commencement any court, tribunal or any authority. Sub section (3) of [Section 4](#) makes it clear that the provisions of sub-section (2) of [Section 4](#) shall not apply to any place of worship which is an ancient and historical monument or an archaeological site or remains covered by [Ancient Monument and Archaeological Sites and Remains Act, 1958](#) or any other law for the time being in force. If the disputed area is held to be a protected monument under the provisions of the 1958 Act, the bar under the Act 1991 would not apply to such disputed area and the area which is notified as a protected monument under the Act of 1958 is exempted from the application of the bar under the Act which is also evident from the over riding effect [u/S.7](#) of the Act. In the present cases, the issue is not relating to the 'title of the property' but for the claim of fundamental right of worship/prayer. In the present petitions no claim to title on the disputed area is claimed but a declaration has been sought in regard to the character of place of worship which was existing as on 15.8.1947 as per the constitutional provisions in reference to [Article 13](#) of the Constitution of India. Thus, it is clear that the Act bars to 'change of the character' of the religious place of worship and bars the 'suits' or other proceedings pending on 11th day of July, 1991 stating it to be abated and further suits or other proceedings may be barred. Thus, it is axiomatic the same does not apply to the extra ordinary jurisdiction of High Court under [Article 226](#) of the Constitution of India. The power of High Court under [Article 226](#) of the Constitution of India for enforcement of fundamental rights or any other purpose even otherwise cannot be overridden by any legislation. Power of judicial review under [Article 226](#) of the Constitution of India is basic structure of the Constitution of India as held in the case of [L. Chandra Kumar Vs. Union of India & Ors.](#) (1997) 3 SCC 261. Thus, the contention of learned Sr. Counsels for respondents and other counsels for interveners regarding the dismissal of the

petitions by Hindu Front, Kuldeep Tiwari and Jain community in view of the provisions of Worship Act, 1991 is repudiated. Considering the nature of the petitions, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 reliefs and various notifications, ASI reports and subsequent orders by the Supreme Court, it is held that the petitions are maintainable. [117] Regarding objection whether the petitions and the reliefs claimed in the aforesaid petitions can be considered in view of the order passed by the Apex Court in the case of Ashwini Kumar Upadhyay (supra), learned Sr. Counsels for the respondent No.8 and counsels for the interveners argued that the present petitions cannot be entertained and heard in the light of the order passed by the Supreme Court in the case of Ashwini Kumar Upadhyay (WP (Civil) No.1246/2020 wherein the constitutional validity of the provisions of [Place of Worship \(Special Provisions\) Act, 1991](#) is under challenge. They heavily relied on the order passed by the Supreme Court in the said case on 12.12.2024 which is reproduced as under:-

WP(Civil) No.1246/2020 (Ashwini Kumar Upadhyay (Petitioner) order dated 12.12.2024.

—All applications for intervention/impleadment are allowed, subject to all just exceptions.

The amended memo of parties will be filed within four from today. The Union of India, which has not filed its counter affidavit/reply, shall file the same within four weeks from today. It is noted that in Writ Petition (Civil) No. 782/2022, which seeks the implementation and enforcement of the Places of Worship(Special Provisions) Act, 1991. notice was issued, vide orderdated 09.09.2022. A counter affidavit/reply has not yet been filed. As noted in the order dated 11.07.2023, it has been stated onbehalf of the Union of India that a common affidavit in reply and response to the entire batch of cases will be filed.

Copies of the said counter affidavit/reply will be served on the petitioners and the respondents, who may file their rejoinder(s)/response(s) thereto within four weeks from the date of service of the counter affidavit/reply.

Once filed, a copy of the said counter affidavit/reply of the Union of India shall be uploaded on the Google Drive link to be created by Mr. Kanu Agarwal, Advocate-on-Record, who is the Nodal Counsel for the Union of India in the present matter. The said link will then be circulated to all the concerned Advocates-on- Record in the present case, including those for the newly impleaded parties. Mr. Vishnu Shankar Jain, Advocate-on-Record, is appointed as the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Nodal Counsel on behalf of the writ petitioners challenging the validity of the 1991 Act. Mr. Ejaz Maqbool, Advocate-on-Record, is appointed as the Nodal

Counsel on behalf of the petitioners/intervenors who seek enforcement of the 1991 Act or are opposing the writ petitions challenging the validity of the 1991 Act.

All the pleadings/documents to be filed in the present matter shall also be sent to the Counsel Nodal on the email id:inrewritpetition559of2020@gmail.com. All the Nodal Counsel will have access to the said email ID to facilitate coordination. This Court, vide order dated 12.10.2022, had referred to the submissions of the parties, formulating several questions of law. During the course of the hearing, it was pointed out that several other aspects and issues would also arise for consideration.

The primary issue, that arises for consideration, is with regard to [Sections 3 and 4](#) of the 1991 Act and its contours, as well as the width and expanse of the said provisions. As the matter is sub judice before this Court, we deem it appropriate to direct that, though fresh suits may be filed, no suits would be registered and no proceedings shall be undertaken therein till further orders of this Court.

Further, in the pending suits, no Court will pass any effective interim orders or final orders, including orders directing surveys, etc., till the next date of hearing/further orders of this Court.

Re-list on 17.02.2025."

[118] It is argued that the Supreme Court has directed that as the matter is sub judice before this Court, it is appropriate to direct that, though fresh suits may be filed, no suits would be registered and no proceedings shall be undertaken therein until further orders of this Court. Further, in the pending suits, no Court will pass any effective interim orders or final orders, including orders directing surveys etc. till the next date of hearing/ further orders of this Court, therefore, these petitions cannot be heard and are not maintainable.

[119] Upon perusal of the entire order, we find that the said order cannot be construed to apply to a writ petition under [Article 226](#) of the Constitution of India. The directions NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 are in respect of the suits. Further, a subsequent order was passed in the case of one of the party here in this petition i.e. Maulana Kamaluddin Welfare Society, Dhar. On 21.1.2025 the case pending before the Supreme Court filed by Maulana Kamaluddin Welfare society, Dhar was tagged with the case of Ashwini Kumar Upadhyay. The relevant order passed by the Supreme Court in the case of Ashwini Kumar Upadhyaya (supra) are quoted as under:-

Writ Petition (Civil) No.1246/2020 (Ashwini Kumar Upadhyay (petitioner) order dated 17.02.2025 All applications for intervention/impleadment are allowed, subject to all just exceptions.

The amended memo of parties will be filed within four weeks 7 WP(C) No. 1246/2020 etc. from today.

The Union of India, which has not filed its counter affidavit/ reply, shall file the same within four weeks from today.

It is noted that in Writ Petition (Civil) No. 782/2022, which seeks the implementation and enforcement of the [Places of Worship \(Special Provisions\) Act, 1991](#),¹ notice was issued, vide order dated 09.09.2022. A counter affidavit/reply has not yet been filed.

As noted in the order dated 11.07.2023, it has been stated on behalf of the Union of India that a common affidavit in reply and response to the entire batch of cases will be filed.

Copies of the said counter affidavit/reply will be served on the petitioners and the respondents, who may file their rejoinder(s)/response(s) thereto within four weeks from the date of service of the counter affidavit/reply.

Once filed, a copy of the said counter affidavit/reply of the Union of India shall be uploaded on the Google Drive link to be created by Mr. Kanu Agarwal, Advocate-on-Record, who is the Nodal Counsel for the Union of India in the present matter. The said link will then be circulated to all the concerned Advocates-on-Record in the present case, including those for the newly impleaded parties.

Mr. Vishnu Shankar Jain, Advocate-on-Record, is appointed as the Nodal Counsel on behalf of the writ petitioners challenging the validity of the 1991 Act. Mr. Ejaz Maqbool, Advocate-on-

Record, is appointed as the Nodal Counsel on behalf of the petitioners/intervenors who seek NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 enforcement of the 1991 Act or are opposing the writ petitions challenging the validity of the 1991 Act.

All the pleadings/documents to be filed in the present matter shall also be sent to the Nodal Counsel on the email id:

inrewritpetition559of2020@gmail.com. All the Nodal Counsel will have access to the said email ID to facilitate coordination.

This Court, vide order dated 12.10.2022, had referred to the submissions of the parties, formulating several questions of law. During the course of the hearing, it was pointed out that several other aspects and issues would also arise for consideration.

The primary issue, that arises for consideration, is with regard to [Sections 3 and 4](#) of the 1991 Act and its contours, as well as the width and expanse of the said provisions.

As the matter is sub judice before this Court, we deem it appropriate to direct that, though fresh suits may be filed, no suits would be registered and no proceedings shall be undertaken therein till further orders of this Court.

Further, in the pending suits, no Court will pass any effective interim orders or final orders, including orders directing surveys, etc., till the next date of hearing/further orders of this Court.

Re-list on 17.02.2025. || Order dated 21.2.2025 —It is pointed by the learned counsel for the parties that the Writ Petition (Civil) No.1246 of 2020, seeking, inter alia, the implementation and enforcement of the [Places of Worship \(Special Provisions\) Act, 1991](#), is pending where interim orders were passed by the Bench headed by Hon'ble the Chief Justice of India on 12.12.2024.

The Registry should accordingly obtain necessary orders from Hon'ble the Chief Justice and tag this matter along with other pending cases.

All contentions are left open for the parties to argue when the matter is taken up. || NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [120] On 22.1.2026 on an application filed by one of the party, the Supreme Court remanded the matter for adjudication before this Court. The order passed by the Supreme Court on 22.1.2026 and 1.4.2026 are reproduced as under:-

Civil Appeal arising out of SLP(C) No.7023/2024 (Maulana Kamaluddin Welfare Society, Dhar - appellant). Order dated 22.1.2026 —1] Through a separate oral order of even date, we have disposed of IA No.527 of 2026 filed in the instant petition, wherein urgent directions have been issued. After the hearing on that application concluded and the order disposing it was dictated, on the oral request and with the consent of learned counsel for the parties, the special leave petition is taken on board for final disposal.

2] Leave granted.

3]The issue that arises for consideration before this Court is whether the High Court of Madhya Pradesh at Indore was justified in issuing interim directions through the impugned order dated 11.03.2024 in Writ Petition No.10497 of 2022. The Writ Petition pertains to a historical site in District Dhar, M.P., which, according to one set of 1 claimants, is the Bhojshala Saraswati Temple, whereas the other set of parties opposing such claims assert it to be the Maulana Kamal Maula Mosque.

4] The directions issued by the High Court on an application moved by respondent nos.1-7, inter alia, obligate the Archaeological Survey of India (in short, the 'ASI') to undertake a complete scientific investigation, survey, and excavation by adopting latest methods, techniques, and modes, including carbon dating of the various structures and a GPR-GPS Survey of the subject site. The above-mentioned directions issued to the ASI are meant to identify the real and true form, nature, and character of the historical building.

5] There are also other ancillary directions, such as for proper documentation of the report of the Expert Committee of not less than five senior-most officers of ASI, besides photography and videography of the entire survey proceedings. The locked/sealed halls and rooms were also directed to be opened so that the artifact(s), idol(s), etc. or any other structure found in the said areas could also be inventoried and scientifically examined by the expert team.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 6] Against the above-stated order dated 11.03.2024 of the High Court, the instant appeal came up for hearing before this Court on 01.04.2024, when it was directed that no action should be taken on the outcome of the survey ordered by the High Court.

It was also made clear that no physical 2 excavation should be undertaken, which may alter the character of the Bhojshala Saraswati Temple-

cum-Maulana Kamal Maula Mosque.

7] At the outset, it is pointed out by Shri K.M. Nataraj, learned Additional Solicitor General of India, who is representing the State of Madhya Pradesh, as well as, on our asking, the Archaeological Survey of India, that the scientific survey, as directed by the High Court, had begun before this Court issued the interim order on 01.04.2024, and the same now stands concluded. Learned Advocate General for the State of Madhya Pradesh also endorses this statement.

The report is presently lying in a sealed cover before the High Court.

8] On our suggestion, Shri Salman Khurshid, learned senior counsel for the appellant, fairly submits that a copy of the survey report may be ordered to be supplied to the parties, and thereafter the appellant may be permitted to submit the objections, if any. Such like liberty can also be granted to the other side. These objections, thereafter, may be considered by the Division Bench of the High Court at the time of final hearing.

9] In view of the fair stand taken by all the stakeholders, we dispose of this appeal with the following directions:

(i) The Writ Petition No. 10497 of 2022 pending before the Indore Bench of the High Court may be taken up by a Division Bench, preferably presided over by the Hon'ble Chief Justice 3 of the High Court or the senior most judge of the High Court Bench, presiding the said Bench of the High Court, within a period of three weeks;

(ii) The Division Bench is requested to unseal the report in open Court and supply copies thereof to both sides. If any part of the report cannot be copied, the parties may be permitted to inspect such part of the report in the presence of expert(s) and their counsel;

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(iii) Thereafter, the parties may be granted two weeks' time to submit their respective objections, opinions, suggestions, and/or recommendations;

(iv) The Division Bench of the High Court may, thereafter, take up the case for final hearing and all the submissions of the parties may be duly considered at the time of final hearing; and

(v) Till the Writ Petition is finally decided, the parties shall maintain status quo re: alteration in the character of the Bhojshala Saraswati Temple-cum-Maulana Kamal Maula Mosque. Meanwhile, the parties shall continue to abide by and implement the order dated 07.04.2003 issued by the Director General of the Archaeological Survey of India.

10] It seems that the order dated 07.04.2003 passed by the Director General of Archaeological Survey of India was also separately challenged in a writ petition before the High Court, which was dismissed by a learned Single Judge. An intra-

Court Writ Appeal against the order of the Single Judge is stated to be pending before the High Court. Let that appeal, along with any other connected matter, be also heard by the Division Bench with the main writ petition.

11] Ordered accordingly.

12] It is clarified that we have not expressed any opinion on the merits of the case, and all the contentions raised on behalf of the parties are kept open to be raised and considered by the

High Court. || Civil Appeal no.4127/2026 dated 01.04.2026 Maulana Kamaluddin Welfare Society - appellant) —1. Leave granted.

2. Civil Appeal No. 466/2026, which arose from an interim order dated 11.03.2024 passed by the High Court of Madhya Pradesh, was disposed of by this Court on 22.01.2026 after hearing both sides, through a reasoned order. In para 8 of the said order, this Court took notice of the fair stand taken on behalf of the appellant that a copy of the Survey Report may be supplied to the parties and some time may be granted to them to submit their objections.

Such objections, thus, were to be considered by the Division Bench of the High Court at the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 time of final hearing. Consequently, the following directions contained in para 9 of the said order were issued:

—(i) The Writ Petition No. 10497 of 2022 pending before the Indore Bench of the High Court may be taken up by a Division Bench, preferably presided over by the Hon'ble Chief Justice of the High Court or the senior most judge of the High Court Bench, presiding the said Bench of the High Court, within a period of three weeks;

(ii) The Division Bench is requested to unseal the report in open Court and supply copies thereof to both 2 sides. If any part of the report cannot be copied, the parties may be permitted to inspect such part of the report in the presence of expert(s) and their counsel;

(iii) Thereafter, the parties may be granted two weeks' time to submit their respective objections, opinions, suggestions, and/or recommendations;

(iv) The Division Bench of the High Court may, thereafter, take up the case for final hearing and all the submissions of the parties may be duly considered at the time of final hearing; and

(v) Till the Writ Petition is finally decided, the parties shall maintain status quo re:

alteration in the character of the Bhojshala Saraswati Temple-cum-Maulana Kamal Maula Mosque. Meanwhile, the parties shall continue to abide by and implement the order dated 07.04.2003 issued by the Director General of the Archaeological Survey of India.

3. There is no dispute that the Survey Report was supplied to the parties, and some of them have submitted their objections thereto. It further appears that the Archaeological Survey of India (—ASI||) also conducted videography and photography of the site.

4. The High Court has now, in deference to para 8 of the order dated 22.01.2026, passed the impugned interlocutory order to the effect that the objections submitted by the parties shall be considered and decided at the time of final hearing. The High Court has directed that the application filed by the appellant for production of videos and coloured photographs taken by the ASI shall be considered at the time of final hearing of the case.

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5. In this regard, we may take notice of paragraphs 5 and 6 of the application moved by the appellant, which is respondent No.8 before the High Court.

6. It, thus, seems that according to the appellant, there are some objections which arise from what is duly recorded in the 3 course of videography. We have no doubt that the learned High Court, after seeing such videography, shall consider those objections too, along with other objections made by the parties, in accordance with the principles of natural justice. The High Court shall, accordingly, take an appropriate decision on the objections, including those which are found arising from the videography.

7. In this regard, we have not expressed any opinion on merits. All the issues are left open to be adjudicated by the High Court. The parties may, accordingly, raise their respective contentions before the High Court.

8. The appeal stands disposed of in the above terms.¶ [121] From the aforesaid, it is clear that the respondent No.8 who is raising this preliminary objections regarding non maintainability of the petition or deferment of hearing in view of the order passed in the case of Ashwini Kumar Upadhyay (supra) his case itself was remanded by the Supreme Court for adjudication before this Court. Thus, the contention of learned counsel for respondents and interveners that the petitions are not maintainable in view of the pendency of the petition of Ashwini Kumar Upadhyay (supra) is not sustainable. The same is hereby rejected. [125] Now we advert to the merits of the case after hearing learned counsel for the parties at length.

[A] LEGAL HISTORY

[122] The facets regarding pending, decided cases and orde
disputed area are noted as under:-

[123] One Amiruddin S/o Waziruddin was first to file Civil Suit No.42 of 1962 impleading Union of India, the Government of Madhya Pradesh and later on Thakur Nihal Chandra, President Hindu Mahasabha Dhar and Bhoj Smriti Utsav Committee NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 were also impleaded as Defendants, praying that the possession of Kamal Maula mosque be handed over to him from Defendants and also for restraining the Defendants from interfering in offering namaz 5 times in Masjid Kamal Maula. Later, the suit was renumbered as 40(A) of 1962 and was sent to the Court of Additional District Judge, Dhar. In the suit the Plaintiff had alleged that there existed a mosque at land No.313 and same was a protected monument under 1904 Act. The suit was dismissed in default vide order dated 27.9.1969 passed by First Additional District Judge, Dhar.

[124] After filing the suit No.40-A of 1962 Thakur Nihal Chandra, President Hindu Mahasabha Dhar and Bhoj Smriti Utsav Committee Dhar were impleaded on their application as Defendants No.3, 4 and 5. All the Defendants filed written statement. The ASI had filed written statement in the Court of Civil Judge and again in the Court of Additional District Judge on 5.7.1969. The written statement was filed by private defendants on 4.5.1964 in Suit No.40-A of 1962. ASI has also filed written statement in Suit No.40-A of 1962 filed on 30.11.1963 and 5.7.1969. The suit was dismissed in default by 1st Additional District Judge, Dhar by order dated 27.9.1969.

[125] One Vimal Kumar S/o Fateh Lal Ji R/o 40 Raghunath Pura, Dhar had filed Writ Petition No.1295 of 1997 challenging order dated 12.5.1997, 13.6.1997 and 29.7.1997 which restricted the rights of Hindus for prayers in disputed area. It was also prayed that _direction be issued restraining Respondents from prohibiting entry of believers of Goddess Saraswati and Hindus for entering into Bhojshala temple of Goddess Saraswati.

[126] Later the Petitioner Vimal Kumar filed application in Writ Petition No.1295 of 1997 seeking permission to withdraw the writ petition. The Hon'ble Court vide order dated 28.01.1998 accepted the prayer and the writ petition was dismissed as withdrawn with liberty to approach before the competent forum.

[127] Director-General of ASI passed an order on 07.04.2003 in exercise of the powers under Rule 4 of The Ancient Monument and Archaeological Sites and Remains Rules, 1959 and partially notifying order No.F No.11/5/97-MCH dated February 5, 1998 making provisions for the entry into the Bhojshala-Kamal Maula Mosque at Dhar. It is provided that Muslim community shall be allowed access to the premises for Friday Namaz between 1 to 3 pm and Hindus shall be permitted to hold traditional NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 ceremonies on the occasion of Basant Panchami every year and shall be permitted access on every Tuesday from sunrise to sunset and the visitor could take a flower or two and a few granules of rice.

[128] The Writ Petitioner Shri Qazi Zakaullah had filed LPA No.766 of 2003 at Principal seat Jabalpur and the same was dismissed on 5.9.2005. Against the order dated 5.9.2005 passed in LPA No.766 of 2003, SLP(C) CC1800 of 2006 has been filed by Qazi Zakaullah before the Hon'ble Supreme Court and same was withdrawn with liberty to take steps for revival of Letters Patent Appeal before the High Court.

[129] In short cases related to Bhojshala and Kamal Maula's Mosque (disputed area) in chronological order is stated as below:

1. Civil Suit No. 40 (A)/ 1962, Amiruddin (LRs) V/s Union of India and other before the District Court, Dhar (M.P.) (Dismissed in Default).
2. Writ Petition No. 1295/1997, Vimal Kumar V/s State of M.P. and others before the High Court of M.P., Indore Bench (Withdrawn by petitioner with liberty to approach the competent forum).

3. Writ Petition No. 4216/2003, Qazi Zakaullah and others V/s State of M.P and others before the High Court of M.P., Jabalpur Bench (Order issued in favour of ASI on 18.09.2003).

4. Writ Appeal No. 784/2006, Qazi Zakaullah and others V/s State of M.P and others before the High Court of M.P., Jabalpur Bench (Pending).

5. Letters Patent Appeal No. 766 of 2003, Qazi Zakaullah and others V/s State of M.P and others before the High Court of M.P., Jabalpur Bench.

6. Writ Petition No. 6514/2013, Antar Singh and others V/s Union of India and others before the High Court of M.P., Indore Bench (Pending).

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7. Writ Petition No. 1089/2016, Arun Singh V/s Union of India and others before the High Court of M.P., Indore Bench (Dismissed as withdrawn).

8. Writ Petition No. 28334/2019, Maulana Kamaluddin Welfare Society V/s State of M.P. and others before the High Court of M.P., Indore Bench (Pending).

9. Writ Petition No. 10484/2022, Kuldeep Tiwari and another V/s Union of India and others before the High Court of M.P., Indore Bench (Pending).

10. Writ Petition No. 10497/2022, Hindu Front for Justice V/s Union of India and others before the High Court of M.P., Indore Bench (Pending).

11. SLP Appeal (Civil) No. 7023 of 2024, Maulana Kamaludddin Welfare Society Dhar Vs. Hindu Front for Justice & Ors. Before the Hon'ble Supreme Court of India. (Disposed vide 22.1.2026).

12. Case No.Civil Suit RCS A/73/2026, Ayaz and others Vs. Union of India & Ors- District Court Dhar for claim of ownership by Muslim community.

13. Supreme Court of India- Civil Appeal No. 4127/2026 @SLP (Civil) No. 11468/2026, Maulana Kamaluddin Welfare Society V/s Hindu Front for Justice and others arising out of High Court WP No. 10497/2022-(Disposed vide order dated 01.04.2026).

14. Writ Petition No. 8986/2026, Shri Salek Chand Jain V/s Union of India and others-reg.

15. Writ Petition No. 13560/2026 filed by Zulfiqar Ahmad Khan and another related to CPM Bhojshala and Kamal Maula's Mosque before the High Court of M.P., Indore Bench, Indore.

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[130] In the light of above said back ground of cases pending or decided, now we consider it appropriate to refer legislative history of the disputed area. It would be apposite to consider the provisions of various Acts enacted from time to time pre- constitution and post-constitution.

[131] The following notifications have been issued by ASI in relation to the disputed area etime to time under different Acts which are quoted as under:-

Date	Particulars	Ref
24.08.1935	Dhar State notified Bhojshala to be dedicated as mosque and can only be used for offering namaz in official gazette	P/5
25.08.1951	Notification of 'Bhojshala and Kamal Maula Mosque' as protected monument at Sr.No.90 under the Ancient & Historical Monuments & Archaeological Sites & Remains Act, 1951	R2(No.
01.05.1952	Letter issued by Education Dept. Madhya Bharat, recognizing rights of Hindu Community on Bansant Panchami in Bhojshala	Ref No.
18.1.1985	Gazette Notification of State Govt.(Gr. No.612) purportedly notifying Bhojshala as waqf property referred as Jama Masjid, Dhar	P/4
12.05.1997	Restraining order of collector on entry of people inside Bhojshala Except for Hindu community on occasion of Basant Panchami and for Muslim Community on every Friday from 1-3 PM	P/7
05.02.1998	Director General, ASI order keeping Bhojshala premises closed except for Hindus on occasion of Basant Panchmi and for muslims between 1-3 PM on every Friday to offer Namaz.	P/8
07.04.2003	Director General, ASI by	P-9

modifying its order dated No.2
05.02.1998, granted
permission to tourist to visit
Bhojshala premises and
also to Hindu community to
offer prayer on every
Tuesday in addition to
occasion of Basant
Panchami.

25.1.2006 ASI letter to Superintendent P/17(W)
ASI for granting access for
Hindus from 12:30 PM to
3:30 PM & Muslims to 1-3
PM on 03.02.2006 at
Bhojshala(Basant Panchmi
falling on Friday)

11.02.2013 ASI order allowing access P/18
to Hindus on 14.02.2013 &
15.2.2013 at Bhojshala
from Sunrise to sunset
except 12 - 3:30 PM
(Basant Panchami falling
on Friday)

[132] Prior to the enforcement of the Constitution of India, there was an Act called [Ancient Monuments Preservation Act, 1904](#) (hereinafter shall be referred as Act of 1904). A notification was issued under the said Act in the year 1909 declaring the site as 'protected monument'. After the independence, an Act was enacted by the Parliament called the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (hereinafter shall be referred as —Act, 1951||). The source of legislation of the said Act is within the purview of List 1 Entry 61 (Union List), Entry 12 of List (ii) (State List) and further Entry 40 of List

(iii) (Concurrent List) of the 7th Schedule. The Constitutional validity or competence of the Parliament is not under challenge in the present petition as well as in any of the petitions which are being heard by this Court along with the present petition. Therefore, we need not to go to examine the validity of the same. The legislative history indicates that there are three enactments; one is Pre Constitution Act of 1904 and the two Acts are after independence i.e. Act of 1951 and Act of 1958. At present the Act of 1958 is undisputedly prevalent legislation.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [133] It is conjoin to refer the background of the Enactment of the Act 1958 before referring to the provisions of the Act which reads as under:-

—There are two Acts relating to ancient monuments-[The Ancient Monuments Preservation Act, 1904](#), and the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act,1951. [The Act](#) of 1951 merely

declares certain monuments, etc., to be of national importance and the Act of 1904 applies also to such monuments. While under the Constitution of India, the subject "Ancient and historical monuments; archaeological monuments; archaeological sites and remains", has been distributed under three heads, namely:-Union List, Entry 67-Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance; State list, Entry 12-

Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance; and concurrent List, Entry 40--Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance. [The Act](#) of 1904 governs all ancient monuments whether falling in the Central field or the State field, and vests all executive powers in the Central Government. The then existing position relating to ancient monuments was found to be unsatisfactory, and the need was felt to legislate a self-contained law at the Centre which would apply exclusively to ancient monuments, etc., of national importance falling under Union List, Entry 67 and to archaeological sites and remains falling under Concurrent List, Entry 40. To achieve this objective the Ancient Monuments and Archaeological Sites and Remains Bill was introduced in the Parliament.¶ [134] The statement of objects and reasons would also be relevant to be considered for Enactment of 1958 Act which is as under:-

—STATEMENT OF OBJECTS AND REASONS NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Under the Government of India Act, 1935, the subject "Ancient and historical monuments; archaeological monuments; archaeological sites and remains" fell within Entry 15 of the Federal List. Under the Constitution, this subject has been distributed under three different heads, namely,-

Entry 67, Union List-Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.

Entry 12, State List-Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance, and Entry 40, Concurrent List-Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.

There are at present two Acts in force relating to ancient monuments--the [Ancient Monuments Preservation Act, 1904](#), and the Ancient and Historical Monuments and

Archaeological Sites and Remains (Declaration of National Importance) Act, 1951. [The Act](#) of 1951 merely declares certain monuments etc. to be of national importance and the Act of 1904 applies also to such monuments. While the Constitution has distributed the subject-matter under three different heads the Act of 1904 governs all ancient monuments whether falling in the Central field or the State field, and vests all executive power in the Central Government. The position of the existing law relating to ancient monuments is far from satisfactory. The present Bill purports to be a self-contained law at the Centre which will apply exclusively to ancient monument, etc., of national importance falling under Entry 67 of List 1 and to archaeological sites and remains falling under Entry 40 in the Concurrent List. Simultaneously, the State Governments would be advised to enact a similar law in respect of ancient Central and State fields will be clearly demarcated and the existing confusion monument etc., falling under Entry 12 in the State List. In this manner, the Central and State fields will NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 be clearly demarcated and the existing confusion and overlapping of jurisdiction arising from the Act of 1904 will be eliminated.|| (emphasis supplied) [135] [Section 2\(a\)](#) Ancient Monument, [Section 2\(j\)](#) Protected Monument, [Section 3](#), [Section 16](#), [Section 18](#), [Section 21](#) and [Section 39\(2\)](#) of the Act of 1958 which reads as under:-

"2. Definitions.—In this Act, unless the context otherwise requires,—

(a) —ancient monument|| means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes—

(i) the remains of an ancient monument,

(ii) the site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of, an ancient monument;

(j) —protected monument|| means an ancient monument which is declared to be of national importance by or under this Act;

3. Certain ancient monuments, etc., deemed to be of national importance.—All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), or by [section 126](#) of the States Reorganisation Act, 1956 (37 of 1956), to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act.

16. Protection of place of worship from misuse, pollution or desecration.—(1) A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 (2) Where the Central Government has acquired a protected monument under [section 13](#), or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of, a protected monument under [section 5](#), and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or part thereof, from pollution or desecration—

(a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, 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

18. Right of access to protected monuments.—Subject to any rules made under this Act, the public shall have a right of access to any protected monument.

21. Excavations in protected areas.—An archaeological officer or an officer authorised by him in this behalf or any person holding a licence granted in this behalf under this Act (hereinafter referred to as the licensee) may, after giving notice in writing to the Collector and the owner, enter upon and make excavations in any protected area.

39. Repeals and savings.—(1) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), and [section 126](#) of the States Reorganisation Act, 1956 (37 of 1956), are hereby repealed.

(2) [The Ancient Monuments Preservation Act, 1904](#) (7 of 1904), shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respects things done or omitted to be done before the commencement of this Act.¶ [136] [Section 16](#) of the Act of 1958 is para-materia to Section 13(1) of the Pre Independence Act 1904. Under the Scheme of Act 1958, the ASI is under obligation NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 for preservation of Ancient Monument([Section 5](#)), maintenance of protected monuments ([Section 11](#)), protection of place of worship from misuse, pollution or desecration ([Section 13](#)), right of access to protected monuments ([Section 15](#)).

[137] [In the Act](#) of 1908 Ancient Monument was defined, however, —monument¶ and —protected monument¶ was not defined. The definition of 'Ancient Monument' is more or less similar in the Act of 1954. In between 1904 Act and 1958 Act, there was one more Act of 1951. Counsel for petitioner pointed out that as per sub-section (1) of Section 39, the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 and [Section 126](#) of the State Reorganisation Act 1956 were repealed, however, the Act of 1904 was not repealed and as per sub-section (2) of [Section 39](#), the Act of

1904 ceased to have effect in relation to an ancient and historical monument and archaeological sites and remains declared by or under this Act to be of National Importance except as respects things done or omitted to be done before the commencement of this Act. [The Act](#) of 1904 was not affecting the monuments and archaeological sites which have been declared of national importance under the Act of 1958 except only the things done or omitted to be done before the Act of 1958. A notification was issued in the year 1908 declaring the present site as protected monument. Protected monument has been defined [u/S.2\(j\)](#) means an ancient monument which is declared to be of national importance by or under this Act. The ancient monument is defined [u/S.2\(a\)](#) means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes the remains of an ancient monument, the site of an ancient monument, such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument. It further includes the means of access to, and convenient inspection of, an ancient monument.

[138] All the three Act relating to protection of ancient monument is considered with their object. The object of the Act was to provide for the preservation of ancient monuments and objects of archaeological, historical or artistic interest. The object of the Act was to provide for the preservation of ancient monuments for the exercise of control over traffic in antiquities and over excavation in certain places and for the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 protection and acquisition in certain cases of ancient monuments and objects of archaeological, historical or artistic interest. The definition [u/S.2\(1\)](#) of 'ancient monument' which has already been reproduced in the preceding paragraphs while considering the contentions of the learned counsel for petitioners. [u/S.3](#), the Central government was conferred power to declare an ancient monument to be a protected monument within the meaning of the Act. The 'protected monument' is not defined, however, an 'ancient monument' is defined and if an ancient monument is notified by the Central government as per [Section 3\(1\)](#) it becomes protected monument. As per sub-section (4) of [Section 3](#), 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 definition of this Act. The other provisions of the Act confers powers on the Central government to acquire the rights in or guardianship of an ancient monument. In pursuant to the above, a notification was issued that the —disputed area‖ was shown to be Bhojshala temple and Kamal Maula mosque. After the independence, the Parliament had enacted an Act to declare certain ancient and historical monuments and archaeological sites and remains in Part A States and Part B States to be of national importance and provided for certain matters connected therewith. The said Act called Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (for short '1951 Act'). The disputed area was included in Schedule 1 of Part 1 and it was mentioned as Bhojshala Mosque at Sl.No.10 of Madhya Bharat State. Thereafter another Act was enacted by the Parliament within a short span called [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (for short '1958 Act'). The source of legislation was provided in Entry 67 of Union List, Entry 12 of State List and Entry 14 of Concurrent List. [This Act](#) was enacted to

provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance for the regulation of archaeological excavation and for the protection of structures, carving and other like objects. [Section 2\(a\)](#) defines Ancient Monument. The definition was changed by adding that a structure which has been in existence for not less than 100 years and including other ancient monuments were defined as ancient monument. Archaeological sites and remains were first time added in this Act and were defined [u/S.2\(d\)](#). Protected monument was defined [u/S.2\(j\)](#) means any ancient monument which is declared to be of national importance by or under this Act.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [Section 3](#) of the 1958 Act where certain ancient monuments etc. were made deemed to be of national importance. As per this provision, the —property in question|| shall be deemed to be an ancient monument. The provisions of [Section 39](#) deals with repeal and saving. As per sub-section (2) of [Section 39](#), The Ancient Monuments Preservation Act 1904 (for short ‘1904 Act’) shall ceased to have effect in relation to ancient and historical monuments and archaeological sites and remains declared or by under this Act to be of national importance except as respect things done or omitted to be done before the commencement of the Act.

[139] However, a survey was already done by the ASI not before 1904 Act, notification and the said survey report has been heavily relied by the respondent No.8 and interveners, however an application IA No.986/2024 seeking directions to Director, ASI to conduct fresh survey as per [Section 16](#) and [21](#) of the Act for determining the true character of the disputed area was filed, the said application was allowed by referring all the judgments and facts of the present cases of both the sides. Order dated 11.3.2024 passed in WP No.10497/2022 is quoted as under:-

"Heard on I.A. No. 986/2024, which is an application seeking issuance of directions to the Director, Archaeological Survey of India in terms of Section 75(e) and [Order 26 Rule 10A of the CPC](#).

1. It is contended on behalf of the petitioners whilst pressing the Interlocutory Application that survey by the Archaeological Survey of India (for short „ASI“) is a statutory duty, which the ASI ought to have performed long back at the inception when the mystery and confusion about the true character of Bhojshala Saraswati Temple („Bhojshala Temple“) cum Maulana Kamal Maula Mosque („mosque“) arose leading to disputes about its true status. He goes on to contend that under [Section 16](#) read with [Section 21](#) of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 („the Monuments Act,1958“), determining and entertaining the true character of any ancient monument is a starting point for the ASI to discharge its statutory duty. A mandamus can be issued to the ASI for discharging its statutory duty in terms of [Section 16](#), towards determining the character and nature of the premises in question, viz. Whether a Temple or Mosque or to what extent are traits of temple along with the deity present in the temple. It is further submitted relying on the documents annexed with the Writ Petition vide Annexure P-5 (I-V) NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 (Images of the various parts & structures standing in the premises) that

there are yantras and sanskrit shlokas inscribed on floors, pillars, walls, which have been deliberately defaced and scratched by visitors from other community and religion; there are carved pillars with defaced images of Hindu goddesses and Gods of various buildings standing inside the premises, including images of Sun God and other Hindu Gods with their traditional engravings. Drawing attention of the Court to various structures like walls, sanctum sanctorum in the disputed complex, it is further argued that there are present mantras inscribed in Sanskrit with recitals of Pali/Prakrit.; a large Hawan Kund and other Kunds constructed originally for conducting Yajnas and offering rituals before them.

2. The petitioners have also relied upon number of historical documents and research material done by foreign as well as Indian Scholars which have mentioned that Bhojshala complex with the Vagdevi temple pre-existed the Kamal Maula Mosque hundreds of years before it. The documents relied upon by the petitioners side disclose that the mosque had been constructed by dismantling, destroying and dismantling the ancient structures of previously constructed Hindu temples for construction of the Mosque. This construction of the mosque on the pre-existing Bhojshala temple took place during the reigns of Alaudim Khilji at the turn of 13th - 14th century. Subsequently, the Kamal Maula Mosque was constructed during the regime of Mehmood Khilji (II) sometime in the year 1514. Even the study reports of the ASI prepared from time to time have stated that originally constructed Bhojshala and Vagdevi temple was destroyed / dismantled to install and construct a mosque over at the instance of Islamist rulers and forces.

3. In the backdrop of the aforementioned submissions, therefore the petitioners prays that it is the sanguine and bounden duty of the ASI acting under the Ancient Monuments Act, 1958 to ascertain the true character, nature and form of the premises in question.

4. Shri Ajay Bagadia, Senior Counsel appearing for the respondent no. 8 has lodged serious objections to the maintainability of the reliefs as sought for by the petitioners, as also interim application for survey by the ASI. He contended that a similar issue was agitated earlier in WP No. 4216/2003 ([Qazi Zakullah and Ors. v State of Madhya Pradesh and Ors.](#)). In the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 said writ petition also, very same order dated 07.04.2003 was put to challenge by the petitioners, when a Single Bench of this Hon^{ble} Court at the Principal Seat at Jabalpur had dismissed the aforesaid writ petition being non-maintainable and replete with disputed facts and submissions. The question of territorial jurisdiction was also laid open. Mr. Bagadia therefore contended that once the said WP No. 4216/2003 was dismissed by the Single Bench against which the W.A. No. 784/2006 is pending before the Division Bench of the Principal Seat at Jabalpur, no interference can be made.

5. Shri Bagadia further submitted that the State Government and ASI for obvious reasons are taking a particular stand under the influence and pressure of the Government of the day and the Court must pierce through the said obvious reasons of such a partisan stand in favour of the existence of Bhojshala Vagdevi Temple against the interests of Muslims, who have been praying on the situs and offering Namaaz for years. Mr. Bagadia further contended that the present proceedings are barred by the principle of „res-judicata“, which shall impede the maintainability of the present writ petition. He contended that eventually the final relief sought by the petitioners is overlapping and similar to the proceedings instituted at the Principal Seat Jabalpur and, therefore, the Court must not entertain the present writ petition. He vehemently argued that present proceedings cannot be equated with Ayodhya (Ramlala temple) dispute, where there was no dispute about the title of the deity, which makes the said case different from the present.

6. Shri Himanshu Joshi, Ld. ASG representing the Archaeological Survey of India (ASI) contended that the order passed by the DG, ASI in July, 2003 apparently did not take into consideration the previously prepared report in the year 1902 -03 under the aegis of then existing expert body and the said report clearly pointed out the pre-existence of Bhojshala Temple of Vagdevi and stated the same to be the important Gurukul & temple of vedic learning and studies. This report also stated that the said temple was razed down and dismantled, defaced by the Islamic invaders, who ruled the country later to construct the mosque therein. However, to separate the grain from the chaff, it is the specific submission & stand of the ASI that a fresh survey would clear the entire dust around the whole status of complex as a noon day.

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7. In the counter affidavit filed by the State Government, through the documents filed on record, it has been stated that the revenue records throughout till 1935-1936 bore the description of premises as Bhojshala & Temple, vide survey number 313 old (604 new) of village Dhar. Since Bhojshala has already been notified as one of the protected monuments under the Monuments Act of 1904 and thereafter again in 1951, therefore it has been managed and controlled entirely by the GOI/ ASI. There is no mention of „Jama Masjid“ anywhere in the revenue records. It is further contended by the State Government that entire land of the Bhojshala complex belong to the State Government, under the management & control of ASI since times preceding the independence. Therefore the same could have never been declared as a waqf property at all. It does not fulfill the necessary requirement for declaration of valid waqf under [Section 2](#) of the Waqf Act and the property never belonged to any muslim person to be created as a valid waqf endowment. The dargah of Hazrat Kamaluddin Chisti is situated on survey

number 302 and not on the structure of Bhojshala, and both the places are separate and distinct. Being notified monument under the provisions of earlier [Monuments Act, 1904](#), substituted by later Monuments Act, 1958, it could have never been notified as waqf nor be conferred the status of waqf as claimed to have happened in 1985. There is no evidence of offering of namaz prior to year 1935 and the order issued by Dhar State in the year 1935 is illegal void ab initio as the whole premises was under the control of ASI, under the ownership of the State. The State also supported the plea of the petitioners that ascertainment of the status of whole site is necessary to be undertaken to clear the misunderstanding, which has long been the reason for communal strife between both the communities.

8. In rejoinder, the petitioners submitted that ASI survey becomes all the more pressing and important in the backdrop of varied submissions made across the Bar, more so when ASI has admitted that there is a serious mystery enveloping the true nature, character and form of the premises in question. He has submitted that the situation and circumstances of Bhojshala temple are akin to Ayodhya Temple dispute, where there was a dispute about existence of the foundational birthplace of Lord Ram, where the Babri masjid was constructed.

9. Heard, learned counsel for the parties and perused the record.

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10. Before proceeding with the matter, it would be apt to refer to the relevant provisions of the Monument Act, 1958.

□ [Section 16](#) of the Monuments of 1958 "[Section 16](#): Protection of place of worship from misuse, pollution or desecration.— (1) A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.

(2) Where the Central Government has acquired a protected monument under [section 13](#), or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of, a protected monument under [section 5](#), and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or part thereof, from pollution or desecration—

(a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, 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."

□ Section 21 the Monument Act, 1958 ARCHAEOLOGICAL EXCAVATIONS 21 . An archaeological officer or an officer authorised by him in this behalf or any person holding a licence granted in this behalf under this Act (hereinafter referred to as the licensee) may, after giving notice in writing to the Collector and the owner, enter upon and make excavations in any protected area

11. As per [Section 39](#) titled as Repeals and Savings, the Monuments Act of 1958 has repealed the Monuments Act of 1904 and the Ancients and Historical Monuments and Archaeological Site and Remains (Declaration of National Importance) Act, 1951. Therefore the legislation that governs the premises in question of the Bhojshala today is the Monuments Act of 1958. It is not a NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 matter of dispute that vide gazette notification dated 28.11.1951, the premises have been notified as protected monuments, the status admitted by all the parties to the lis.

12. It is also not a matter of dispute that previously under the erstwhile [Monuments Act, 1904](#) also, the said premises were notified as an ancient monument already. Therefore there can be no iota of doubt that statutory duty of the ASI exists as enjoined under Section 16 of the Monument Act, 1958, viz. to ascertain the nature, character and original form of the place of worship. It is only thereafter that the protection of the said place of worship from misuse, pollution or desecration can happen at the instance of ASI. The starting point of applicability of [Section 16](#) is therefore ascertainment of the true character, nature and form of place or the site, where the ancient monument is situated.

13. The existence of a duty to find out the true character of any monument or an archaeological site is followed by the exercise under Section 21 of the Monument Act, 1958, viz, that of excavation, whenever any Archeological Officer has reasons to believe that the area contains ruins or relics of historical or archaeological importance. The survey therefore, by necessary implication includes qua the protected area a right accompanied with the duty of the Archaeological Officer to excavate, dig the said protected area containing ruins or relies of historical or archaeological importance. Ascertainment of character of a place of worship or a shrine is a precondition to decide or to determine the primary, fundamental and essential purpose of the place of worship or shrine under Section 16 of the Monuments Act, 1958. Till and until the character or the nature of the place of worship or shrine is not determined, decided or ascertained, the purpose of the temple is bound to be enveloped in mystery, just like the Bhojshala Temple or the Kamal Maula Mosque. The detailed arguments at the bar by all the contesting parties fortifies the Court's belief and assumption that the nature and

character of the whole monument admittedly maintained by the Central Government needs to be demystified and freed from the shackles of confusion. How to unshackle the whole site from the shackles of mystery, conflicting narratives and quandaries is a duty enjoined upon the ASI under Section 16 the Monument Act, 1958, and not upon the Court of law. Both the ASI and State Governments in their counter affidavits have categorically stated referring to various official dossiers, research studies and other associated material that the said perplexity exists even today having NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 snowballed into an extreme controversy today for any Government of the day to even touch the whole issue. In short, because of the mystery surrounding the exact nature, form and character of the Bhojshala Temple cum Kamal Maula Mosque, the ghost of controversies has assumed such mammoth proportion that it has become „touch me not“. Though Mr. Bagadia argued that the stand of the ASI and State Government is actuated more by political considerations, than by law, however the Court feels that it is a submission which weighs all the more in favour of the necessity of ASI to perform its statutorily assigned duty u/s 16 r/w Section 21 of the Monuments Act, 1958. The Court therefore cannot sit as a mute spectator, when admittedly inaction or abdication of statutory duty by the ASI mandated under [Section 16](#) is palpably visible. The order dated 07.04.2003 issued by the DG, ASI has been stated to be without any prior survey or study undertaken by the ASI under Section 16 of the Monument Act, 1958. The ASI in their counter affidavit vide „Paras 1 to 5 of Parawise Reply“ have not denied that no exercise under Section 16 the Monument Act, 1958 was ever carried prior to issuance of the impugned order of April 2003. Even on the Court’s oral query during the hearing, the Counsel for the ASI was not in a position to answer the said straight question about prior survey under Section 16 of the Monuments Act, 1958. From the specific stand of the ASI through its counter affidavit, it is thus clear that the order was issued without any prior survey or study under section 16 the Monument Act, 1958. The Court therefore is of the prima-facie opinion that order dated 07.04.2003 is in the teeth of and contrary to the mandate of Section 16 the Monument Act, 1958 , whereunder the primary postulate is the ascertainment of the nature and character of the place of worship or a shrine.

14. On a specific query being put to the counsel the ASI for pointing out the material taken into consideration by them, or the State Government, prior to passing of the order dated 07.04.2003, there was no satisfactory answer meeting the mandatory, indispensable requisites of Section 16 the Monument Act, 1958. The Court therefore cannot be oblivious to the deliberate dereliction of duty on the part of ASI, especially when the controversy has been brewing for decades now. The Court finds substance in the argument of the petitioners that even though the impugned order was issued in April 2003, the constant inaction and disdainful attitude of the ASI in neglecting the spite of Bhojshala Temple cum Kamal Maula Mosque and violation of the provisions of Section 16 the Monument Act, 1958, specifically NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [Section 16\(2\)](#) constitutes a continuing cause of action. If any place of worship or a shrine is subjected to a usage through an order issued contrary to the statutory provisions to the mandate of the Ancient Monuments Act, 1958, then the continuation of the activity by any community (Hindu or Muslim), amounts to a continuing illegality falling in the category of perpetual wrong and thus, a continuing cause of action. Therefore the plea of limitation, delay and laches as raised by Mr. Bagadia

seems prima-facie unpalatable to the Court. A lot will turn upon the outcome of the survey or study to be undertaken by the ASI, which would further scan the spine of the impugned order dated 07.04.2003.

15. So far as, other objection relating to res judicata raised by Shri Bagadia is concerned, it is a trite law that the same cannot always be decided as a preliminary issue or an issue to be dealt at the threshold for determining the maintainability of proceedings. It can be determined both by considering the facts as well as the law, being a mixed question of fact and law. However, for the purposes of deciding the application for interim directions preferred by the petitioners, the Court's opinion is that res judicata cannot be argued to be attracted in the present case, specifically in the context of adjudication of the present application. It is because the proceedings of W.P. No. 4216/2003 taken up before the Principal Seat at Jabalpur never had the prayer or the reliefs as sought for in the present writ petition or in the interim application. The relief that is sought in the present petition is for carrying out survey and study in terms of statutory responsibility enshrined under [Section 16](#) read with Section 21 of the Monuments Act, 1958. Though the documents relied upon and the submissions made are overlapping in both the proceedings, however the relief that is sought is entirely different and stands on a different footing.

16. A bare reading of the final order dated 18.09.2023 passed in W.P. No. 4216/2003 ([Qazi Zakullah and Ors. v State of Madhya Pradesh and Ors.](#)), shows that the relief sought therein was only a restraint order against Hindus entering and worshipping in the said Bhojshala temple cum Kamal Maula Mosque. It was argued that the site in question is a mosque where Hindus have no right to worship, and that entry of Hindus should therefore be barred. In the said context, the Single Bench of this Court held the submissions to be not worthy of scrutiny in writ proceedings, but relegated the parties to the civil suit. However in the present case, the primary contention of the petitioners is of the examination of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 the true nature and character of the site of Bhojshala Temple cum Kamal Maula Mosque.

17. On a complete perusal of the writ petition as also the interlocutory application filed on behalf of the petitioners, this Court is of the firm opinion that the nature of relief sought for in the present proceedings is differently drawn from the one sought for in the previously filed W.P. No. 4216/2003 at the Principal Seat at Jabalpur. Both the parties informed the Court in the course of arguments that the matter is pending consideration before the Division Bench vide W.A. No. 784/2006 with no effective interim order staying the operation and effect of the impugned circular cum office order dated 07.04.2003 by the Division Bench. Whilst dismissing the writ petition, the Single Bench has left the question of territorial jurisdiction also open, which implies that issue of maintainability of the writ petition on the ground of jurisdiction was never adjudicated, for which reason also this Court is of the firm view that the present proceedings shall not be barred on the grounds of res judicata.

18. This Court finds support in its view by the judgment of the Apex Court rendered in the case of [Jamia Masjid v. Sri K.V. Rudrappa](#) reported in (2022) 9 SCC 225. Paras 17 to 19 are reproduced below:

"18. In order to attract the principles of res judicata, the following Ingredients must be fulfilled:

- (i) The matter must have been directly and substantially in issue in the former suit;
- (ii) The matter must be heard and finally decided by the Court in the former suit;
- (iii) The former suit must be between the same parties or between parties under whom they or any of them claim, litigating under the same title; and
- (iv) The Court in which the former suit was instituted is competent to try the subsequent suit or the suit in which such issue has been subsequently raised.

19. In [Syed Mohd. Salie Labbai v. Mohd. Hanifa, S. Murtaza Ali, J.](#) speaking for a Bench of two Judges observed that before a plea NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 of res judicata can be given effect, the following conditions must be proved : (SCC p. 790, para 7) "7.... (1) that the litigating parties must be the same;

(2) that the subject-matter of the suit also must be identical;

(3) that the matter must be finally decided between the parties; and (4) that the suit must be decided by a court of competent jurisdiction."

The Court noted that "the best method" to decide the question of res judicata is first to determine the case of the parties as they are put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the judgments which operate as res judicata. In that case, it was held that the judgment in the previous suit was confined to two points:

(i) The plaintiffs claimed certain rights for the performance of ceremonies in the properties and a share in the income accruing to the mosque from the worshippers; and

(ii) A claim, insofar as the graveyard was concerned for receiving pit fees for burials. Consequently, it was held that the trial court had not decided upon either the public character of the mosque or the mode and manner or the effect of the dedication of the site for the purpose of the mosque or the graveyard."

19. There are five essential conditions, which must be satisfied before a plea of res judicata can be pressed to oust any plaintiff/petitioners in any civil proceedings at the threshold. In the

matter of [Sheodan Singh v. Daryao Kunwar](#) reported in AIR 1966 SC 1332, the Constitution Bench of the Apex Court in Para 9 explicating the 5 conditions held thus :

"9. A plain reading of [Section 11](#) shows that to constitute a matter res judicata, the following conditions must be satisfied, namely-(1) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit; (II) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim; (III) The parties must have litigated under the same title in the former suit; (IV) The court NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and (V) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit. Further Explanation I shows that it is not the date on which the suit is decided, so that even if a suit was filed later, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as res judicata it will have to be seen whether all the five conditions mentioned above have been satisfied."

20. Thus, the necessity of determination of the form, nature and character of the site in question was not an issue directly and substantially involved in the previous proceedings in W.P. No. 4216/2003. When the very question of territorial jurisdiction was left open by the Single Bench, the same cannot act as an impediment to this Court in dealing with the issue, more so when all the parties admitted that it is the reason of mystery and unsolved questions. The argument therefore relating to maintainability of present proceedings being barred by res judicata, holds no water and is liable to be rejected at this stage as a preliminary bar.

21. Apart from the above, the Courts have always been invariably inclined for survey, study and examination of any place of worship or shrine by the expert body only, viz. ASI, whenever questions about the exact nature or character of the same have arisen. Recent most example and case at hand being the one relating to claims in relation to Gyanvapi Mosque cum Shivlinga in Varanasi. The Allahabad High Court in the matter of [Committee of Management, Anjuman Intezamia Masajid, Varanasi v Rakhi Singh and Ors.](#) (through its Order dated 03.08.2023) reported in AIR 2023 Allahabad 279, permitted the ASI survey of Gyanvapi Mosque cum Shivlinga despite oppositions in abundance by the other side.

22. The Apex Court affirmed the aforesaid judgment of the Allahabad High Court further through its order dated 04.08.2023 passed in [Committee of Management, Anjuman Intezamia Masajid, Varanasi v Rakhi Singh and Ors.](#) Reported in 2023 SCC Online SC 980. It was held by the Apex Court that wherever any issue in the suit involves any scientific investigation, which cannot be in the opinion of the Court be conveniently conducted NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 by it, the Court may, if it thinks necessary and expedient in the interests of justice, issue a Commission through such person to enquire into such

question and report thereon to the Court. Paras 13 & 14 are worthy of reference which are as follows :

"13. Order XXVI Rule 10A stipulates that where any issue in a suit involves any scientific investigation which cannot in the opinion of the Court be conveniently conducted before the court, the court may, if it thinks necessary or expedient in the interest of justice so to do, issue a commission to such person as it thinks fit directing them to inquire into such question and report thereon to the court. Under sub-rule (2) of Rule 10A, the provisions of Rule 10 of the order shall, as far as may be, apply in relation to a Commissioner appointed under the rule as they apply to a Commissioner appointed under Rule 9. Rules 9 and 10 of Order XXVI therefore assume relevance and are extracted below:

"9. Commissions to make local investigations.-In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Procedure of Commissioner.-(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit.-The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 (3) Commissioner may be examined in person-Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

10-A. Commission for scientific investigation - (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court the Court may, if it thinks it necessary or expedient in the Interests

of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under Rule

9."

14. In terms of Order XXVI Rule 10, the Commissioner has to submit a report in writing to the court. The report of the Commissioner and the evidence taken by him constitute evidence in the suit and form a part of the record. However, the court and, with its permission, any of the parties may examine the Commissioner personally in open court touching any of the matters referred to him or mentioned in the report or as regards the report including the manner in which the investigation has been made. The court is also empowered to direct such further inquiry if it is dissatisfied with the proceedings of the Commissioner. The evidentiary value of any report of the Commissioner is a matter to be tested in the suit and is open to objections including cross-examination. A report of the Commissioner does not by and of itself amount to a substantive finding on matters in dispute and is subject to the process of the court during the course of the trial."

23. Further survey and study through scientific investigations and various techniques accompanying it like carbon dating, GSR - GPS survey, etc. aid and facilitate the process of arriving at the truth and ascertaining the actual state of affairs. With the advent of modern techniques of investigation, scientific ways of empirical study under the guidance of responsible officers of ASI and advanced ways of excavation, truth can be examined and ascertained by the experts of the field, especially when ASI as the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 expert body is constituted statutorily under a Parliamentary enactment.

24. On the similar lines, the Constitution Bench of the Supreme Court in the matter of [M Siddique v Mahant Suresh Das](#) reported in (2020) 1 SCC 1, held that archaeology is a science that draws on multidisciplinary or transdisciplinary approaches and in considering the nature of archaeological evidence. It is important to remember that archaeology as a branch of knowledge draws sustenance from the science of learning, it is the wisdom and experience and the vision which underlines the process of interpretation. Therefore the Court can safely rely upon the conclusions derived on the basis of such multidisciplinary scientific studies by the ASI. It was observed in paras 679 to 683, in the context of scientific investigations constituting the basis of archaeology, which are as follows :

"679. Archaeology as a science draws on multidisciplinary or trans-disciplinary approaches. In considering the nature of archaeological evidence, it is important to remember that Archaeology as a branch of knowledge draws Sustenance from the science of learning, the wisdom of experience and the vision which underlies the process of interpretation. As a discipline, it nurtures a trained mind. It relies on a cross-fertilisation with other disciplines such as history, sociology and anthropology. This is not a weakness but a strength. Archaeology combines both science and art. As a science,

it is based on the principle of objective evaluation. As an art, it relies on a vision which is realised through years of commitment to the pursuit of knowledge based on the histories of eras. Archaeology as a discipline cannot be belittled as unreliable. The value of Archaeology cannot be diluted in the manner which has been suggested by laying a claim to its being a weak form of evidence.

680. While considering archaeological evidence within the framework of [Section 45](#) of the Evidence Act and the court-ordered excavation in the context of the provisions of Rule 10-A of [Order 26 CPC](#), it is nonetheless necessary for the Court to appreciate both the strength and the limits of the discipline. Archaeology is no exception. A distinguished archaeologist, Sir Mortimer Wheeler summarised the experience which he gained in his work titled *Archaeology from the Earth* 258. Dealing with stratigraphy, Sir Mortimer notes:

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 "an ancient city in the East is never level, Very rarely is a city completely destroyed and completely rebuilt at one moment and at one horizon. Normally, a house is reconstructed or replaced as it decays, or at the whim of its owner. The town as a whole is constantly in a state of differential destruction and construction. Individual building sites rise above their neighbours; the town site itself rises and assumes the contour of a hill: buildings on its slopes are contemporary with buildings on its summit. A doorway or a potsherd may be found at one spot 10 ft below a doorway or a potsherd of precisely the same date at another spot."

681. Excavation in layers is in and of itself a complex exercise. Interpreting the findings in turn involves navigating through layered complexities. Sir Mortimer notes:

"Well, there are examples of various kinds of stratigraphical evidence: of layers that are contemporary with one another layers that are separated by greater or lesser time intervals, layers that have accumulated in unbroken succession. The reading of a section is the reading of a language that can only be learned by demonstration and experience. A word of advice to the student. However practised, do not read too hastily. Be your own devil's advocate before passing judgment. And wherever possible, discuss your diagnosis with others with colleagues, with pupils, with your foreman. ('The testimony of one person is no testimony'; declares Hywel Dda, the wise Welsh lawgiver) Be humble. Do not ignore the opinion of the uninstructed. Everyone knows is much as the savant. The walls of rude minds are scrawled all over with facts, with thoughts." Emerson said so, he was right. Even if you do not accept the views of those you question, and the mere act of questioning is at the same time a restraint and a stimulus."

Sir Mogimer's caution would apply as much to the law as to Archaeology: something that we as Judges would do well to bear in mind in arriving at our conclusion in these appeals.

682. In his book titled *The Logic of Scientific Discovery* 259, Karl Popper distinguishes the work of a scientist with that of a philosopher. Popper quotes Lord Acton when he states:

"there is nothing more necessary to the man of science than its history and the logic of discovery....: the way error is detected, the use of hypothesis, of imagination, the mode of testing."

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683. The supposed distinction between science as embodying absolute truth and Archaeology as unguided subjectivity is one of degree not of universes. Yet as in other disciplines of its genre, Archaeology is as much a matter of process as it is of deduction. The archaeologist must deal with recoveries as much as the "finds" from them. Interpretation is its heart, if not its soul. Interpretations do vary and experts disagree. When the law perceives an exercise of interpretation it must recognise margins of error and differences of opinion. Archaeological findings are susceptible of multiple interpretations. This may in part be a function of the archaeologist's perception of the past and what about the past the archaeologist seeks to decipher. Tradition based Archaeology may seek facts about the past. An archaeologist, on the other hand, may set about to validate a belief about the past, An archaeologist may approach the task with an open mind to unravel features that are unknown. Guided by the underlying approach to the discipline, the archaeologist will bring to bear on the task at hand the purpose underlying its own origin. So long as we understand the limits and boundaries of the discipline, we can eschew extreme positions and search for the often elusive median."

25. The Court therefore can safely place reliance upon any survey report with conclusions arrived after undertaking elaborate scientific investigations involving multidisciplinary approaches of archaeology by the ASI. Ascertainment of the nature and character of the site would also lend credibility to the existence of juristic person/entity of deity of the Vaagdevi/ Saraswati with a temple (if found to exist). The deity as argued by the petitioners being the Vageshwari Devi (Goddess Saraswati) is a juristic person/entity in her own rights to be protected, preserved from being desecrated, polluted on one hand and also to be served with rituals and religious practices by the people of that belief on the other. Rights of a deity as a juristic person/entity have also been well defined and time-tested through various judicial precedents. The Apex Court in the judgment of [M Siddique v Mahant Suresh Das \(Supra\)](#) has reiterated the said right of the deity of a temple. However, this is just a prima facie view of the Court, wherein the primary relief of direction to the ASI for a scientific survey and study is to be issued.

26. That apart, the submissions of the petitioners are worthy of acceptance pertaining to their fundamental rights under [Articles 25](#) and [26](#) of the Constitution of India. Every Government has the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 constitutional obligation to ensure preservation and protection of not only the ancient monuments and

structures including temples of archaeological and historical importance, but also of sanctum sanctorum as well as the deity of spiritual importance. There is a constitutional duty even to sanction funds for providing basic amenities to pilgrims, proper arrangements for shelter places, maintenance of law and order and the preservation of purity and pristine character of the deity. The Apex Court interpreting [Article 25](#) and [26](#) of the Constitution of India in the judgment rendered in the case of [Sarika v. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain](#) reported in (2018) 17 SCC 112, (Mahakaleshwar Temple judgment), held thus:

"15. There is a constitutional obligation to preserve the religious practices of all religions, culture and there is also a corresponding duty to act in that direction. Similarly, such acts which are necessary for the preservation of such historical monuments/deities. The State is duty-bound to spend the amount so that not only the archaeological, historical and ancient monuments are preserved but sanctum sanctorum, as well as the deity otherwise no useful purpose would be served by spending so much amount on Simhastha/Kumbh Melas in case deity, is itself permitted to be deteriorated as it has happened at other places particularly nearby Omkareshwar Jyotirlingani by offerings and rubbing it, etc. has deteriorated and now barricades have been erected around the lingam and nobody is permitted to touch it. Same is true with respect to other important temples of which reports have been filed. It is apparent from the reports published about Omkareshwar that the administration had banned offering of milk, ghee, water, curd and other traditional materials to save the Jyotirlingam from further erosion. It is regrettable that we have not been able to preserve and protect our Jyotirlingas of immense importance and there was a proposal to install new Lingam at Omkareshwar in place of the original."

27. On the same lines, the Division Bench of Madras High Court in the matter of [Periyanambi Narasimha Gopalan v. Secretary to Government and Anr.](#), reported in [(2021) 5 Mad LJ 413; (2021) SCC OnLine Mad 2091], has also recently reiterated the constitutional obligation of the State and ASI in the context of religious places that state is the custodian of most temples and property including the idols belonging to them. It is their primary duty to protect, maintain and safeguard not only the temple, but also valuable idols and antiques. The protection of the concerned NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 religious site implies the protection of the land, as well as the rituals, religious practices and traditions associated with it. [Article 49](#) Constitution of India occurring under Part IV of the Constitution lays down the Directive Principles of the State Policy, which read thus:

"[Article 49](#). Protection of monuments and places and objects of national importance: It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."

28. From the above discussion, this Court has drawn only one conclusion that Constitutional as well as statutory obligation of the ASI to have a scientific survey, study convened at the earliest of the Bhojshala Temple cum Kamal Maula Mosque.

29. Accordingly, I.A. No. 986/2024 is allowed and the following directions are issued to the Director, ASI relating to the entire site of Bhojshala Temple cum Kamal Maula Mosque:

a. Complete scientific investigation, survey and excavation , through adoption of latest methods, techniques and modes of GPR-GPS survey of the site in question constituting the disputed Bhojshala Temple cum Kamal Maula Mosque complex, as also the entire 50m of peripheral ring area surrounding/constituting the circular periphery from the boundary of the complex be conducted .

b. A detailed scientific investigation be conducted by adopting carbon dating method for ascertaining the age, life of various structures both above and beneath the ground; permanent, movable and immovable structures both beneath as well as above the ground, constituting the walls, pillars, floors, surfaces, upper top, sanctum sanctorum of the entire complex. c. A proper documented comprehensively drafted report prepared by a Expert Committee of not less than five(5) senior most officers of ASI headed by the Director General/Additional Director General of the ASI himself be submitted before this Court within a period of six weeks from the date of receipt of certified copy of this order. Efforts should be made to have a representation of Officers of both the contesting communities (if available of the said position & rank) in the said Expert Committee;

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 d. To photograph and videograph the entire survey proceedings in the presence of two (2) nominated representatives each of both the petitioners as well as respondent no.8 in the present petition;

e. To unlock and open the locked/ sealed rooms, halls of the whole complex and prepare a complete inventory of each and every artifact, idol, deity, or any structure found in the said locked, sealed halls and rooms, and submit the same along with the respective photographs. Such artifacts, idols, structures all must be subjected to the very same exercise of scientific investigation, carbon dating and survey as stipulated above vide points (a) to (c) and be included separately in the report to be filed before this Court.

f. Any other study, investigation or inquiry, which the said five(5) member committee of the ASI feels necessary to be undertaken, without destroying, defacing, destructing the original nature of the whole complex be undertaken, towards ascertaining the true

nature and character of the Bhojshala Temple cum Kamal Maula Mosque for arriving at the truth.

30. All other issues and submissions relating to the relief as claimed by the petitioners or the right to worship and perform rituals in the disputed premises shall be considered and determined only after receipt of the aforementioned report from the Expert Committee. The issue relating to validity of the wakf created on the disputed complex; that of granting the relief in the writ proceedings or relegating the petitioners to the Civil Suit for claiming those reliefs will all be determined and adjudicated post the receipt of report from the Five Member Committee of the ASI as aforementioned.

31. I.A. No. 986/2024 stands disposed off and closed.

32. List the case on 29th April, 2024 alongwith W.P. No. 6514/2013, W.P. No. 28334/2019 and W.P. No. 10484/2022."

[140] In para 29, following directions were given for scientific investigation, survey and excavation which are reiterated as under:-

"29. Accordingly, I.A. No. 986/2024 is allowed and the following directions are issued to the Director, ASI relating to the entire site of Bhojshala Temple cum Kamal Maula Mosque:

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022

a) Complete scientific investigation, survey and excavation , through adoption of latest methods, techniques and modes of GPR-GPS survey of the site in question constituting the disputed Bhojshala Temple cum Kamal Maula Mosque complex, as also the entire 50m of peripheral ring area surrounding/constituting the circular periphery from the boundary of the complex be conducted .

b) A detailed scientific investigation be conducted by adopting carbon dating method for ascertaining the age, life of various structures both above and beneath the ground; permanent, movable and immovable structures both beneath as well as above the ground, constituting the walls, pillars, floors, surfaces, upper top, sanctum sanctorum of the entire complex.

c) A proper documented comprehensively drafted report prepared by a Expert Committee of not less than five(5) senior most officers of ASI headed by the Director General/Additional Director General of the ASI himself be submitted before this Court within a period of six weeks from the date of receipt of certified copy of this order.

Efforts should be made to have a representation of Officers of both the contesting communities (if available of the said position & rank) in the said Expert Committee;

d) To photograph and videography the entire survey proceedings in the presence of two (2) nominated representatives each of both the petitioners as well as respondent no.8 in the present petition;

e) To unlock and open the locked/ sealed rooms, halls of the whole complex and prepare a complete inventory of each and every artifact, idol, deity, or any structure found in the said locked, sealed halls and rooms, and submit the same along with the respective photographs.

Such artifacts, idols, structures all must be subjected to the very same exercise of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 scientific investigation, carbon dating and survey as stipulated above vide points (a) to

(c) and be included separately in the report to be filed before this Court.

f) Any other study, investigation or inquiry, which the said five(5) member committee of the ASI feels necessary to be undertaken, without destroying, defacing, destructing the original nature of the whole complex be undertaken, towards ascertaining the true nature and character of the Bhojshala Temple cum Kamal Maula Mosque for arriving at the truth.

[141] After seeking extension by this Court, the survey was completed on 15th July, 2024. Against the order dated 11.3.2024, party Maulana Kamaluddin Welfare Society filed Special Leave to Appeal No.7023/2024 before the Supreme Court. The Supreme Court passed following order on 1.4.2024 quoted as under:-

—Heard Mr.Salman Khurshid, learned Senior counsel, appearing for the petitioner - Society.

2. The challenge is to the interim order passed on 11.03.2024 by the Division Bench at Indore of the Madhya Pradesh High Court.

3. The matter pertains to the Bhojshala Temple cum Kamal Maula Mosque at Dhar District, Madhya Pradesh. By the impugned order, the Director of the Archaeological Survey of India (ASI) is required to undertake a scientific investigation through adoption of latest method in the concerned complex and also in the peripheral area surrounding the complex.

4. The petitioner - Society was the respondent No.8 in the W.P. No.10497/2022 and it raises objection to the survey ordered by the High Court contending that relief to the respondent(s) - writ petitioner(s) cannot be granted in a petition under [Article 226](#) of the Constitution. The petitioner also raises contention about the lawful right of the respondent No.8 vis-a-vis the complex in question. According to the petitioner, through the ordered survey, evidence in favour of the writ petitioner's cause could be discovered and such roving enquiry should be discouraged and parties be relegated to the Civil Court. The senior counsel then refers to the

order passed by the High Court on 18.09.2003 pertaining to the very same premises in the W.P. (Civil) NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 No.4216 of 2003 and argues that the later writ petition is hit by the principle of res judicata.

5. Mr. Guru Krishna Kumar and Mr. Sridhar Potaraju, learned Senior Counsel appearing on behalf of the Caveator - respondent No.1 and is respectively submit that a writ appeal against the learned Single Judge's order (dated 18.09.2003) is pending before the Division Bench at Jabalpur.

6. Issue notice, returnable in four weeks.

7. In the meantime, no action should be taken on the outcome of the survey ordered by the High Court under the impugned order dated 11.03.2024.

It is also made clear that no physical excavation should be undertaken which will alter the character of Bhojshala Temple cum Kamal Maula mosque at Dhar District, Madhya Pradesh.

[142] Thereafter, the proceedings of all these petitions remain pending. On 22.1.2026, the Supreme Court disposed of the said appeal with a direction to decide the pending cases. The order dated 22.1.2026 passed by the Supreme Court for ready reference is quoted as under:-

Civil Appeal arising out of SLP(C) No.7023/2024 (Maulana Kamaluddin Welfare Society, Dhar - appellant). Order dated 22.1.2026 —1] Through a separate oral order of even date, we have disposed of IA No.527 of 2026 filed in the instant petition, wherein urgent directions have been issued. After the hearing on that application concluded and the order disposing it was dictated, on the oral request and with the consent of learned counsel for the parties, the special leave petition is taken on board for final disposal.

2] Leave granted.

3]The issue that arises for consideration before this Court is whether the High Court of Madhya Pradesh at Indore was justified in issuing interim directions through the impugned order dated 11.03.2024 in Writ Petition No.10497 of 2022. The Writ Petition pertains to a historical site in District Dhar, M.P., which, according to one set of 1 claimants, is the Bhojshala Saraswati Temple, whereas the other set of parties opposing such claims assert it to be the Maulana Kamal Maula Mosque.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 4] The directions issued by the High Court on an application moved by respondent nos.1-7, inter alia, obligate the Archaeological Survey of India (in short, the 'ASI') to undertake a complete scientific investigation, survey, and excavation by adopting latest methods, techniques, and modes, including carbon dating of the various structures and a GPR-GPS Survey of the subject site. The above-mentioned directions issued to the ASI are meant to identify the real and true form, nature, and character of the historical building.

5] There are also other ancillary directions, such as for proper documentation of the report of the Expert Committee of not less than five senior-most officers of ASI, besides photography

and videography of the entire survey proceedings. The locked/sealed halls and rooms were also directed to be opened so that the artifact(s), idol(s), etc. or any other structure found in the said areas could also be inventoried and scientifically examined by the expert team.

6] Against the above-stated order dated 11.03.2024 of the High Court, the instant appeal came up for hearing before this Court on 01.04.2024, when it was directed that no action should be taken on the outcome of the survey ordered by the High Court.

It was also made clear that no physical 2 excavation should be undertaken, which may alter the character of the Bhojshala Saraswati Temple-cum-Maulana Kamal Maula Mosque.

7] At the outset, it is pointed out by Shri K.M. Nataraj, learned Additional Solicitor General of India, who is representing the State of Madhya Pradesh, as well as, on our asking, the Archaeological Survey of India, that the scientific survey, as directed by the High Court, had begun before this Court issued the interim order on 01.04.2024, and the same now stands concluded. Learned Advocate General for the State of Madhya Pradesh also endorses this statement.

The report is presently lying in a sealed cover before the High Court.

8] On our suggestion, Shri Salman Khurshid, learned senior counsel for the appellant, fairly submits that a copy of the survey report may be ordered to be supplied to the parties, and thereafter the appellant may be permitted to submit the objections, if any. Such like liberty can also be granted to the other side. These objections, thereafter, may be considered by the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Division Bench of the High Court at the time of final hearing.

9] In view of the fair stand taken by all the stakeholders, we dispose of this appeal with the following directions:

(i) The Writ Petition No. 10497 of 2022 pending before the Indore Bench of the High Court may be taken up by a Division Bench, preferably presided over by the Hon'ble Chief Justice 3 of the High Court or the senior most judge of the High Court Bench, presiding the said Bench of the High Court, within a period of three weeks;

(ii) The Division Bench is requested to unseal the report in open Court and supply copies thereof to both sides. If any part of the report cannot be copied, the parties may be permitted to inspect such part of the report in the presence of expert(s) and their counsel;

(iii) Thereafter, the parties may be granted two weeks' time to submit their respective objections, opinions, suggestions, and/or recommendations;

(iv) The Division Bench of the High Court may, thereafter, take up the case for final hearing and all the submissions of the parties may be duly considered at the time of final hearing; and

(v) Till the Writ Petition is finally decided, the parties shall maintain status quo re: alteration in the character of the Bhojshala Saraswati Temple-cum-Maulana Kamal Maula Mosque. Meanwhile, the parties shall continue to abide by and implement the order dated 07.04.2003 issued by the Director General of the Archaeological Survey of India.

10] It seems that the order dated 07.04.2003 passed by the Director General of Archaeological Survey of India was also separately challenged in a writ petition before the High Court, which was dismissed by a learned Single Judge. An intra-

Court Writ Appeal against the order of the Single Judge is stated to be pending before the High Court. Let that appeal, along with any other connected matter, be also heard by the Division Bench with the main writ petition.

11] Ordered accordingly.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 12] It is clarified that we have not expressed any opinion on the merits of the case, and all the contentions raised on behalf of the parties are kept open to be raised and considered by the High Court.¶ [143] On 16.2.2026, the cases were taken up and following order was passed in view of the order passed by the Supreme Court:-

—The petitioners in person has brought to our notice the order dated 22.01.2026 passed by the Apex Court in Civil Appeal No.466 of 2026 (Arising out of SLP (C) No.7023/2024) [Maulana Kamaluddin Welfare Society Dhar v/s Hindu Front for Justice & Others]. By the said order, the appeal was disposed of with direction contained in paragraphs

- 9 & 10 and the same are as under:-

"9. In view of the fair stand taken by all the stakeholders, we dispose of this appeal with the following directions:

(i) The Writ Petition No. 10497 of 2022 pending before the Indore Bench of the High Court may be taken up by a Division Bench, preferably presided over by the Hon'ble

Chief Justice of the High Court or the senior most judge of the High Court Bench, presiding the said Bench of the High Court, within a period of three weeks;

(ii) Division Bench is requested to unseal the report in open Court and supply copies thereof to both sides. If any part of the report cannot be copied, the parties may be permitted to inspect such part of the report in the presence of expert(s) and their counsel;

(iii) Thereafter, the parties may be granted two weeks' time to 1 WP-10484-2022 submit their respective objections, opinions, suggestions, and/or recommendations;

(iv) The Division Bench of the High Court may, thereafter, take up the case for final hearing and all the submissions of the parties may be duly considered at the time of final hearing; and

(v) Till the Writ Petition is finally decided, the parties shall maintain status quo re:

alteration in the character of the Bhojshala Saraswati Temple-cum-Maulana Kamal Maula Mosque. Meanwhile, the parties shall continue to abide by and implement the order dated 07.04.2003 issued by the Director General of the Archaeological Survey of India.

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10. It seems that the order dated 07.04.2003 passed by the Director General of Archaeological Survey of India was also separately challenged in a writ petition before the High Court, which was dismissed by a learned Single Judge. An intra-

Court Writ Appeal against the order of the Single Judge is stated to be pending before the High Court. Let that appeal, along with any other connected matter, be also heard by the Division Bench with the main writ petition." As per para - 9(i), the Writ Petition No.10497 of 2022 pending before the Indore Bench of the High Court may be taken up by a Division Bench, preferably presided over by the Hon'ble Chief Justice of the High Court or the senior most judge of the High Court Bench, presiding the said Bench of the High Court within a period of three weeks.

In para - 10, it was brought to the notice of the Apex Court that an intra-court appeal (Writ Appeal No.784 of 2006) is pending before the Principal Seat of the High Court.

Considering the same, the Apex Court in para - 10 has observed that the said appeal along with the other connected matters be also heard by the Division Bench with the main writ petition.

In view of the aforesaid paras - 9 & 10, these matters be placed before Hon'ble the Chief Justice for necessary orders for hearing the cases along with pending writ appeal (Writ Appeal No.784 of 2006) before Principal Bench.

List these matters on 18.02.2026. [144] Thereafter as per the order passed by the Bench of Hon'ble Chief Justice, the cases along with pending WA No.784/2006 (New No.WA No.559/2026) were placed for hearing before us on 16.2.2026. We passed the following order:-

—Heard on IA No.1654/2024, which is an application for ignoring the defect of legible copies/typed copy.

Considering the grounds mentioned in the application, the defects, as pointed out by the Registry for the time being is ignored. At the time of hearing of the case, if legible/typed copies are be required, then this Court will pass appropriate orders.

With the aforesaid, IA No.1654/2024 is allowed and stands disposed of.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Also heard on IA No.8313/2023, which is an application filed on behalf of respondent Nos.1 to 4 for adoption of reply filed in other connected petitions.

Considering the ground mentioned in the application and the nature of all the petitions, prayer is allowed. Reply filed in other cases is permitted to be adopted and shall be treated as reply in the present petition.

It is not disputed by counsel for the petitioners that he has received copy of the reply filed by the respondent Nos.1 to 4.

In view of the aforesaid, IA No.8313/2023 is allowed and stands disposed of.

Also heard on IA No.8933/2023, which is an application filed on behalf of respondent No.9 seeking appropriate direction.

Counsel for the respondent No.9 submits that the aforesaid IA has rendered infructuous and therefore, does not wish to press the same.

In view of the aforesaid, IA No.8933/2023 is dismissed as having been rendered infructuous.

Also heard on IA Nos.5676/2024, 5679/2024 and 2341/2026, which are applications for intervention.

Applications are opposed by counsel for the petitioners.

However, considering the nature of the petition and that the petition is a public interest litigation, applications for intervention are allowed to the extent that the intervenor would be given right to audience only at the time of hearing and may file documents in support of the submissions on affidavit, which are proposed to be raised.

In view of aforesaid, aforesaid IAs are allowed and stand disposed of.

Also heard on IA No.2317/2026, which is an application filed on behalf of respondent No.8 for dismissal of petition being not maintainable in the eyes of law.

The aforesaid IA shall be considered at the time of hearing of the petition.

Also heard on IA No.2318/2026, which is an application filed on behalf of respondent No.8 for production of video recording and coloured photographs of the survey.

The aforesaid IA shall be considered at the time of hearing of the petition.

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Parties may submit their respective

objections/opinion/suggestions or recommendations in respect of the report of the Archeological Survey of India before the next date, if not already filed, in terms of the directions contained in para 9(ii) and (iii) of the order dated 22.01.2026.

The Court propose to visit the site before the next date of hearing.

Keeping in view the directions contained in para 9(iii) & 9(iv) of the order dated 22.01.2026 passed by the Apex Court in the case of Maulana Kamaluddin Welfare Society Dhar, M.P. Vs. Hindu Front For Justice (Regd. Trust No.976) & others, (Civil Appeal No.466/2026, arising out of SLP (C) No.7023/2024), parties are directed to argue the matter finally on the next date of hearing.

List the matter on 02.04.2026.¶ [145] Against the said order, a party Maulana Kamaluddin Welfare Society filed Special Leave Petition, which was disposed of by the Supreme Court on 1.4.2026 which is quoted as under:-

Civil Appeal no.4127/2026 dated 01.04.2026 Maulana Kamaluddin Welfare Society - appellant) —1. Leave granted.

2. Civil Appeal No. 466/2026, which arose from an interim order dated 11.03.2024 passed by the High Court of Madhya Pradesh, was disposed of by this Court on 22.01.2026 after hearing both sides, through a reasoned order. In para 8 of the said order, this Court took notice of the fair stand taken on behalf of the appellant that a copy of the Survey Report may be supplied to the parties and some time may be granted to them to submit their objections.

Such objections, thus, were to be considered by the Division Bench of the High Court at the time of final hearing. Consequently, the following directions contained in para 9 of the said order were issued:

—(i) The Writ Petition No. 10497 of 2022 pending before the Indore Bench of the High Court may be taken up by a Division Bench, preferably presided over by the Hon'ble Chief Justice of the High Court or the senior most judge of the High Court Bench, presiding the said Bench of the High Court, within a period of three weeks;

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(ii) The Division Bench is requested to unseal the report in open Court and supply copies thereof to both 2 sides. If any part of the report cannot be copied, the parties may be permitted to inspect such part of the report in the presence of expert(s) and their counsel;

(iii) Thereafter, the parties may be granted two weeks' time to submit their respective objections, opinions, suggestions, and/or recommendations;

(iv) The Division Bench of the High Court may, thereafter, take up the case for final hearing and all the submissions of the parties may be duly considered at the time of final hearing; and

(v) Till the Writ Petition is finally decided, the parties shall maintain status quo re:

alteration in the character of the Bhojshala Saraswati Temple-cum-Maulana Kamal Maula Mosque. Meanwhile, the parties shall continue to abide by and implement the order dated 07.04.2003 issued by the Director General of the Archaeological Survey of India.

3. There is no dispute that the Survey Report was supplied to the parties, and some of them have submitted their objections thereto. It further appears that the Archaeological Survey of India (—ASI) also conducted videography and photography of the site.

4. The High Court has now, in deference to para 8 of the order dated 22.01.2026, passed the impugned interlocutory order to the effect that the objections submitted by the parties shall be considered and decided at the time of final hearing. The High Court has

directed that the application filed by the appellant for production of videos and coloured photographs taken by the ASI shall be considered at the time of final hearing of the case.

5. In this regard, we may take notice of paragraphs 5 and 6 of the application moved by the appellant, which is respondent No.8 before the High Court.

6. It, thus, seems that according to the appellant, there are some objections which arise from what is duly recorded in the 3 course of videography. We have no doubt that the learned High Court, after seeing such videography, shall consider those objections too, along with other objections made by the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 parties, in accordance with the principles of natural justice. The High Court shall, accordingly, take an appropriate decision on the objections, including those which are found arising from the videography.

7. In this regard, we have not expressed any opinion on merits. All the issues are left open to be adjudicated by the High Court. The parties may, accordingly, raise their respective contentions before the High Court.

8. The appeal stands disposed of in the above terms.¶ [146] The cases were taken up on 02nd April, 2026, we directed for commencement of the hearing passing the following order:-

—Shri Salman Khurshid, Senior Advocate for the respondent No. 8 in W.P. No. 10497/2022 has drawn our attention to the order passed by the Apex Court in Civil Appeal No. 4127/2026 filed by the respondent No. 8. He had taken us to the paragraph No. 6 of the order which is reproduced as under :-

—6. It, thus, seems that according to the appellant, there are some objections which arise from what is duly recorded in the course of videography. We have no doubt that the learned High Court, after seeing such videography, shall consider those objections too, along with other objections made by the parties, in accordance with the principles of natural justice. The High Court shall, accordingly, take an appropriate decision on the objections, including those which are found arising from the videography.

Considering the aforesaid and previous order passed by the Apex Court on 22.01.2026 and also the order passed by this Court on 11.03.2024, we fix all the matters for hearing which shall commence from 06.04.2026 at 2:30 pm.¶ [147] During the course of hearing, the respondent No.8 Maulana Kamaluddin Welfare Society filed IA No.2318/2026 for

production of videography done by ASI during their survey in compliance to the order passed by this Court. The following order was passed on 21.4.2026 allowing the said application:-

—Shri Vishnu Shankar Jain - Advocate (through V.C.) with Shri Vinay Joshi, Ms. Varsha Parashar, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Shri Harishankar Jain, Shri Parth Yadav, Shri Saurabh Singh, Ms. Mani Munjal Yadav, Shri Utkarsh Dubey and Shri Devendra Nagar, Shri Vagish Parashar, Shri Rohit Shukla, Ms. Shalini Joshi, Ms. Shivangee Parmar, Shri Satyanawrayan Dubey, Ms. Priyanka Sharma, Shri Bhuvneshm Gupta, Shri Lalit Namdev and Shri Pradhumna Malpani - Advocates appeared for the petitioner in WP No.10497/2022.

Shri. A.K. Chitale - Sr. Advocate with Shri Kartik Chitale - Advocate for the petitioner in WP No.6514/2013.

Shri Salman Khurshid - Sr. Advocate through VC with Shri Noor Ahmed Sheikh & Shri Zishan Khan - Advocates for the respondent No.8 in WP No.10497/2022 and WP No.10484/2022.

Shri Sunil Kumar Jain - Addl. Solicitor General with Shri Aviral Vikas Khare - Advocate for respondents Nos. 1 to 4 & 6 in WP No.10484/2022, for respondent No.4 and 5 in WA No.559/2026, for respondent No.1, 2 & 6 in WP No.6514/2013 and for respondent No.7, 8 & 10 in WP No.28334/2019.

Ms. Shobha Menon, Senior Counsel (through V.C.) assisted by Shri N.A. Sheikh, learned counsel for the appellants in WA No.559/2026.

Shri Vishwajit Joshi, Ms. Nena Mishra, Shri Shreesh Dubey, and Ms. Surbhi Bahal - Advocates for respondent No.9 in WP No.10497/2022.

Shri Syed Ashhar Ali Warsi and Ms. Poorvi Asati, Ms. Manan Sharma & Shri Mohd. Hashim - Advocates for the intervener in WP No.10497/2022.

Shri Sajid Iqbal Ansari - Advocate for the intervener in WP No.10497/2022.

Shri Noor Ahmed Sheikh - Advocate for the intervener. Shri Manish Gupta with Shri Chandresh Gupta - Advocate for the petitioner in W.P. No.10484/2022 and for the intervenor in WP No.28334/2019 and in WA No.559/2026.

Shri Aniket Naik, learned counsel for the respondent no.9 in WP NO.10484/2022.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Shri Prashant Singh - Advocate General through VC with Shri Nilesh Yadav AAG, Rahul Sethi - AAG, Shri Dhirendra S. Parmar - AAG, Shri Ashish Yadav

- AAG, Shri Sonal Gupta - AAG, Shri Sudeep Bhargava - Dy.AG, Shri Shrey Raj Saxena - Dy.AG, Shri Surendra Kumar Gupta - G.A., and Shri Sahil Sonkusale and Shri Viraj S. Jha - PL for the respondent/State.

Shri Salman Khurshid - Sr. Advocate, appearing on behalf of respondent No.8, Maulana Kamaluddin Welfare Society.

He argued on IA No.2318/2026, which is an application for production of the videography, etc., and brought to our notice the order dated 1.4.2026 passed by the Apex Court in Civil Appeal No.4127/2026 filed by the respondent No.8 against the interim order dated 11.3.2024 passed by this Court. While disposing of the said appeal, certain observations have been made in regard to the consideration of the objections to the Archeological Survey of India report, which is reproduced as under:-

"6. It, thus, seems that according to the appellant, there are some objections which arise from what is duly recorded in the course of videography. We have no doubt that the learned High Court, after seeing such videography, shall consider those objections too, along with other objections made by the parties, in accordance with the principles of natural justice. The High Court shall, accordingly, take an appropriate decision on the objections, including those which are found arising from the videography."

The submission of learned counsel for respondent No.8 is that the videography of the Archeological Survey of India Survey should be supplied to them so that, after seeing said videography, they may submit their objections, and thereafter this Court can take an appropriate decision on the said objections which would arise from the videography.

The counsel for the Archeological Survey of India submitted that the videography of the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 survey is a long videography of

about 96 days, and the display of the videography or supply of it may take a long time. Counsel for respondent Archeological Survey of India further submitted that the said order is confined only to the viewing of the videography by this Court;

however, we did not appreciate the same, considering the aforesaid paragraph 6 of the order of the Apex Court.

In view of the observations made in para 6 of the order of the Apex Court dated 01.04.2026, we direct Archeological Survey of India to upload the videography of the survey proceedings conducted at the bhojshala site on a secured digital platform such as google drive link or any equivalent cloud based service and to provide access to the counsel for respondent No.8 and to the High Court of MP, Bench at Indore. Since the hearing of the case is going on on a day-to-day basis in the light of the order passed by the Apex Court in the present case, the Archeological Survey of India shall ensure that uploading of the said videography on the Google Drive link is done with top priority by 27.4.2026.

Copy of this order passed by this Court shall be communicated by the learned counsel for ASI to the Director General, Archeological Survey of India, New Delhi (respondent No.2) and the Superintendent, Archeological Survey of India, Bhopal Circle, Bhopal (respondent No.3) today itself.

Counsel for respondent No.8 is heard in part.

List tomorrow i.e., 22.04.2026. [148] The respondent No.8 represented by two different counsel in two different cases filed their objections to the videography. Their objection to the ASI report and videography were also heard by us in detail. The hearing of the cases almost continued day to day with adjustment of all the respective counsels from 8th April and arguments were finally concluded on 12th April, 2026.

[149] Now we revert back to the ASI Survey in pursuant to the order passed on 11.3.2024. ASI has submitted its report which is in 10 volumes. In short, each Volume is under following heading:-

Volume 1 Introduction NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022
1.1 Introduction.

1.1.1 Court Directives and Compliance 1.1.2 Constraints 1.1.3 Location 1.1.4 Protected Monument 1.1.5 Areas of Study 1.1.6 Studies Carried Out 1.2 Structure 1.2.1 Platform 1.2.2 Entrance Porch 1.2.3 Eastern Colonnade 1.2.4 Southern Colonnade 1.2.5 Northern Colonnade 1.2.6 Western Colonnade 1.2.6.1 Mihrab 1.2.6.2 Ceiling of Dome 1.2.6.3 Mimber (Pulpit) 1.2.6.4 Hujra 1.2.7 Pillars and Pilasters 1.2.8 Courtyard 1.2.9 Hauz (Tank) 1.2.10 Roof 1.2.11 East Wall 1.2.11.1 Entrance Facade 1.2.12 North Wall 1.2.13 South Wall 1.2.14 West Wall 1.3 Inscriptions 1.4 Engravings 1.5 Paintings 1.6 Previous works 1.6.1 Images 1.7 Summary 1.7.1 Brief Findings of the Survey Volume 2 Structure - Part 1 2.1 Pillars 2.1.1 Types 2.1.2 Description 2.1.3 Drawings Volume 3 Structure - Part 2 3.1 Pilasters 3.1.1 Types 3.1.2 Description 3.1.3 Drawings Volume 4 Inscriptions 4.1 Protected

Monument 4.1.1 Sanskrit and Prakrit NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 4.1.1.1 Stone Inscriptions 4.1.1.2 Fragments 4.1.1.3 Engravings 4.1.2 Arabic and Persian 4.1.2.1 Stone Inscriptions 4.1.2.2 Ink Inscriptions 4.2 Kamal Maula Dargah 4.2.1 Arabic and Persian 4.2.1.1 Stone Inscriptions 4.2.1.2 Loose Slabs 4.2.1.3 Inscribed Tile 4.2.1.4 Stone (missing) Inscription 4.3 Others 4.3.1 Sanskrit and Prakrit 4.3.2 Arabic and Persian Volume 5 Scientific Studies 5.1 Scientific Investigations 5.1.2 Tools Used 5.1.3 X-Ray Fluorescence Report 5.1.4 Ground Penetration Radar Survey 5.1.5 Condition Report 5.1.6 Excavations 5.1.6.1 Trench 1 5.1.6.2 Trench 2 5.1.6.3 Trench 3 5.1.6.4 Trench 4 5.1.6.5 Trench 5 5.1.6.6 Trench 6 5.1.6.7 Trench 7 5.1.6.8 Test Pits 5.1.6.9 Pottery 5.1.7 Debris Clearance 5.1.8 Dating 5.1.9 Field Laboratory Volume 6 Artifacts - Part 1 6.1 Finds from Current Investigations 6.1.1 Coins 6.1.2 Inscriptions 6.1.3 Sculptures 6.1.4 Figurines 6.1.5 Stucco 6.1.6 Querns 6.1.7 Pestles/Mullers 6.1.8 Sling balls 6.1.9 Hopscotch 6.1.10 Rings 6.1.11 Bangles 6.1.12 Beads NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 6.1.13 Copper Objects 6.1.14 Iron Objects 6.1.15 Stone Objects 6.1.16 Terracotta Objects 6.1.17 Others Volume 7 Artifacts - Part 2 7.1 Architectural Members 7.1.1 Basalt 7.1.2 Schist 7.1.3 Marble 7.1.4 Sandstone 7.1.5 Limestone Volume 8 Artifacts - Part 3 8.1 Architectural Members 8.1.1 Limestone Volume 9 Artifacts - Part 4 9.1 Southeast Cell 9.1.1 Inscriptions 9.1.2 Sculptures 9.1.3 Architectural Members 9.2 Southern Colonnade 9.2.1 Sculptures 9.2.2 Architectural Members 9.3 Northeast Corner 9.3.1 Architectural Members 9.4 Earlier Finds Volume 10 Illustrations 10.1 Current Investigation 10.1.1 List of Figures 10.1.2 Figures [150] Volume 1 of the report reveals about compliance of directions contained in Para 29 of order dated 11.3.2024 which is relevant and quoted as under:-

"Bhojshala Temple cum Kamal Maula Mosque Complex, Dhar (Madhya Pradesh) In Writ Petition No. 10497 of 2022 Hon'ble High Court of Madhya Pradesh at Indore passed an order on 11.03.2024.

The order directed the Archaeological Survey of India 29 (a). Complete scientific investigation, survey and excavation, through adoption of latest methods, techniques and modes of GPR-GPS survey of the site in question constituting the disputed Bhojshala Temple cum NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Kamal Maula Mosque complex, as also the entire 50 m of peripheral ring area surrounding/ constituting the circular periphery from the boundary of the complex be conducted;

ASI - In compliance of the order, the Archaeological Survey of India started investigations, survey and excavations systematically from 22.03.2024. The team of the Archaeological Survey of India included archaeologists, epigraphists, chemists, conservators, surveyors, photographers, draughtsman and other officials who are

required for systematic archaeological studies, documentation of the finds, and analysis of them.

While focus of investigations was on the protected monument, 50 m of peripheral ring area was also investigated and surveyed using latest scientific tools and techniques.

Scientific investigations, survey and archaeological excavations in the monument were carried out carefully without causing any damage to the existing structure. As the structure is a monument of national importance, otherwise also it is being maintained by the Archaeological Survey of India since 1951, as its constitutional responsibility.

Ground Penetrating Radar (GPR) survey was carried out by the scientists and experts of the National Geophysical Research Institute (NGRI), an institution under the Council of Scientific and Industrial Research (CSIR), Hyderabad. Close profiles were taken in and around the monument. Profiles were also taken in open space in 50 m of peripheral ring area. Area having structures and graves, etc. could not be covered in as details as the protected area.

Hon'ble Supreme Court of India in order dated 01.04.2024 in Special Leave Petition (Civil) No. 7023 of 2024, directed that "no physical excavation should be undertaken which will alter the character of Bhojshala Temple cum Kamal Maula Mosque at Dhar District, Madhya Pradesh." Advise of the Deputy Solicitor General of India in M.P. High Court Bench at Indore was sought and complying with the direction of the Hon'ble Court it was ensured that excavation is carried out in such a way that it does not lead to any alteration of the character of the structure. While conducting the investigations and excavation even stone blocks scattered in the southwest corner of the courtyard were not disturbed and it was limited to small areas available between them.

The team worked continuously, without observing any holiday from the day of starting to the end, and completed the work as per the order dated 29.04.2024. Protected Monument was examined in detail and various features were thoroughly examined and documented.

29 (b). A detailed scientific investigation be conducted by adopting carbon dating method for ascertaining the age, life of various structures both above and beneath the ground; permanent, movable and immovable NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 structures both beneath as well as above the ground

constituting the walls, pillars, floors, surfaces, upper top, sanctum sanctorum of the entire complex;

ASI - In compliance of the order, teams of experts of the Archaeological Survey of India comprising archaeologists, epigraphists, chemists, conservators, surveyors, draughtsman, photographers and other officials conducted detailed studies to determine the antiquity of different objects and structures. Structure of the protected monument was thoroughly documented as well as all its pillars and pilasters. In order to study different parts systematically, walls, pillars, floors, ceilings, were all distinctly marked on plans of the site. Parts of the building which were hidden by later fillings were cleared and studied to comply with the order of Hon'ble Court.

As per the directions of the Court, to study structures and structural remains buried under the earth, debris accumulated around the protected monument was removed carefully under the supervision of the archaeologists and other professionals. All the exposed areas of the structure were examined carefully and properly documented.

The ASI has expertise in conducting scientific investigation and archaeological excavations/ scientific clearance of buried structures in and around the protected monuments and to ascertain their date. The existing structure, exposed structures and archaeological remains retrieved from the excavation are of historical period. As adequate datable material is available to ascertain their age, they were dated on stylistic ground, and on palaeography, as they belong to the medieval period.

29 (c). A proper documented comprehensively drafted report prepared by a Expert Committee of not less than five (5) senior most officers of ASI headed by the Director General/ Additional Director General of the ASI himself be submitted before this Court within a period of six weeks from the date of receipt of certified copy of this order. Efforts should be made to have a representation of Officers of both the contesting communities (if available of the said position and rank) in the said Expert Committee;

ASI - In compliance of the order, a team of seven (7) senior archaeologists, headed by the Additional Director-General, was constituted. As per the direction of the Hon'ble Court, this expert committee had equal representation of Officers of both the contesting communities in the same position.

The report on scientific investigations, survey and excavations, has details and photographs of objects recovered in the study area, in and around the protected

monument, during investigation and excavations.

A detailed comprehensively drafted report in ten (10) volumes has been prepared by the Archaeological Survey of India is being submitted within the time limit granted by Hon'ble Court in its order dated 04.07.2024.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 29 (d). To photograph and videograph the entire survey proceedings in the presence of two (2) nominated representatives each of both the petitioners as well as respondent no. 8 in the present petition;

ASI - In compliance of the order, thorough documentation was carried out during the entire period of the investigation, survey and excavation through photography and videography. Representatives of the petitioners as well as respondent no. also observed every activity conducted by the team of the Archaeological Survey of India.

29 (e). To unlock and open and locked/ sealed rooms, halls of the whole complex and prepare a complete inventory of each and every artifact, idol, deity, or any structure found in the said locked, sealed halls and rooms, and submit and same along with the respective photographs. Such artifacts, idols, structures all must be subjected to the very same exercise of scientific investigation, carbon dating and survey as stipulated above vide points (a) to (c) and be included separately in the report to be filed before this Court;

ASI - In compliance of the order, the only room in the southeast corner of the present structure, which was under use and where CCTV camera monitor was installed, was vacated. On cleaning of this room, northern part of the floor seemed uneven and filled with stones arranged haphazardly. On removal of these stones a number of architectural members, sculptural fragments, fragments of inscriptions, etc. were recovered.

As directed by the Hon'ble Court a detailed inventory of all these artefacts has been prepared along with their respective photographs. All these objects have been duly documented, analysed and studied like other archaeological remain. Details of these objects are included in a separate section in the report, being submitted before the Court.

29 (f). Any other study, investigation or inquiry, which the said five (5) member committee of the ASI feels necessary to be undertaken, without destroying, defacing,

destructing the original nature of the whole complex be undertaken, towards ascertaining the true nature and character of the Bhojshala Temple cum Kamal Maula Mosque for arriving at the truth."

ASI- In compliance of the order, after thorough study of the existing structure it was found that later filling in the eastern entrance porch was hiding the parts of pillars, pilasters and details of the lower part of the structure. For studying and documenting true nature and character of the structure, it was necessary to remove these later filling on either side of the porch.

After due study of the existing structure and random masonry of the latter filling, GPR Survey and considering the features of the structure, trained NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 archaeologists and conservators carefully removed later filled debris. The removal was without destroying, defacing, destructing the original nature of the whole complex. With the removal of latter filled debris true nature and character of the entrance porch become visible. Which in turn helped in arriving at the truth regarding Bhojshala Temple cum Kamal Maula Mosque complex.

Scientific investigations, survey and excavations were conducted by the Archaeological Survey of India, as directed by the Hon'ble High Court, vide its Order dated 11.03.2024. Since "Bhoja Shala and Kamal Maula's Mosque" at Dhar is a monument of national importance, protected under the [Ancient Monuments and Archaeological Sites and Remains Act, 1958](#), the Archaeological Survey of India conducted every activity of scientific investigation, survey and excavations with utmost care keeping every aspect of its proper protection and preservation in view. Detailed documentation of findings, and structures carried out during the investigations is submitted as per the direction of Hon'ble Court."

FINDINGS OF ASI SURVEY ALONGWITH ITS BASIS

Brief of Findings	Para & Page Numbers of Basis of Vol.1 (Findings)	
GPR Survey in the courtyard indicated that it broadly has three-layered stratigraphy with variable thickness.	Para: 4 to 8, Pg.142-143	Vo to
GPR profiles of the tank region shows distinct reflection signatures and cavity passage	Para 7, Pg. 143	Vo
existing structure is constructed over a pre-existing structure of basalt, lower part of which still exist as the base of present structure.	Para 9, Pg.143	Vo ex (a
Three Phases of Structure. Existing structure representing the third phase, was built over the structure of an earlier phase which was damaged and modified for reuse.	Para 10, Pg. 143	Vo
High wall with offsets indicate that the early structure built on natural soil of bricks was massive perhaps for public purpose.	Para 11, Pg. 143-144	Vo
Level of other structures around the main structure was raised from time to	Para 12, Pg.144	Vo

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time indicating that it survived for a long time.		
Solid platforms, carefully filled with horizontal stone layers set in hard soil, with thick outer brick walls and	Para 13, Pg. 144	Vol.

brick rammed thick floors
on top was built for public
use

Remains of earliest
structures still exist in-situ,
covered under the thick
and heavy slabs of basalt.
Based on the artifacts
found during the
investigations, these brick-
structures dated to the
Paramara period, i.e. 10th-
11th century.

Para 14, Pg. 144

Vol.
Pg.

Earlier brick structures
were enlarged by using
locally available basalt
stone, whose lower portion
is buried beneath massive
stone platform constructed
for structure enlargement
The enlarged structure
made of basalt was
embellished with numerous

Para 15, Pg. 144

Vol.

Para 16, Pg. 144

Vol.

Brief of Findings	TABLE - IMAGE 1 Para & Page Numbers of Vol.1 (Findings)	Basis
inscriptions engraved on large slabs of fine-grained basalt, one of which contains 'Sharada Sadan' found in Parijatamanjari, inscribed in slab fixed the present structure	Para 17, Pg. 144	Vol. 1
Inscriptions found in and around the existing structure fixed in the stone structure, gives it different identity	Para 18, Pg. 144	Vol. 1 75, 84
Superstructure of this stone structure was later modified and converted into mosque (Architectural		

members)

Eastern area is almost 3-4 m higher than the working level of the existing structure. This area contains several graves, which are made on even higher platforms, hence original level of present structure and entrance of previous structures could not be exposed. Entrance to previous structure

Para 19, Pg. 145

Vol. 10, Pg.1

Superstructure of existing structure constructed over a large & high platform of basalt, vary in material and style. It was retained and used as base for constructing the present structure, using architectural members of limestone.

Para 20, Pg. 145

Vol. 10, Pg.2

Existing structure is made hurriedly with not much attention to symmetry, designs. Superstructure is made of limestone but some parts of the earlier basalt structure, and one pillar No.24 base of marble were also reused.

Para 21, Pg. 145

Vol. 2, Pg.70

Mouldings of the platform of earlier structure are of uniform shape and height all around. Existing structure above the platform are of different shapes and sizes & Stone blocks used in construction of these walls are not in proper courses running through the entire building.

Para 22, Pg. 145

Vol. 10, Pg.2

Beautifully carved ceiling with concentric circles and lotus designs is used in main dome. Another smaller dome is provided

Para 23, Pg. 145

Vol. 10, Pg.4

at northern side, but there

NEUTRAL CITATION NO. 2026:MPHC-IND:8805

is no dome at south side.
(View of Dome)

Mihrab in the western
colonnade is a new
construction and therefore
it is beautifully decorated.
It is made of different
material than the entire
structure (Mihrab)

Para 24, Pg. 145

Vol

Brief of Findings

TABLE - IMAGE 2
Para & Page Numbers of
Vol.1 (Findings)
Para 25, Pg. 146

B

V

Walls of the mihrab in the
west abut against the
platform made of basalt
and having mouldings
running under it. The
material of the platform
and the walls of the mihrab
are different.

Images carved on previous
structure, pillars, pilasters,
beams, windows, were
chopped off to reuse them
in the present structure.

Para 26, Pg. 146

V

Large size inscriptions in
Sanskrit and Prakrit were
damaged and reused. Large
slabs having these
inscription were reused in
floor or veneering of walls
by chiselling written
surfaces.

Para 27, Pg. 146

V

The existing structure has
long colonnades in all four
directions decorated with
106 pillars and 82 pilasters.

Para 28, Pg. 146

V

These pillars and pilasters are reused in the existing structure. Pillars & Pilasters

Art and architecture of these pillars and pilasters in colonnades suggest that they were originally part of temples. For their reuse in the existing structure, figures of deities and

Para 30, Pg. 146

V

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humans carved on them were mutilated.

56 Arabic and Persian inscriptions studied in Bhojshala Temple cum Kamal Maula Mosque and Kamal Maula Tomb

including loose slabs kept or reported in tomb. Forty-three ink written inscriptions found few bearing the visitor records. Some also mention part of religious texts like Islamic creed, invocation, and attributes of God while some illustrate couplets of Persian poetry with name of the person. Arabic and Persian Inscriptions

Para 31, Pg. 146

Vol. 4: P
260 to 26

Coins of (Indo Sassanian 10th to 11th century), Pg.13 to 19 (Delhi Sultanate 13th to 14th Century), Pg.20 to 22 (Malwa Sultanate 15th to 16th Century), Pg.23 to 26 (Mughal Sultanate 16th to

Para 32, Pg. 147

Vol. 6, P

18th Century), Pg.27 (Dhar State 19th Century), Pg.28 to 30 (British period), Pg.31 to 38 (Independent India)

Earliest coins found at the site are Indo-Sassanian which can be dated to 10th-11th century, when Paramara kings were ruling in Malwa with their capital at Dhar.

Para No. 33, Pg. 147 Vol. 6, P

Total 94 sculptures, sculptural fragments, and architectural members with sculptural depiction were noticed during the investigation made of basalt, marble, schist, soft-stone, sandstone, and limestone. Sculptures &

Para No. 34, Pg. 147 Vol. 6 Pg

NEUTRAL CITATION NO. 2026:MPHC-IND:8805

(Architectural Members).

TABLE - IMAGE 3

Brief of Findings

Para & Page Numbers of Vol.1 (Findings) Basis o

Sculptures of four armed deities were carved on windows, pillars and beam used in the existing structure.

Para No. 35, Pg. 147 Vol. 10

Images carved on these included Ganesh, Brahma with his consorts, Narsimha, Bhairava, Gods and Goddesses, human and animal figures, Mythical and composite figures include variety of

Para No. 36, Pg. 147 Vol. 10 to 137 Mukh)

kirtimukhas - human face,
lion face, composite face;
vya/a of different shapes,
etc.

As human and animal
figures are not permitted in
mosque at many places
such images have been
chiselled out or defaced
visible on pillar and
pilaster in western and
eastern colonnades; on
lintel in western colonnade;
entrance of southeast cell,
etc.

Para No. 37, Pg. 147

Vol. 10

kirtimukha with human,
animal and composite faces
carved on a number of
pillars in western
colonnade were not
destroyed. Small figures of
deities carved on frame of
windows fixed in north and
south walls of the western
colonnade are also
comparatively in good state
of preservation.

Para No. 38, Pg. 147

Vol. 10

From art and architecture
of decorated pillars and
pilasters it can be said that
they were part of earlier

Para No. 39, Pg. 148

Vol. 10

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temples and were reused
while making colonnades
of the mosque over the
high platform of basalt.
More than 150 inscriptions
and fragments, engraved
on fine grained basalt in
Nagari script, and datable

Para No. 40, Pg. 148

Vol.

to 13th century CE have been found in and around the Bhojshala Temple cum Kamal Maula Mosque. (Sanskrit and Prakrit Inscriptions)

Based on existing inscriptions in the complex It can be said that these inscriptions contained literary works composed by some of the Paramara kings

Para No. 41, Pg. 148

Vol.

A large inscription fixed in eastern colonnade contains two poems in Prakrit language consisting of 109 stanzas each. The first of them 'Avanikirlasatam' is attributed to Mahirijjidhirija Paramesvara Bhojadeva. Second stated to have been composed by Paramara king Bhoja.

Para No. 42, Pg. 148

Vol.

All Sanskrit and Prakrit inscriptions are earlier than the Arabic and Persian inscriptions, indicating that users or engravers of the Sanskrit and Prakrit inscriptions occupied the place earlier.

Para-49 Pg.149

Vol.

These inscriptions start with the invocation of gods such as Om

Para No. 43, Pg. 148

Vol.

Sarasvityanamah, Om namah Shivay.

Large inscription fixed in eastern colonnade contains the Pirijjitamajjari-nitika or

Para No. 44-46, Pg. 148

Vol.

Vijayasrf with names of its
composer Madana, the
preceptor of the king
Arjunavarman, the king of
Ohara of Paramara family,
descendant of the emperor
(siirvabhauma) Bhojadeva.

TABLE - IMAGE 4		
Brief of Findings	Para & Page Numbers of Vol.1 (Findings)	Basis o
This inscription also mentions the first performance of Parijgitamajjari-nitika took place in a temple of the goddess Sarasvati (Siiradiidevyiib Sadman).	Para 45 Pg.148	Vol. 4,
Many fragments found in and around the present structure contains similar text and verse numbers, which run in hundreds, suggesting that these works were long literary compositions.	Para 46 Pg.148	Vol. 4,
The two Nagamika inscriptions engraved on two separate pillars in the western colonnade are of grammatical and educational interest indicating tradition of existence of centre of learning, believed to be founded by the king Bhoja.	Para No. 47, Pg. 149	Vol. 10
The opening verses of one of the inscriptions refers to the king Naravarman (ruled between 1094 - 1133 CE) son of Udayaditya, of the Paramara dynasty.	Para No. 48, Pg. 149	Vol. 4,
Verses 17-18 of the inscription of Khilji king Mahmud Shah, dated to AH 859 (1455 CE) and fixed on the gateway of the tomb of Abdullah Shah Changal at Dhar	Para No. 50, Pg. 149	Vol. 4,

NEUTRAL CITATION NO. 2026:MPHC-IND:8805

(Epigraphia Indo-Moslemica 1909-10) mentions "This brave man reached from Centre of religion in this old monastery with crowd of people together destroyed the effigies of idols made this temple into mosque violently"

Retrieved architectural remains, sculptural fragments, large slabs of inscriptions on pillars, etc. suggest that a large structure associated with literary and educational activities existed at the site which based on scientific investigations can be dated to the Paramara period.

Para No.51 Vol. 10, Pg.97 to 100, to 139, 152

[C] HISTORICAL LITERATURE, ARCHAEOLOGICAL FEATURES AND ITS DISCUSSION:-

[151] The following historical literature was produced by all the parties, the relevant part of the same re produced and quoted as under:-

[152] Prabandha Chintamani, a Jain scripture records that:-

—the famous Raja Bhoj of Parmara dynasty got constructed the Bhojshala temple at Dhar, Madhya Pradesh, in 1034 A.D. for worshipping Goddesses Saraswati. The temple served as a center of Hindu philosophy and Sanskrit language, and a great residential university. About 1400 great scholars, poets and theologians like Maagh, Vaanabhatta, Kalidas, Bhavabhooti, Maanatunga, Bhaskarabhatta and Dhanapal got patronage at Bhojshala where many famous scriptures like the Avani Koormashatam, Saraswati Kanthaabharana, Raajamaartanda, and Tithisaaranika were written. As mentioned in

the Dhar District Gazetteer, the Bhojashala was a great center of learning of almost all prevalent Indian religions and disciplines. Raja Bhoj himself was well versed in 72 types of arts and 36 models of military sciences. He wrote 84 books on various subjects NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 like Astronomy, Ayurveda, Grammar, Politics, Sculpture, Philosophy, Chemistry, Vaastu, etc. || [153] K.K.Munshi notes the importance of Raja Bhoja's contribution to Hindu cultural legacy in the following words:-

...during Bhoja's rule civilization in Malwa had risen to a magnificent pitch. Our appreciation of Bhoja for having portrayed a faithful picture of the most glorious period of medieval Indian History [in the Srngaramanjarikatha] is heightened when we take into consideration the worked and stood tor all that was glorious in Hindu Culture'. (K.K. Munshi, ed. Srngaramanjarikatha, Singhi Jaina granthamala, no.30(Bombay, 1959); 90.) || [154] In 1903, a Sanskrit and Prakrit inscription from the time of Arjunavarman (circa 1210-15) was found in the walls of the building by K.K.Lele, Superintendent of Education in the Princely State of Dhar. The engraved inscription is displayed inside the entrance. The text includes parts of a drama called Vijayasrinatika composed by Madana, the king's preceptor, or 'Bala Saraswati'. Other inscribed tablets noted by Lele included a large tablet inscribed with the Kurmasataka-verses in praise of the Kurma incarnation of Vishnu and a serpentine inscription containing the grammatical rules of the Sanskrit language. These finds, particularly the grammatical inscription, promoted Lele to name the building Bhoj Shala, or 'Hall of Bhoja', in reference to King Bhoja (circa 1000-55), the author of several works on poetics and grammar such as the famous Saraswatikanthabharana or —Necklace of Saraswati'. The term 'Bhoj Shala' || was first published by C.E. Luard in 1908.

[149] That the Imperial Gazetteer of India 1908 Vol. XI at page 295 mentions that:- —The Kamal Maula is a small enclosure containing four tombs. One is said to be that of Mahmud Khilji I, the other is that of Shaikh Kamal Maulvi. Over the doorway is a handsome blue tile with an inscription in Kufic characters. Kamal-ud-din was a follower of the famous saint Nizam-ud-din-Aultya, who lived in the time of Ala-ud-din (1296-1316). This mausoleum was built in 1457 by Mahmud I in honor of his memory. Raja Bhoj's School is another mosque made out of Hindu remains in the fourteenth or fifteenth century. Its present title is a misnomer, derived from the numerous slabs containing rules of Sanskrit grammar which have been used to pave the floor. It stands on the site of an old temple, probably that mentioned in a play of which a portion was discovered here inscribed in stone slabs fixed in the back of the mihrab. The temple was dedicated to the goddess Saraswati and is described as the ornament of the eighty-four squares of Dharanagiri. On two pillars are a curious 17 epitome of Sanskrit inflexional terminations, cut so as to resemble a snake, and called Sarpabandhi in consequence. || [155] Royal Asiatic Society published journal in 1904. In the journal there is some

narration regarding Bhojshala school in Article XI in the chapter titled as 'Dhar and Mandu'. There are photographs of two inscriptions found in Bhojshala. The description mentioned at page 350, 351 and 352 are being reproduced below:-

"The mosque, contiguous to Kamal-ul-din's tomb, is known among the Hindoo population as "Raja Bhoja ka Madrassa", i.e. Raja Bhoja's School. In its present form, it is contemporaneous with the buildings round it, but, as in the case of the Lat Musjid, all the materials used seem to have been taken from Hindoo buildings. The decoration of the "Mehrab"

and the dome are more elaborate than
in the Lat Musjid. As confirming the local

tradition of the existence of Raja Bhoja's school in this neighbourhood, the two Serpobandht pillar inscriptions, photographs of which are given below, are extremely interesting. The following explanation of them, has kindly been given to me by Mr. K.K. Lele, Superintendent of Education in the Dhar State.

—Inscription No.1 is made up by the windings of one serpent only.

It contains the Sanskrit alphabet in the Nagari characters the 11th or 12th Century A.D., and the chief inflectional terminations of nouns and verbs. The former are given in the body of the serpent, and the latter in the tail. The consonants do not differ very much from those in common use now; but the vowels have quite a different shape. The whole inscription is 2ft. 3 in. in height and 1 ft. in breadth. There are altogether 53 letters and symbols, and 21 nominal and 18 verbal inflectional terminations. As the alphabet plays the chief part in this inscription, it may be called alphabetical."

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 —Inscription No.II, is bigger in size, 21/2 ft. in height", and 1.1/2 ft. breadth, with greater contents. It is made up by the intertwining of two serpents, probably male and female. It contains chiefly the personal terminations of the ten | tenses and moods of Sanskrit grammar. There are three numbers in Sanskrit, and two sets of terminations (Parasmaipada and Atmanepada, transitive and intransive) for each of the tenses and moods: so for the three persons in each there are altogether 18 terminations, 9 of each set, as shown below:-

Parasmai

Atmane

Sing.

Du.

Pl.

Sing.

Du.

3rd person

...

... 3rd person ...

2nd person

...

... 2nd person ...

1st person

...

... 1st person ...

Inscription Sarpobandha No II

[156] Thus, there are altogether 1x10180 verb terminations, 90 of each set, given in the table numbered on the right-side. They are given in slanting columns from the left to the right in the spaces left between the zigzag turnings of the serpents. On the left-hand side are marked the names of the two sets of terminations, the three persons: the third or Prathama, the second or madhyama, and the first or uttama; and the three numbers by the figures 1, 2 and 3. The names of the tenses are marked on the top of each column by the initial letter of each. In Sanskrit, besides primitive verbal bases, there are several (not fewer than a dozen) derivative bases of verbs, which show cansation, desire, intensity, etc. These and other details are indicated in the round knots below the principal table. The inscription is based on the Ka-tantra grammar of Sanskrit. Above the table are two Sanskrit stanzas of the Anustubha metre 32 letters divided into 4 feet of 8 letters each. In the first verse of occur the names of Udayadittya and Naravarman, and in the second that of Udayadittya alone. Now these Udayadittya and Naravarman were the almost immediate successors of the Raja Bhoja who ruled at NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Dhar during the first half of the eleventh century of the Christian era. The probable meaning of the stanzas is as follows:-

—The swords of the king Udayadittya and Naravarman were equally ready for the protection of the varnas (i.e. four castes) - and the letters of the alphabet. This pillar inscription has been put here by king Udayadittya for the gratification of poets and princes. —In addition to these evidences, considerable portion of the floor of the mosque is paved with black stone slabs, on which can be distinctly seen traces of the inscriptions which once covered them, but which unfortunately have been almost totally defaced by the Mahomedan conquerors. Finally, a recent close inspection has brought to light the fact that the reverse side of two of the great black stones slabs which form the lining of the —Mehrab— are covered with similar Inscriptions, which happily by their position have escaped destruction, but of which, owing to that same position, it has only been possible up to the present to take fragmental impressions. These impressions seem to show that the inscriptions are a dramatic composition probably on an historical subject, written in the reign of successor of Bhoja. The photographs

relating to inscription | 1 and 2 mentioned herein published by Royal Asiatic Society journal are on record.

[157] That in the book 'Mandu', the city of Joy written by G. Yazdani, Director of Archaeology in H.E.H. The Nizam's Dominions and Epigraphist to the Government of India for Muslim inscriptions in the year 1929 has written about Bhojshala. The relevant portion appearing at page 9-10 are being reproduced herein below:-

—The Bhojshala and Kamal Maula In a picturesque corner well shaded by tall trees lie these two buildings. The Bhojshala or Raja Bhoja's School is a mosque made by the Musalman rulers of Malwa out of the remains of a Hindu temple of the 11th or 12th century. This popular title is a misnomer derived from the numerous slabs containing rules of Sanskrit Grammar, placed on the floor of the building so as to be trodden under the feet of the —true believes. On the site of this building there was originally a temple and it was in all probability the temple to Saraswati which is described in the Sanskrit play of Arjunavarma Paramara's day (1210-16) as —the ornament of the eighty-four squares of Dharanagri. Two slabs were discovered behind the Mihrab one bearing two NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Prakrit odes of the 11th century (one supposed to have been composed by Raja Bhoja himself and the other the Sanskrit play mentioned, which praises Arjunvarma. These slabs stand on the north side of the building and are beautiful specimens of the stone-cutter's work.

[158] On Two pillars in this building are a curious epitome of Sanskrit inflectional terminations cut to resemble snakes. In a small enclosure known as Kamal Maula's cemetery near the gate of this building, are four tombs. One is believed to be of Mahmud Khilji (1435-69) another being that of Shaikh Kamal Maula or Malavi so called from his long residence in Malwa. Over the door is a blue tile inscribed in cufic characters. The oldest inscription in Dhar was found in this cemetery. It states that Dilawar Khan, then only governor in Malwa under Muhammad Shah repaired the ruined mosques of Dhar in 795 A.H. or 1392 A.D. [159] That from the archaeological and historical facts it is crystal clear that the building in question is a Hindu temple and place of learning of Sanskrit language. The scholars, on the basis of research made by John Malcolm and Michael Willis have further opined regarding grammatical inscriptions that:-

[i] The building also contains two serpentine grammatical inscriptions. These records prompted K. K. Lele to describe the building as the Bhojsala or Hall of Bhoja because king Bhoja was the author of a number of works on poetics and grammar, among them the Sarasvatikanthabharana or 'Necklace of Sarasvati'. The term Bhojasala was taken up by C. E. Luard and published in his Gazetteer of 1908 although Luard noted that it was a misnomer. That the term Bhojsala is due to Lele is shown by the writing of William

Kincaid in his "Rambles among Ruins in Central India," published in the Indian Antiquary, in 1888. This makes no mention of the term Bhojsala, noting only the Akl ka kua or "Well of Wisdom" in front of the tomb of Kamal al-Din. Kincaid was a cynical observer but in any case the absence of the term Bhojsala in his text indicates was "no living tradition about the Bhojsala in the middle decades of the nineteenth century" among those with whom he interacted.

[ii] After Lele and Luard had identified the Bhojsala with the Kamal Maula, O.C.Gangoly and K.N.Dikshit published an inscribed sculpture in the British Museum, announcing that it was Raja Bhoja's Sarasvati from Dhar. This analysis was broadly accepted and had a significant impact. The statue in the British Museum was often identified as Bhoja's Sarasvati in the years that followed. The inscription on the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 sculpture mentions king Bhoja and Vagdevi, another name for Sarasvati. However, later study of the inscription by Indian scholars of Sanskrit and Prakrit languages notably Harivallabh Bhayani, demonstrated that inscription records the making of a sculpture of Ambika after the making of three Jinas and Vagdevi. In other words, although Vagdevi is mentioned, the inscription's main purpose is to-record the making of an image of Ambika, i.e. the sculpture on which the record is incised. Text and translation:-

"aum ! srimadhbhojanarem dracam dranagarividyadhari [*dha] rmmadhih yo---- [damaged portion] khalu sukhaprasthapana-(2) y=ap(sa)rah[*!] vagdevi[*m] Prathama[*m] vidhaya janami[m] pas[c] aj jinanamtrayim amba[m] nityaphala(d) ikam vararucih (m) urttim subha [m] ni-(3) rmmame [I] iti subham II sutradhara sahirasutama nathalena ghatitam II vi [jna]nika sivadevena likhitam itill (4) samvat 100 91 [II*]" Aum. Vararuci, King Bhoja's religious superintendent (Dharmmadhi) of the Candranagari and Vidyadhari [branches of the Jain religion], the apsaras [as it were] for the easy removal [of ignorance? By..?], that Vararuci, having first fashioned Vagdevi the mother [and] afterwards a triad of Jinas, made this beautiful image of Amba, ever abundant in fruit. Blessings! It was executed by Manathala, son of the sutradhara Sahira. It was written by Sivadeva the proficient. Year 1091.

Iconography:-

[160] The identification of the British Museum sculpture as Ambika is confirmed by the iconographic features which conform to Ambika images found elsewhere. A particularly close comparative example is the Ambika in Sehore dating to the eleventh century. Like the Dhar sculpture, the Sehore image shows a youth riding a lion at the foot of the goddess and a figure with a beard standing at one side. The inscription on the statute in the British Museum indicates that the Vagdevi at Dhar was dedicated to the Jain form of Saraswati.

[161] Maa Saraswati has a significant place in the Sanatan scriptures. In Rigveda, Devi Saraswati is lauded not less than seventy-two times. In a famous hymn, S'aunaka Gritasamda, the Rishi of the second Mandala in Rigveda lauds the Saraswati as ambitame, naditame, devitame Saraswati; (RV II.41.16):-

Ambitame devitame naditame Saraswati NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Aprashastaa iva smasi prashastim amba nas kridhi (Translation: Mother (Ambi) Supreme, Devi Supreme, River Supreme Saraswati, consider me without recognition, Saraswati, give me recognition, Ambaa).

[162] Our ancient sages have described Goddess Saraswati in the most ancient scripture Rigveda. The scholars have opined that Ambitame and Ambaa in the Rigveda is the same Amba mentioned on the inscription of Bhojshala Saraswati Pratima. The scholars have further described Goddess Saraswati in the following manner:-

—She is Divinity of learning which is evidenced by what is perhaps a writing stylus carried on her unbroken right hand (out of four hands) -- a writing stylus used for creating inscriptions. The object carried on her left hand is not of high resolution on the photograph and may be a portion of a measuring thread (sutra) used by sthapati (sculptors, mason artisans). A Gandharva seen above the right shoulder of the Pratima perhaps with a flower-garland venerating the divinity. The lady riding a lion at the bottom right of the Pratima may relate to the divine Durga form of Amba. The standing bearded person on the bottom left of the Pratima may be Brahma. || [163] It would be also relevant to refer certain photographs which are filed along with the petition in WP No.10497/2022 Hindu Front as Annexure P.5 which has been elaborated in the petition in para 5.30 which has also been confirmed in the scientific survey carried out by the ASI as per the court order dated 11.3.2024, visible in videography.

Sl.No.	Annexure No.	Description
1	5(i)	Yantra and Sanskrit Shloka on floor def
2	5(ii)	Sanskrit Shloka on floor- defaced.
3	5(iii)	Dharmchakra on ceiling.
4	5(iv)	Carved pillars in the building as found
5	5(v)	The other side of carved pillars of the found only in temples.
6	5(vi)	Defaced image of Hindu God/Goddess on t building

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7	5(vii)	Defaced image of Sun god on the pillar
8	5(viii)	Landscape photo of the building.
9	5(ix)	Defaced image of Hindu God on the pilla
10	5(x)	Defaced image of Sun God on the pillar (zoomed in)
11	5(xi)	Overall picture of the carved pillars a temples.
12	5(xii)	Traditional Hindu engravings on the pil
13	5(xiii)	Defaced images of Hindu Gods on the pil
14	5(xiv)	Image of Sun God on another pillar of
15	5(xv)	Traditional images of three Hindu Gods building which have been defaced.
16	5(xvi)	Yantra used by ancient scholars engrave building
17	5(xvii)	Traditional Hindu architecture found in

building. The place for Hindu deity is also visible and also the stairs subsequently erected alongside 18 5(xviii) Engravings of Hindu Goddesses on the| pillar of the building as was prevalent in Hindu temples in 10th-11th century 19 5 (xix) Photograph of the courtyard of the | building having carved pillars which was traditionally constructed in Hindu temples in 10th -11th century. Such type of pillars are not found in mosques.

20 5(xx) Disintegrated and desecrated sculptures kept under iron fencing by ASI 21 5(xxi) Surya Chakra as is prevalent in Hindu temples. 22 5(xxii) Another photograph of

Dharm Chakra which is found only in Hindu temples 23 5(xxiii) Locked room 24 5(xxiv) Yantra depicting Sanskrit Grammar 25 5(xxv) Mantra in Sanskrit above Yantra 26 5(xxvi) Overall view of the Bhojshala building alongwith Havand NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Kund 27 5(xxvii) Carved ceiling in traditional Hindu style 28 5(xxviii) Recital in Pali/Prakrit as found on the walls of Bhojshala building 29 5(xxix) Sanskrit Grammar Charts explaining the Sanskrit Grammar engraved in Bhojshala building 30 5(xxx) 31 5(xxxi) 32 5(xxxii) 33 5(xxxiii) [164] WA No.559/2026 ([Qazi Zakaullah & Ors. Vs. State of MP & Ors.](#)), the respondent No.8 and appellant in Writ Appeal in support of the claim that the ancient and historical monument was a mosque have relied on a narration of —Soofiwad|| written by Director Shrimati Pirbha Shriniwasulu, published by M.P. Hindi Granth Academy. Hazrat Maulana Kamaluddin Chishti had laid the foundation stone of the said Mosque in 1306-07 AD. A reference has also been made to a book written by Shri M.W. Khan, published by Anjuman Zila Dhar (MP) in 1964, also writes at pages 5 and 16 that Hazrat Maulana Kamaluddin Saheb Chishti Rehmatullah Aleh had laid the foundation stone of Shahi Masjid Maulana Kamaluddin in 704 Hijri (1305 AD). This author, in his above book further writes at pages 5,6,9 and 33 that after two years i.e. in 706 Hijri (1307 AD), —Shahi Masjid Maulana Kamaluddin|| (124 feet in width and 188 feet in length) was constructed. When the said Mosque was constructed Maulana Kamaluddin Chishti was alive but lateron, he died in Dhar in the year 1330 AD. He was buried in the grave on the right of the main entrance of the said Masjid. A tomb over the grave was built up in 1457 by Sultan Mehmud Khilji of Mandu, which is also known as ‘Mazhar’ of Maulana Kamaluddin. The relevant pages of the book written by Dr.(Smt) Pirbha Shriniwasulu and Shri M.W. Khan were also referred. They also referred the gazetteer of 1908 of the Dhar State compiled by Capt. C.E. Luard in support of their contention that in 1304-5 AD Malwa was conquered during the regime of Sultan Allauddin Khilji (Emperor of Delhi). Afterwards, during the regime of Sultan Mehmud Shah Tughlaq (Emperor of Delhi), Dilawar Khan Gauri was appointed the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Governor of Malwa in 1392 AD. The pages of the book M.W. Khan have been referred. Certain pages of ‘Medieval Malwa’ were also referred. Certain notes in the book by Major C.L. Luard in his book Dhar and Mandu were also referred.

[165] It was further referred the factum of renovation of old Jama Masjid of Dhar by Dilawar Khan in 1392 AD. is also written at pages 14 and 15 of an Urdu Book ‘Shaha- Ne-Malwa’. The book titled as Studies in the History of Malwa edited by Dr. S.K. Bhat and published by Malwa Itihas Parishad was also referred. [166] On the basis of the aforesaid literature, it was contended that the disputed area was a Mosque and namaz has been offered in the said disputed area. [167] The following documents have been relied and referred by petitioner/appellant representing cause of muslim community:-

A-[i] Jama Masjid Maula Kamal is a registered Wakf, at Serial No. 612 of the list of Wakfs, published in M.P. Rajpatra dated 18.01.1985 (See Annexures P-19 and P-20 at Para No.5.6 of the Writ Petition).

[ii] Dhar State"s Notification dated 24.8.1935 (Annexure P-32 at Para 5.12 of the W.P).

[iii] Dhar Collector's letter dated 22.9.1951 (Annexure P-3 and Para 5.13 of W.P).

(iv) Madhya Bharat Government's letter dated 15.10.1991 Annexure P-34, Para 5.14 of W.P).

[v] Madhya Bharat Government's letter dated 1.5.1952 (Annexure P-36, Para 5.16 of W.P).

[vi] Voluntary Agreement executed by the Hindu and Muslim Communities on 23rd April, 1995 (Annexures P-38, Para No.523 of W.P).

[vii] Dhar Collector's letter dated 12.5.1997 (Annexure P-39, Para No.524 of WP).

[viii] | Dhar Collector's Letter dated

May 1997 (Annexure P-40, Para No.5.24 of W.P).

[ix] Director General, Archeological Survey of India, Government of India"s letter/order dated 28.11.1997 (Annexure P-41, Para 5.26 of W.P).

[x] Collector Dhar"s Order dated 31.1.1998 (Annexure P-42 Para 5.27 of W.P).

[xi] | Director General, Archeological Survey of India, Govt. of India"s Order dated 5.2.1998 (Annexure P-3, Para No.528 of W.P).

[xii] Director General, Archeological Survey of India, Govt. of India"s Order dated 7.4.2003 (Annexure P-1, Para 3(1) of W.P). | B-[i] State of M.P. and Other's return dated 30.11.1998: Annexure P-22, Para No. 15 of the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Return - See Para 5.5 of W.P/; Para 17, 22, 46 and Paras 20, 35, 36 and 37 of Return: Annexure P-22 (See Para No. 5.28 (i) and (ii) of W.P).

[ii] Union of India and Other's Return dated 22.6.1088 Annexure P-23, Para 5(c) at Pages 21 and 22 of the Return, Para 5(n) at Page 50 of the Return, Para 5(o) at Page 63 and 64 of the Return, Para 5(n)(b), paras 52 and 53 of the Return, Para 5(j) at Page 30 of the Return, Para 5(n) Pages 54 and 55 of the Return and Para 5(o) at Page 58 of the Return.

[168] The ASI has been associated with the monuments since 1902-1903 onwards as reflected in annual archaeological reports placed on record. These documents establish early State recognition and conservation efforts. The 1905 report describes Dhar as the capital of Hindu Rules (Parmars), and notes that later Islamic rulers constructed mosques using materials from earlier Hindu temples, including at the disputed site. Thus, ASI relies on the findings such as Sanskrit inscriptions, Sculptural elements and temple style pillars and slabs. These indicate that materials from a pre-existing Hindu structure were used. Certain reports (1905, 1910-11) mention that the structure stands on the site of a temple believed to be dedicated to Goddess Saraswati, based on inscriptions and local tradition. Reports from 1902-03 and thereafter classify the structure as an important historical and archaeological building, including —Bhojshala Kamal Maula||. Records show continuous repair and conservation work undertaken by ASI, reinforcing its role as custodian of a protected monument. Under [Section 2](#) of the Ancient Monuments Preservation Act, 1904 (for short _1904 Act'), the structure qualifies

as an ancient monument due to its historical and archaeological significance. It is argued that the monument falls within the ambit of [Section 3](#) of the 1904 Act and was treated as protected even prior to later enactments. Under the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (for short '1951 Act'), the monument is listed (Entry No. 90) as one of national importance. [Section 3](#) of the 1951 Act creates a deeming fiction, giving retrospective effect-treating such monuments as protected under the 1904 Act at all relevant times. [The Ancient Monuments and Archaeological Sites and Remains Act, 1958](#) (for short '1958 Act') continues this protection, vesting control and management with ASI. ASI asserts that it is the statutory authority responsible for regulation, preservation, and management of the monument. ASI refers to archival records NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 showing that in 1935, the structure was treated as an archaeological building of the State, with disputes arising regarding its use. The 1935 proceedings show recognition as an archaeological structure, restrictions on religious use and attempts to maintain communal balance. The provisions of the [Government of India Act, 1935](#) regarding federation and authority were not fully operational in relation to princely states like Dhar. Thus, reliance on the 1935 notification to determine religious character is legally questionable. Under [Section 4\(3\)](#) of the Places of Worship (Special Provisions) Act, 1991 (for short '1991 Act'), monuments governed by the 1958 Act are excluded from its operation. Hence, the 1991 Act does not apply to this monument, and cannot be used to claim fixed religious status. ASI relies on Rule 4 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (for short '1951 Act'), which allows closure of monument or parts thereof and regulation for specified periods. The 2003 ASI order regulating access (timings for communities) is defended as a valid administrative arrangement under statutory powers. Earlier pleadings were based on general observations, not on detailed scientific study. The recent court-directed scientific survey report (using modern techniques) should be treated as the most reliable and conclusive material. Monument Status is Undisputed. Across all records the structure is consistently treated as an ancient monument and it is under ASI control. The central question is not title but statutory protection and management, which vests in ASI. Final Position and legal conclusion is that the monument has been protected since 1904 (deemed), 1951 (declared), and 1958 (continued). ASI has full authority to regulate access and usage. The Court should recognize ASI's statutory control, rely on scientific survey findings and reject challenges based on historical disputes or selective records. From 1900 onwards, it has always been treated as an ancient monument. 1951 Act gives retrospective protection -- making it protected since 1904. 1991 Act does not apply to protected monuments and ASI has full authority to regulate access, including the 2003 order. As per the provisions of [Sections 2 and 3](#) of 1951 Act the disputed area was at that time in Madhya Bharat State and the same was included in Part 1 of the Schedule and as has ancient and historical monuments the same is mentioned at Sl.No.90 of District Dhar as Bhojshala and Kamal Maula's Mosque. The provisions of [Section 13](#) of the Act 1904 is para material with [Section 16](#) of Act 1958, therefore, a survey was mandatory regarding ascertainment of religious character of the disputed area as Bhojshala and Kamal Maula Mosque. No material has been placed before us NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 regarding any survey by ASI treating it to be Bhojshal and Kamal Maula

Mosque. By virtue of [Section 2](#) and [3](#) of the 1951 Act, the said ancient monument has become protected monument by deeming Clause. Therefore, the disputed area became protected monument since 1904 Act. By virtue of [Section 39\(2\)](#) of the 1958 Act, the disputed area is a protected monument since 1904 i.e. 18.3.1904. Thus, we held that the disputed area is a protected monument since 18.3.1904.

[169] In Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 which came into force with effect from 28.11.1951 whereby authorising the Central Government to declare the ancient and historical monument mentioned in the Schedule to be of national importance at Sl. No.91 of Part I of the Schedule, it is mentioned Bhojshala Temple cum Kamal Maula Mosque was declared as national monument. The property in question was being managed by ASI under the Act of 1951 and thereafter under the Act of 1958.

[170] As per [Section 16](#) of the Act of 1958 a 'protected monument' is maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any other purpose inconsistent with its religious character. Sub-section (2) of [Sec.16](#) states that where the Central Government has acquired a protected monument under [section 13](#), or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of a protected monument under [section 5](#) and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or part thereof, from pollution or desecration. Further provides by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, 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 taking such other action as he may think necessary in this behalf. [Section 21](#) provides for archaeological excavation. As per [Section 39](#) which is titled as Repeals and saving the Monuments Act of 1958 that repealed The Monument Act of 1904 and The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, therefore, the legislation that governs the premises in question of the Bhojshala today is the Monument Act of 1958. It is also not a matter of dispute NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 that previously under the erstwhile [Monuments Act, 1904](#) also, the said premises were notified as an ancient monument already. Therefore there can be no iota of doubt that statutory duty of the ASI exists as enjoined under Section 16 of the Monument Act, 1958, viz. to ascertain the nature, character and original form of the place of worship. It is only thereafter that the protection of the said place of worship from misuse, pollution or desecration can happen at the instance of ASI. The starting point of applicability of [Section 16](#) is therefore ascertainment of the true character, nature and form of place or the site, where the ancient monument is situated. It was the duty of the ASI to find out the true character of any monument or an archaeological site is followed by the exercise under Section 21 of the Monument Act, 1958, viz, that of excavation, whenever any Archaeological Officer has reasons to believe that the area contains ruins or relics of historical or archaeological importance. The survey therefore, by necessary implication includes qua the protected area a right

accompanied with the duty of the Archaeological Officer to excavate, dig the said protected area containing ruins or relies of historical or archaeological importance. Ascertainment of character of a place of worship or a shrine is a precondition to decide or to determine the primary, fundamental and essential purpose of the place of worship or shrine under Section 16 of the Monuments Act, 1958. Without ascertaining the character of the place of worship or shrine, the same was notified by the ASI in its notification as Bhojshala Temple or the Kamal Maula Mosque. Therefore, mentioning the disputed area as Bhojshala Temple cum Kamal Maula Mosque was without discharging of any statutory duty enshrined upon the ASI u/S.16 of the Monuments Act. This Court passed an order on 11.3.2024 directing for scientific survey. Thus, apart from historical literature and architectural features, the survey report also becomes significant for the purpose of corroboration to the aforesaid findings. Thus, we have to decide whether the disputed area is a 'protected monument' and what was its character as on 15th day of August 1947.

[171] To find out the character of the 'disputed area' the historical and archaeological aspects have to be surveyed. The parties for their rival claims have referred historical literature, Architectural features. ASI survey reports which will be discussed hereinafter in detail which will facilitate us to determine the character of the 'disputed area' whether the same is Bhojshala and Saraswati temple or Kamal Maula Mosque or Jain Temple.

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[D] ASI SURVEY

[172] At this stage, it is apt to refer and mention the notifications issued pre- independence and post independence:-

Date	Particulars	Ref
24.08.1935	Dhar State notified Bhojshala to be dedicated as mosque and can only be used for offering namaz in official gazette	P/5
25.08.1951	Notification of 'Bhojshala and Kamal Maula Mosque' as protected monument at Sr.No.90 under the Ancient & Historical Monuments & Archaeological Sites & Remains Act, 1951	R2(No.
01.05.1952	Letter issued by Education Dept. Madhya Bharat, recognizing rights of Hindu Community on Basant Panchami in Bhojshala	Ref No.
18.1.1985	Gazette Notification of State Govt.(Gr. No.612) purportedly notifying Bhojshala as waqf property referred as Jama Masjid, Dhar	P/4
12.05.1997	Restraining order of collector on entry of people inside Bhojshala Except for Hindu community on occasion of Basant Panchami and for Muslim Community on every Friday from 1-3 PM	P/7
05.02.1998	Director General, ASI order keeping Bhojshala premises closed except for Hindus on occasion of Basant Panchmi and for muslims between 1-3 PM on every Friday to offer Namaz.	P/8
07.04.2003	Director General, ASI by modifying its order dated 05.02.1998, granted permission to tourist to visit Bhojshala premises and also to Hindu community to	P-9 No.

	offer prayer on every Tuesday in addition to occasion of Basant Panchami.	
25.1.2006	ASI letter to Superintendent P/17(W) ASI for granting access for Hindus from 12:30 PM to 3:30 PM & Muslims to 1-3 PM on 03.02.2006 at Bhojshala(Basant Panchmi falling on Friday)	
11.02.2013	ASI order allowing access to Hindus on 14.02.2013 & 15.2.2013 at Bhojshala from Sunrise to sunset except 12 - 3:30 PM (Basant Panchmi falling on Friday)	P/18(W)

[173] After going through the survey report extensively, a brief findings of the report is prepared by us which is made part of the judgment which are as under:-

Brief Findings of the Survey "In compliance of the order of the Hon'ble High Court of Madhya Pradesh at Indore, dated 11.03.2024 in Writ Petition No. 10497 of 2022 the Archaeological Survey of India (ASI) carried out scientific investigations, survey and excavations from 22.03.2024 in Bhojshala Temple cum Kamal Maula Mosque complex, and 50 m of peripheral ring area surrounding the circular periphery from the boundary of the complex. The ASI conducted the investigations, survey and excavations complying with the order dated 01.04.2024 of the Hon'ble Supreme Court of India in Special Leave Petition (Civil) No. 7023 of 2024, in such a way so as not to alter the character of Bhojshala Temple cum Kamal Maula Mosque at Dhar District, Madhya Pradesh.

2. All the objects which were noticed and retrieved during the scientific investigation, survey and excavations in the complex were duly documented. These objects include inscriptions, sculptures, coins, architectural fragments, pottery, and objects of terracotta, stone, metal and glass. Objects which required first aid treatment were treated at the site.

3. In 1951, "Bhoja Shala and Kamal Maula's Mosque" was declared as a monument of national importance by the Ancient and Historical Monument and Archaeological Sites

and Remains (Declaration of National Importance) Act, 1951. Being a monument of national importance, all the scientific investigations, survey, and archaeological excavations were carried out very carefully, ensuring that during all these operations no damage is caused to the existing structure.

GPR Survey NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022

4. GPR Survey in the courtyard indicated that it broadly has three-layered stratigraphy with variable thickness. The top Layer-1 has a thickness of -1 m with stone slab constructions, suggesting inhomogeneous lithology constituted of filled fragmented material and lacks a clear stratification. Layer-2 is highly saturated with filled fragments extending up to 4 to 5 m from layer-1. Layer 3, extending downward from a depth >5 m, forms the largely undisturbed base horizon in which all the structures rest.

5. The Western colonnade shows a distinct compact GPR reflection compared to the courtyard open area. It can be inferred that the courtyard region is loosely filled as compared to the colonnade area. The brick structure wall and the filled fragmented materials visible in the courtyard region is similar to the southwest excavated section of the courtyard.

6. Longitudinal profiles with north-to-south directions in western colonnade broadly indicate irregular strata up to 5 m, below which natural surface starts. The entire upper strata (<5 m) is filled/constructed material. Three distinct sections of structures are clearly seen. The central section is filled/constructed later than the other two sections.

7. The GPR profiles of the tank region show distinct reflection signatures. A bright vertical signal is observed indicating cavity passage.

8. Profile taken on the excavated section where <50 cm layer reflects the undulated surface with bright reflection. The man-made structures are observed up to 4 m of depth. The natural surface starts below 5 m in depth. A cavity reflection is also observed.

Pre-existing Structure

9. Based on the survey, scientific investigations, archaeological excavations, study of inscriptions, examination of sculptural and architectural fragments, study of art and architecture of the existing structure, and excavated remains it can be said that the existing structure is constructed over a pre-existing structure of basalt, lower part of which still exist as the base of present structure. Scientific and archaeological investigations indicate three distinct architectural phases at the site. The existing structure representing the third phase, was built over the structure of an earlier phase which was damaged and modified for reuse.

Brick-built Structures.

11. Walls exposed during the excavation in southwest corner of the courtyard, suggest that the early structures made on the natural soil were of bricks. Thick and high wall with offsets indicate that the structure would have been massive and perhaps for public purpose.

12. Other structures abutting it show different levels of rise suggesting that the level of structures around the main structure was raised from time to time indicating that it survived for a long time.

13. Solid platforms, carefully filled with horizontal stone layers set in hard soil, with thick outer brick walls and brick rammed thick floors on top could have been built for public use.

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14. Remains of these earliest structures constructed at the site, still exist in-situ, and are covered under the thick and heavy slabs of basalt used during the construction of the platform. Based on the artifacts found during the investigations, these brick structures can be dated to the Paramara period, i.e. 10th-11th century CE.

Stone Structure of Basalt

15. Earlier brick structures were enlarged by using locally available basalt stone. Lower portions of these earlier brick structures are buried and confined within the massive stone platform constructed during the enlargement of the establishment.

16. The enlarged structure made of basalt was embellished with numerous inscriptions engraved on large slabs of fine-grained basalt. A number of inscriptions which are found in and around the existing structure would have been placed in this structure. Mention of 'Sharada Sadan' is found in Parijatamanjari, which is inscribed on a large slab which was found and fixed in the present structure.

17. Hundreds of large and small fragments of inscriptions found in and around the existing structure suggest that a number of inscriptions were fixed in the stone structure, giving it a different identity.

18. Fragments of these inscriptions, sculptures, and architectural members suggest that superstructure of this stone structure was later modified and converted into mosque.
Entrance to previous structure

19. Eastern area is almost 3-4 m higher than the working level of the existing structure. This area contains several graves, which are made on even higher platforms making the deposit in this area almost 4 m higher from their natural level. Due to limited space near entrance no excavation could be taken up at the eastern side, hence original level of present structure and entrance of previous structures could not be exposed.

Existing Structure

20. Superstructure of existing structure which is constructed over a large and high platform of basalt, vary distinctly in material and style. Entire platform of the previous structure, made of basalt, was retained and used as base for constructing the present structure, largely using architectural members of limestone.

21. Existing structure appears to have been made hurriedly with not paying much attention to symmetry, designs, material, etc. Although most of the superstructure is made of limestone but

some parts of the earlier basalt structure, and one pillar base of marble were also reused.

22. Whereas mouldings of the platform of earlier structure are of uniform shape and height all around, stone courses in walls of existing structure above the platform are of different shapes and sizes. Stone blocks and slabs used in construction of walls are not dressed in any particular size to lay proper courses running through the entire length of the building.

23. A beautifully carved ceiling with concentric circles and lotus designs is used in main dome. Another smaller dome is provided at northern side, but there is no dome at south side.

Mihrab NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022

24. Mihrab in the western colonnade is a new construction and therefore it is beautifully decorated. It is made of different material than the entire structure. 25. Walls of the mihrab in the west abut against the platform made of basalt and having mouldings running under it. The material of the platform and the walls of the mihrab are different.

26. Images carved on previous structure, pillars, pilasters, beams, windows, were chopped off to reuse them in the present structure.

27. A large number of large size inscriptions in Sanskrit and Prakrit were damaged and reused. These large slabs of fine quality of stones were reused in floor or veneering of walls by chiselling written surfaces. A number of Inscriptions belonging to pre-existing structures have been noticed and copied from the existing structure. Pillars and Pilasters

28. The existing structure has long colonnades in all four directions decorated with 106 pillars and 82 pilasters. These pillars and pilasters reused in the structure were studied systematically and scientifically.

29. A variety of pillars and pilasters of different sizes and designs are reused to construct colonnades of the present structure. For achieving the desired height, two pieces of shafts were put one above the other.

30. Art and architecture of these pillars and pilasters in colonnades suggest that they were originally part of temples. For their reuse in the existing structure, figures of deities and humans carved on them were mutilated.

Arabic and Persian inscriptions

31. 56 Arabic and Persian inscriptions studied in Bhojshala Temple cum Kamal Maula Mosque and Kamal Maula Tomb include loose slabs kept or reported in tomb, and forty-three ink written inscriptions. Ink inscriptions chiefly bear the visitor records, however, some also mention part of religious texts like Islamic creed, invocation, and attributes of God while some illustrate couplets of Persian poetry along with the name of the person.

Coins 31 coins of silver, copper, aluminium and steel, datable to periods of Indo-Sassanian (10th-11th century), Delhi Sultanate (13th-14th century), Malwa Sultan (15th-16th century), Mughal (16th-18th century), Dhar state (19th century), British (19th-20th century), and independent India, were found during the investigations in and around the present structure.

33. Earliest coins found at the site are Indo-Sassanian which can be dated to 10th-11th century, when Paramara kings were ruling in Malwa with their capital at Dhar.

Sculptures

34. Total 94 sculptures, sculptural fragments, and architectural members with sculptural depiction were noticed during the investigation. They are made of basalt, marble, schist, soft-stone, sandstone, and limestone.

35. Sculptures of four armed deities were carved on windows, pillars and beam used in the existing structure.

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36. Images carved on these included Ganesh, Brahma with his consorts, Narasimha, Bhairava, Gods and Goddesses, human and animal figures. Images of animals in different mediums include lion, elephant, horse, dog, monkey, snake, tortoise, swan, and bird. Mythical and composite figures include variety of kirtimukhas human face, lion face, composite face; vyala of different shapes, etc.

37. As human and animal figures are not permitted in mosque at many places such images have been chiselled out or defaced. Such attempts can be seen on pillar and pilaster in western and eastern colonnades; on lintel in western colonnade; entrance of southeast cell, etc. 38. It is noteworthy that kirtimukha with human, animal and composite faces carved on a number of pillars in western colonnade were not destroyed. Small figures of deities carved on frame of windows fixed in north and south walls of the western colonnade are also comparatively in good state of preservation.

38. It is noteworthy that kirtimukha with human, animal and composite faces carved on a number of pillars in western colonnade were not destroyed. Small figures of deities carved on frame of windows fixed in north and south walls of the western colonnade are also comparatively in good state of preservation.

39. From art and architecture of decorated pillars and pilasters it can be said that they were part of earlier temples and were reused while making colonnades of the mosque over the high platform of basalt. A pillar decorated with niches in all four directions depict mutilated images of deities. Another base of a pillar also depicts a deity image in a niche. Standing images on two pilasters have been chopped off and are beyond recognition.

Sanskrit and Prakrit Inscriptions

40. More than 150 inscriptions and fragments, engraved on fine grained basalt in Nagari script, and datable to 13th century CE have been found in and around the Bhojshala Temple cum Kamal Maula Mosque.

41. Based on existing inscriptions in the complex it can be said that these Y inscriptions contained literary works composed by some of the Paramara kings or works composed or copied during the Paramara rule.

42. A large inscription fixed in eastern colonnade contains two poems in Prākṛit language consisting of 109 stanzas each. The first of them is called in the colophon as Avanikūrmaśatam and its authorship is attributed to Mahārājādhirāja Paramēśvara Bhōjadeva. Although, there is no colophon at the end of the second poem, it is also stated to have been composed by Paramara king Bhoja.

43. These inscriptions start with the invocation of gods such as Sarasvityanamah, Om namah Shivay .

44. Another large inscription fixed in eastern colonnade contains the Pārijātamañjari-nāṭika or Vijayaśrī and mentions names of its composer Madana, the preceptor of the king Arjunavarman, the king of Dhāra of Paramara family, who is a descendant of the emperor (sarvabhauma) Bhōjadēva.

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45. This inscription also mentions that the first performance of the Pārijātamañjari-nāṭika took place in a temple of the goddess Sarasvati (SāradādevyāḥSadmani). 46. Many fragments found in and around the present structure contains similar text and verse numbers, which run in hundreds, suggesting that these works were long literary compositions.

47. The two Nagakarnika inscriptions engraved on two separate pillars in the western colonnade are of grammatical and educational interest. These two Inscriptions indicate to the tradition of the existence of a centre of learning, believed to be founded by the king Bhoja.

48. The opening verses of one of the inscriptions refers to the king Naravarman (ruled between 1094-1133 CE) son of Udayaditya, of the Paramāra dynasty.

49. All Sanskrit and Prakrit inscriptions are earlier than the Arabic and Persian inscriptions, indicating that users or engravers of the Sanskrit and Prakrit inscriptions occupied the place earlier.

50. Verses 17-18 of the inscription of Khilji king Mahmud Shah, dated to AH 859 (1455 CE) and fixed on the gateway of the tomb of Abdullah Shah Chagal at Dhar (Epigraphia Indo-Moslemica 1909-10) mentions "(17) This brave man reached from Centre of religion in this old monastery with crowd of people together (18) destroyed the effigies of idols made this temple into mosque violently".

Nature and Age

51. Retrieved architectural remains, sculptural fragments, large slabs of inscriptions with literary texts, Nagakarnika inscriptions on pillars, etc. suggest that a large structure associated with literary and educational activities existed at the site. Based on scientific investigations and archaeological remains recovered during the investigations, this pre-existing structure can be dated to the Paramara period.

Based on scientific investigations, survey and archaeological excavations conducted, study and analysis of retrieved finds, study of architectural remains, sculptures, and inscriptions, art

and sculptures, it can be said that existing structure was made from the parts of earlier temples."

[174] In order to ascertain the character of the disputed area which is claimed to be a protected monument under the different pre independence and post-independence legislation, it would be necessary to consider the evidentiary value of the ASI report. All the parties relied on the judgment passed in the case of M Siddiq (D) Thr.Lrs.vs Mahant Suresh Das &Ors (known as Ayodhya judgment, therefore, we refer the various paragraphs of [the said judgment](#). The learned Advocate General made a brief of all the relevant paragraphs of [the said judgment](#) and categorised them as 10 principles which are reproduced as under:-

PRINCIPLE #1 NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 One of the most important principles which emanates from the Ayodhya Judgement is that the burden of proof on which a case like this has to be tested is not that of mathematical certainty or proof beyond a reasonable doubt, but the standard which courts should accept is that of preponderance of probability, which is also the accepted standard in civil proceedings.

[Relevant Paragraphs for Principle: paragraphs 1235 PRINCIPLE #2 The Ayodhya Judgment elucidates that the Enquiry of Modern Courts cannot be to ascertain Theological Perfection of the structure, but to ascertain Evidence of Faith and belief, Worship, Subsistence of Endowment, Nature of endowment and whether it exists in perpetuity or not, Religious Use, Conduct of Worshipper, Historical Assertion and Continuity and Consistency of Religious Belief. [Relevant Paragraphs for Principle 1:paragraphs 78 to 83 and 90] PRINCIPLE #3 The third principal, which emanates from Ayodhya, is that the protection of the deity, the endowed property, and the underlying pious purpose is the paramount objective of modern courts. Thus, the interests of the deity or the purpose itself, can be protected by its beneficiaries, i.e., the Worshippers. The rule of locus standi is relaxed in this regard to ensure justice to the purpose. Worshippers can be granted recognition to institute proceedings to protect the interests of the deity against a stranger. Since the principle is to ensure the interests of the pious purpose, worshippers in their elevated status, can institute proceedings against strangers acting in contravention of the purpose, and, in cases, even the Shebait. [Relevant Paragraphs for Principle 3:paragraphs 448, 449, 451, 454, 456, 458, 467,509] PRINCIPLE #4 A Hindu endowment made to divinity entails a pious purpose, which is universal, infinite and omnipresent, and cannot be confined within physical or legal boundaries. The idol is recognised because it embodies a pious purpose, which in itself is not limited to the idol. The law is bound to protect that pious purpose so that the intention of the dedicator/ testator and the future interests of devotees are not defeated. The destruction or absence of the idol does not result in termination of the pious purpose, and consequently does not terminate the pious purpose or the endowment. Even where the idol is destroyed, or where the presence of the idol is intermittent or entirely absent, the legal personality created by the endowment i.e, the pious purpose, continues to subsist, because what the law protects is the underlying pious purpose of

continued worship, not the physical image simpliciter. The conferment of legal personality upon the pious purpose ensures that there exists an entity in whom the property may vest in an ideal sense, who may receive the dedication, and through whom the interests of devotees may be protected.

The protection of pious purpose is imperative for modern courts, and therefore, even in the absence of trust, where an endowment is made for a NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 religious or charitable institution, and its object is pious, the institution, is given juristic personality to secure its interests. The object has to be to fulfil the purpose of dedication through continued worship, so that devotees may realise spiritual fulfilment through prayer. In the case of Hindu idols, legal personality is not conferred upon the idol simpliciter, but upon the underlying pious purpose of continued worship of the deity as incarnated in the idol. Further, to give primacy and security to such pious purposes, it has been held that the faith and belief of Hindu devotees is a matter personal to their conscience, and it is not for the Court to scrutinise the strength of their convictions or the rationality of their beliefs beyond a prima facie examination to ascertain whether such beliefs are held in good faith.

[Relevant Paragraphs for Principle 3: paragraphs 128, 131, 144, 146, 148, 151, 152, 154, 156, 158, 160, 162, 223, 537] PRINCIPLE #5 The judgment in the Ram Janmabhoomi case recognises an important principle when modern courts are to assess matters of faith and belief. Faith and belief are recognised to be of paramount importance. However, courts must also recognise that they are not always capable of proof by direct documentary evidence, nor must they always subscribe to secular logic. The Court elucidates that faith and belief lie within the personal realm of the believer, and their genuineness cannot be put to the test of scriptural interpretation or rational scrutiny. The test should be of genuineness and not rationality.

Faith, though important, cannot conclusively determine title or other proprietary rights and has to be construed with the relevant corroborative material on record. In matters of faith, absence of evidence cannot be negatively treated against the believer as evidence of absence. Consistency and continuity of faith and belief are relevant factors when proprietary rights are judged. If a denomination has consistently and continuously believed in the existence of a particular fact within the spiritual realm, and such assertion is corroborated by other relevant material on record, then courts must not decide the matter by comparing the strength of competing faiths, but must assess the genuineness of the belief. [Relevant Paragraphs for Principle : paragraphs 236, , 249, 263.8, 809, 814.6, 1176, 1178, 1179, 1181, 1188, 1188.6, 1200.1, 1417] PRINCIPLE #6 The next principle which flows from Ayodhya is with regard to evidentiary value of Official Gazettes or Gazetteers by Court. The judgment makes clear the position that Official Gazettes or Gazetteers, though are not inadmissible or irrelevant and may be considered

by the Court to provide historical background and may also possess corroborative value where supported by other material, however, they cannot be treated as conclusive proof of title, religious character, legal entitlement, or disputed historical fact. Their contents must be scrupulously tested against the totality of the record, including contemporaneous documents, official NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 records, archaeological material, conduct of parties, and other surrounding circumstances.

[Relevant Paragraphs for Principle : paragraphs 861, 864, 865, 866, 867, 868, 881, 1333] PRINCIPLE #7 In disputes such as this of competing religious denominations, the Ayodhya Judgement is a lodestar in the assessment of Official Government records by modern courts. Official descriptions, administrative nomenclature, government correspondence and contemporaneous official records may have material evidentiary value where they consistently identify a disputed site by reference to its religious or historical association. Such material may not, by itself, conclude title or final legal character, but it can substantially corroborate other documentary, historical, archaeological and worship-related evidence. [Relevant Paragraphs for Principle: paragraphs 1352, 1353, 1354 and 1355] PRINCIPLE #8 As regards the principle of Waqf by user, the principle which emanates from the Ayodhya Judgement is that the evidentiary burden. Ayodhya thus demonstrates that internal religious doctrines, whether invoked by the Hindu side in the form of juristic personality of the land itself, or by the Muslim side in the form of waqf by user over the entire disputed property, cannot be accepted in a manner that automatically destroys the established religious rights of the other community. The Court rejected the claim that the land itself, Ram Janmabhoomi Asthan, was a juristic person, and also rejected the claim that the entire disputed property was waqf by user, since such recognition would have extinguished competing and Hindu religious rights in the same property. [Relevant Paragraphs for Principle : paragraphs 1132, 1136, 1138, 1139, 1139.2, 1140] PRINCIPLE #9 The principle, which the Ram Janmabhoomi judgment reposes, is that ASI is a body having recognised credibility and expertise which modern courts do not possess, and therefore its reports are to be ascribed due value. In the Ram Janmabhoomi case, the Apex Court did not validate the approach of the High Court in not evaluating the report. Though it is necessary to bear in mind the criticism levelled against its methodology and findings. The Court held that by virtue of Order 26 Rule 10(2), the report and the evidence taken by the Commissioner "shall be evidence in the suit" and "shall form part of the record". The principle is that it is not safe for a Court to act as an expert and overrule an elaborate report of a Commissioner whose integrity and carefulness are unquestioned, and whose careful and laborious execution of the task is reflected in the report. However, such expert opinion must be sieved and evaluated by the Court and cannot be treated as conclusive in and of itself. The further principle through which modern courts have to assess a dispute before them is that archaeology, which includes multiple disciplines and NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022

transdisciplinary approaches, is the strength of the report prepared by such experts and cannot be labelled as a weak form of evidence. The assessment of findings has to be done by applying the principle of preponderance of probabilities rather than absolute truth. Preponderance of probability is to be considered an acceptable standard. Findings of forceful demolition can be inferential where the building in dispute did not have its own foundation, but was raised on existing walls, or where the floor was sitting just over the floor of the earlier building. The Court must read the report as a whole, assess its findings contextually, consider objections realistically, and determine whether the conclusions drawn are supported by the material on record.

[Relevant Paragraphs for Principle 4: paragraphs 571, 572, 612, 612.1, 612.2, 617, 622, 623, 624, 629, 654, 658, 659, 660, 661, 672 to 674, 675, 679, 691, 716, 717, 720, 721, 722, 723, 730, 731, 733] PRINCIPLE #10 Another aspect of this principle is that where the dispute concerns religious character, historical use, continuity of worship, or competing claims over a protected or disputed religious site, archaeological findings of religious motifs, art, instruments, sculptures, inscriptions and architectural members demonstrating pre-existing structure of a particular religion may be of high probative value. This enables the Courts to apply the other principles in determining subsisting rights and consistency of belief. Ayodhya judgement recognises that religious symbols, their location and acknowledgement of such symbols by the opposite side may together support an inference not merely of abstract belief, but of actual religious worship and continuity. The Supreme Court also ascribes high value to consistency of belief despite demolition or ruination of the superstructure or even conversion in a given case.

[Relevant Paragraphs for Principle 4: paragraphs 1204, 1204.3, 1206, 1207, 1210, 1212, 1216, 1217] [175] Principle No.1 is that the burden of proof on which a case like this has to be tested is not that of mathematical certainty or proof beyond a reasonable doubt, but the standard which courts should accept is that of preponderance of probability. Principle No.2 says that the Enquiry of Modern Courts cannot be to ascertain Theological Perfection of the structure, but to ascertain Evidence of Faith and belief, Worship, Subsistence of Endowment, Nature of endowment and whether it exists in perpetuity or not, Religious Use, Conduct of Worshipper, Historical Assertion and Continuity and Consistency of Religious Belief. Principle No.3 emanate from Ayodhya judgment is that the protection of the deity, the endowed property, and the underlying pious purpose is the paramount objective of modern courts. Thus, the interests of the deity or the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 purpose itself, can be protected by its beneficiaries, i.e., the Worshipers. The rule of locus standi is relaxed in this regard to ensure justice to the purpose. Principle No.4 which has been culled out is about the existence or the presence of a destroyed idol. The destruction or absence of the idol does not result in termination of the pious purpose, and consequently does not terminate the pious purpose or the endowment. Even where the idol is destroyed, or where the presence of the idol is intermittent or entirely absent, the legal personality created by the endowment i.e, the pious purpose, continues to subsist, The conferment of legal

personality upon the pious purpose ensures that there exists an entity in whom the property may vest in an ideal sense, who may receive the dedication, and through whom the interests of devotees may be protected. The conferment of legal personality upon the pious purpose ensures that there exists an entity in whom the property may vest in an ideal sense, who may receive the dedication, and through whom the interests of devotees may be protected. The protection of the deity is imperative for the modern Courts. Even in absence of trust, where an endowment is made for a religious or charitable institution, and its object is pious, the institution, is given juristic personality can to secure the interest. Principle No.5 recognise the important principle when modern courts has to assess the matters of faith and belief. Faith and belief are recognised to be of paramount importance. However, courts must also recognise that they are not always capable of proof by direct documentary evidence, nor must they always subscribe to secular logic. The Court elucidates that faith and belief lie within the personal realm of the believer, and their genuineness cannot be put to the test of scriptural interpretation or rational scrutiny. The test should be of genuineness and not rationality. Consistency and continuity of faith and belief are relevant factors when proprietary rights are judged. If a denomination has consistently and continuously believed in the existence of a particular fact within the spiritual realm, and such assertion is corroborated by other relevant material on record, then courts must not decide the matter by comparing the strength of competing faiths, but must assess the genuineness of the belief. Principle No.6 makes it clear the position of evidentiary value of Official Gazettes or Gazetteers by Court. The judgment makes clear the position that Official Gazettes or Gazetteers, though are not inadmissible or irrelevant and may be considered by the Court to provide historical background and may also possess corroborative value where supported by other material, however, they cannot be treated as conclusive proof of title, religious NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 character, legal entitlement, or disputed historical fact. Their contents must be scrupulously tested against the totality of the record, including contemporaneous documents, official records, archaeological material, conduct of parties, and other surrounding circumstances. Principle No.7 says that the official descriptions, administrative nomenclature, government correspondence and contemporaneous official records may have material evidentiary value where they consistently identify a disputed site by reference to its religious or historical association. Such material may not, by itself, conclude title or final legal character, but it can substantially corroborate other documentary, historical, archaeological and worship-related evidence. Principle No.8 is about the principle of Waqf by user, the principle which emanates from the Ayodhya Judgement is that the evidentiary burden. Ayodhya thus demonstrates that internal religious doctrines, whether invoked by the Hindu side in the form of juristic personality of the land itself, or by the Muslim side in the form of waqf by user over the entire disputed property, cannot be accepted in a manner that automatically destroys the established religious rights of the other community. Principle 9 is about the ASI report. The Apex Court did not appreciate the approach of the High Court in not evaluating the report. Though it is necessary to bear in mind the criticism levelled against its methodology and findings. The Court held that by virtue of Order 26 Rule 10(2), the report and the evidence taken by the Commissioner —shall be evidence in the suit|| and —shall form part of the record||. However, such expert opinion must be sieved and evaluated by the Court and

cannot be treated as conclusive in and of itself. The further principle through which modern courts have to assess a dispute before them is that archaeology, which includes multiple disciplines and trans disciplinary approaches, is the strength of the report prepared by such experts and cannot be labelled as a weak form of evidence. The assessment of findings has to be done by applying the principle of preponderance of probabilities rather than absolute truth. Preponderance of probability is to be considered an acceptable standard. Findings of forceful demolition can be inferential where the building in dispute did not have its own foundation, but was raised on existing walls, or where the floor was sitting just over the floor of the earlier building. The Court must read the report as a whole, assess its findings contextually, consider objections realistically, and determine whether the conclusions drawn are supported by the material on record. Another principle which has been gathered from the said judgment is that the dispute concerns religious character, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 historical use, continuity of worship, or competing claims over a protected or disputed religious site, archaeological findings of religious motifs, art, instruments, sculptures, inscriptions and architectural members demonstrating pre-existing structure of a particular religion may be of high probative value. This enables the Courts to apply the other principles in determining subsisting rights and consistency of belief. [176] In the present case, we are not deciding the title of the property of the _disputed area. Most of the arguments of the other respondents and interveners were as if the petitioners are claiming title over the disputed area. The judgment in Ayodhya case was arising out of a civil suit which was dealing with the claim of a title over the disputed area. In the present case, as we consider that we have to determine the character of the disputed area on the basis of historical literature, architectural features, ASI survey reports etc. For determining the character of the disputed area we have to keep in mind the aforesaid 10 principles laid down by the Apex Court in the Ayodhya case. We have already referred in detail the legal history and historical literature produced from both the sides. Imperial gazetteer of India 1908 Vol. 11 at page is again quoted for ready reference:-

—The Kamal Maula is a small enclosure containing four tombs. One is said to be that of Mahmud Khilji I, the other is that of Shaikh Kamal Maulvi. Over the doorway is a handsome blue tile with an inscription in Kufic characters. Kamal-ud-din was a follower of the famous saint Nizam-ud-din-Auliya, who lived in the time of Ala-ud-din (1296-1316). This mausoleum was built in 1457 by Mahmud I in honor of his memory. Raja Bhoj's School is another mosque made out of Hindu remains in the fourteenth or fifteenth century. Its present title is a misnomer, derived from the numerous slabs containing rules of Sanskrit grammar which have been used to pave the floor. It stands on the site of an old temple, probably that mentioned in a play of which a portion was discovered here inscribed in stone slabs fixed in the back of the mihrab. The temple was dedicated to the goddess Saraswati and is described as the ornament of the eighty-four squares of Dharanagiri. On two pillars are a curious epitome of Sanskrit inflexional terminations, cut so as to resemble a snake, and called Sarpabandhi in consequence.|| NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [177] That Royal Asiatic Society published journal in 1904. In the journal there is some narration regarding Bhojshala school in Article XI in the chapter titled as —Dhar and Mandu'. There are

photographs of two inscriptions found in Bhojshala. The description mentioned at page 350, 351 and 352 are being reproduced below:-

"The mosque, contiguous to Kamal-ul-din's tomb, is known among the Hindoo population as "Raja Bhojaka Madrassa", i.e. Raja Bhoja's School. In its present form, it is contemporaneous with the buildings round it, but, as in the case of the LatMusjid, all the materials used seem to have been taken from Hindoo buildings. The decoration of the "Mehrab" and the dome are more elaborate than in the LatMusjid. As confirming the local tradition of the existence of Raja Bhoja's school in this neighbourhood, the two Serpobandhi pillar inscriptions, photographs of which are given below, are extremely interesting.

[178] The following explanation of them was given by Mr.K.K.Lele, Superintendent of Education in the Dhar State.

"Inscription No.1, is made up by the windings of one serpent only.

It contains the Sanskrit alphabet in the Nagari characters the 11th or 12th Century A.D., and the chief inflectional terminations of nouns and verbs. The former are given in the body of the serpent, and the latter in the tail. The consonants do not differ very much from those in common use now; but the vowels have quite a different shape. The whole inscription is 2ft.

3 in. in height and 1 ft. in breadth. There are altogether 53 letters and symbols, and 21 nominal and 18 verbal inflectional terminations. As the alphabet plays the chief part in this inscription, it may be called alphabetical. || Inscription No.II, is bigger in size, 2 1/2 ft. in height and 1 1/2 ft. in breadth, with greater contents. It is made up by the intertwining of two serpents, NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 probably male and female. It contains chiefly the personal terminations of the ten tenses and moods of Sanskrit grammar. There are three numbers in Sanskrit, and two sets of terminations (Parasmaipada and Atmanepada, transitive and intransitive) for each of the tenses and moods: so for the three persons in each there are altogether 18 terminations, 9 of each set, as shown below:-

Parasmai Atmane Sing. Du. Pl. Sing. Du. Pl.

3rd person 3rd person

2nd person ... 2nd person ...

1st person ... 1st person ...

Inscription Sarpobandha No II Thus, there are altogether 18x10180 verb terminations, 90 of each set, given in the table numbered on the right-side. They are given in slanting columns from the left to the right in the spaces left between the zigzag turnings of the serpents. On the left hand side are marked the names of the two sets of terminations, the three persons: the third or Prathama, the second or madhyama, and the first or uttama; and the three numbers by the figures 1, 2 and 3. The names of the tenses are marked on the top of each column by the initial letter of each. In Sanskrit, besides primitive verbal bases, there are several (not fewer than a dozen) derivative bases of verbs, which show cansation, desire, intensity, etc. These and other details are indicated in the round knots below the principal table. The inscription is based on the Ka-tantra grammar of Sanskrit.

Above the table are two Sanskrit stanzas of the Anustubha metre 32 letters divided into 4 feet of 8 letters each. In the first verse of occur the names of Udayadittya and Naravarman, and in the second that of Udayadittya alone. Now these Udayadittya and Naravarman were the almost immediate successors of the Raja Bhoja who ruled at Dhar during the first half of the eleventh NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 century of the Christian era. The probable meaning of the stanzas is as follows:-

—The swords of the king Udayadittya and Naravarman were equally ready for the protection of the varnas (i.e. four castes) and the letters of the alphabet. This pillar inscription has been put here by king Udayadittya for the gratification of poets and princes. —In addition to these evidences, considerable portion of the floor of the mosque is paved with black stone slabs, on which can be distinctly seen traces of the inscriptions which once covered them, but which unfortunately have been almost totally defaced by the Mahomedan conquerors. Finally, a recent close inspection has brought to light the fact that the reverse side of two of the great black stones slabs which form the lining of the —Mehrab are covered with similar inscriptions, which happily by their position have escaped destruction, but of which, owing to that same position, it has only been possible up to the present to take fragmental impressions. These impressions seem to show that the inscriptions are a dramatic composition probably on an historical subject, written in the reign of a successor of Bhoja. [179] The photographs relating to inscription 1 and 2 mentioned herein published by Royal Asiatic Society journal are annexed in the petition.

[180] That in the book 'Mandu', the city of Joy written by G. Yazdani, Director of Archaeology in H.E.H, The Nizam's Dominions and Epigraphist to the Government of India for Muslim inscriptions in the year 1929 has written-about Bhojshala. The relevant portion appearing at page 9-10 are being reproduced hereinbelow:-

—The Bhojshala and Kamal Maula In a picturesque corner well shaded by tall trees he these two buildings. .

The Bhojshala or Raja Bhoja's School is a mosque made by the Musalman rulers of Malwa out of the remains of a Hindu temple of the 11th or 12th century, This popular title is a misnomer derived from the numerous slabs containing rules of NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Sanskrit Grammar, placed on the floor of the building so as to be trodden under the feet of the —true believes. "On the site of this building there was originally a temple and it was in all probability the temple to Saraswati which is described in the Sanskrit play of Arjunavarma Paramara's day (1210-16) as —the ornament of the eighty-four squares of Dharanagri. Two slabs were discovered behind the Mihrab one bearing two Prakrit odes of the 11th century (one supposed to have been composed by Raja Bhoja himself and the other the Sanskrit play mentioned, which praises Arjunvarma. These slabs stand on the north side of the building and are beautiful specimens of the stone-cutter's work.

On Two pillars in this building are a curious epitome of Sanskrit inflectional terminations cut to resemble snakes.

In a small enclosure known as Kamal Maula's cemetery near the gate of this building, are four tombs. One is believed to be of Mahmud Khilji (1435-69) another being that of Shaikh Kamal Maula or Malavi so called from his long residence in Malwa. Over the door is a blue tile inscribed in cufic characters.

The oldest inscription in Dhar was found in this cemetery. It states that Dilawar Khan, then only governor in Malwa under Muhammad Shah repaired the ruined mosques of Dhar in 795 A.H. or 1392 A.D. [181] That in Indian Archaeology Review 1972-73, it has been mentioned that:-

"EXCAVATION AT BHOJSALA, DISTRICT DHAR In order to ascertain the details of the original plinth. Shri V.K. Tiwari of the Central Circle of the Survey carried out a small scale excavation at Bhojasala. Trenches were laid out to the northern side of the monument. During the course of the excavation following structures, assignable to the

medieval period, were encountered: two terraces of concrete, measuring respectively 5x3 and 1.70x10 m; a small structure of low walls, provided with two steps; and a small cell. Another trench, 3x3 m in area, taken on the eastern side of the monument, yielded yellow earth mixed with bricks-

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 bats, assignable perhaps to the Paramara period. Among the finds from this trench may be mentioned potsherds of Paramara period, a few architectural members of temples, a number of iron objects including rings, locks, knives, arrow-heads and nails, a copper ring, porcelain fragments and pre- Mughal glazed pottery. A trench in the western side of the monument —yielded a small mutilated stone sculpture of Vishnu.¶ [182] Indian Archaeological Review 1972 supports the claim of the petitioners in WP No.10497/2022 Hindu Front For Justice (Regd. Trust No.976) through its President Ms.Ranjana Agnihotri & Ors. And WP No.10484/2022 (Kuldeep Tiwari) that the Bhojshala and temple of goddess Vagdevi (Saraswati) was constructed in 1034 AD.

[183] The respondent No.8 and the interveners and the appellant based their case upon the Ailan dated 24.8.1935 in which the disputed area was recognized as a Mosque. It was argued that the said document issued by the Dhar State is legal and valid document because it was issued under the provisions of [Sec.82](#) of the Government of India Act, 1935.

[184] After hearing learned counsel for parties and going through the enactments relating to ancient monument and the Act of 1935, we notice that the said Act came into force only on 1.4.1937. The same was not in force at the time when the Ailan dated 24.8.1935 was issued. The other aspect of the validity of the order dated 24.8.1935 vis-a-vis the Constitution of India has to be considered.

[185] [Article 13](#) which deals with the laws inconsistent with in derogation of the fundamental rights. [Article 13\(1\)](#) clearly states that all laws in force in the territory of India immediately before the commencement 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. Sub section (3) of [Sec.3\(b\)](#) says that in this Article unless the context otherwise requires, 'laws in force' includes laws passed or made by the Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [186] Here we have already noticed that the disputed area was already notified as an ancient monument under the [Act of Ancient Monuments Preservation Act 1904](#) and after incorporating the various provisions we have held that the disputed area was a protected monument under the Act of 1954 with effect from 1904. Once it has been held to be a protected monument from 1904 then the Ruler of Dhar State could not have issued Ailan dated 24.8.1935. The status of this order becomes only of an executive order issued prior to the Constitution, therefore, [Article 13](#) invalidates laws inconsistent with the fundamental rights and defines law unless for the purpose of [Article 13](#) itself. [Article 130](#) is contextual and cannot automatically validate every executive order or notifications issued prior to the Constitution. Every order issued by the Princely Ruler survives as law only when it goes through the test as prescribed under the Constitution. At this stage, it will be relevant to refer the provisions of [Article 372](#) of the Constitution of India which engrafts the provisions of continuance in force of existing laws and their adoption. The relevant part of [Article 372](#) of the Constitution is reproduced as under:-

"372.(1) Notwithstanding the repeal by this Constitution of the enactments referred to in [article 395](#) but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be question in any court of law."

[187] Thus, if the order dated 24.8.1935 is tested on the anvil of [Article 13](#) and [372](#) of the Constitution of India, it cannot be held to be a legal constitutional valid order.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 For a pre Constitution instrument to survive it must possess legislative character emanate from lawful legislative authority and must satisfy the requirements of [Article 365](#) and [372](#) of the Constitution. The 1935 order (Ailan) was merely an executive or administrative arrangement and not a legislative enactment. Even otherwise from the material which has been placed before us, the said order is contrary to the inscriptions, scriptures and continuity of official recognition which is clearly established the extent of a substantial pre existing hindu religious and

educational structure associated with Bhojshala. Thus, the order dated 24.8.1935 cannot override constitutional principles and cannot be treated as a binding legislative document.

[188] The respondent No.8 Maulana Kamaluddin Welfare Society through its President Abdul Samad Khan and appellant in WA No.559/2026 Qazi Zakullah have referred historical literature of —Soofiwwad|| written by Director Shrimati Pirbha Shriniwasulu, published by M.P. Hindi Granth Academy. Hazrat Maulana Kamaluddin Chishti had laid the foundation stone of the said Mosque in 1306-07 AD. A reference has also been made to a book written by Shri M.W. Khan, published by Anjuman Zila Dhar (MP) in 1964, also writes at pages 5 and 16 that Hazrat Maulana Kamaluddin Saheb Chishti Rehmatullah Aleh had laid the foundation stone of Shahi Masjid Maulana Kamaluddin in 704 Hijri (1305 AD). This author, in his above book further writes at pages 5,6,9 and 33 that after two years i.e. in 706 Hijri (1307 AD), —Shahi Masjid Maulana Kamaluddin|| (124 feet in width and 188 feet in length) was constructed. When the said Mosque was constructed Maulana Kamaluddin Chishti was alive but later on, he died in Dhar in the year 1330 AD. He was buried in the grave on the right of the main entrance of the said Masjid. A tomb over the grave was built up in 1457 by Sultan Mehmud Khilji of Mandu, which is also known as 'Mazhar' of Maulana Kamaluddin. The relevant pages of the book written by Dr.(Smt) Pirbha Shriniwasulu and Shri M.W. Khan were also referred. They also referred the gazetteer of 1908 of the Dhar State compiled by Capt. C.E. Luard in support of their contention that in 1304-5 AD Malwa was conquered during the regime of Sultan Allauddin Khilji (Emperor of Delhi). Afterwards, during the regime of Sultan Mehmud Shah Tughlaq (Emperor of Delhi), Dilawar Khan Gauri was appointed the Governor of Malwa in 1392 AD. The pages of the book M.W. Khan have been referred. Certain pages of 'Medieval Malwa' were also referred. Certain notes in the book by Major C.L. Luard in his book Dhar and Mandu were also referred.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [189] It was further referred the factum of renovation of old Jama Masjid of Dhar by Dilawar Khan in 1392 AD. is also written at pages 14 and 15 of an Urdu Book 'Shah-Nama-Malwa'. The book titled as Studies in the History of Malwa edited by Dr. S.K. Bhat and published by Malwa Itihas Parishad was also referred. [190] Documents have also been filed which have been referred in para 164 and 167 of the judgment establish that Hazrat Maulana Kamaluddin Chishti had laid the foundation stone of the said Mosque in 1306-07 AD. None of the material relied by them shows that the disputed area which is claimed to be a mosque was constructed prior to 1034 AD. Thus, the historical material, literature and the notifications placed by the respondent No.8 and the appellant itself established that the said mosque was constructed after 1034 AD. It is established by the material that there was construction of Bhojshala and temple of goddess Vagdevi (Saraswati). [191] The other reason disown the claim of the respondent No.8, appellant and interveners in their support that the disputed area was a mosque right from its inception has to be decided in the light of the historical material and the architectural features and ASI report. A mosque can be built on a Waqf property. The concept of waqf has been explained in Mulla Principles of Mahomedan Law composed by Sir Dinshaw Fardunji Mulla (21st edition). The topics have been divided into sections in the book. It mentions that the term waqf literally means detention and further that:-

—The legal meaning of waqf, according to Abu Hanifa, is the detention of a specific thing in the ownership of the waqf or appropriator, and the devoting or appropriating of its profits or usufruct—in charity on the poor or other good objects||. According to the two disciples, Abu Yusuf and Muhammad, waqf signifies the extinction of the appropriator's ownership in the thing dedicated and the detention of the thing in the implied ownership of God, in such a manner that its profits may revert to or be applied—for the benefit of mankind||. (Baillie, 557-558. See Hedaya, 231, 234). A waqf extinguishes the right of the waqf or dedicator and transfers the ownership to God. The mutawalli is the manager of the waqf, but the property does not vest in him, as it would in a trustee in English law.|| NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [192] No material suggests that the part of the land No.604 (Old No.313) is a Waqf property and the same was dedicated or could be dedicated to Waqf. It is imperative under Muhammadan Law that property must belong to waqif and the owner must belong to waqif and the owner must dedicate the property to the Almighty. Historical material placed before us could not show that waqf has been created and therefore, there can be no presumption regarding existence of a mosque in the disputed area which is prima facie established to be constructed as Bhojshala and temple of goddess Vagdevi (Saraswati) a place of learning Sanskrit language in 1034 AD.

[193] We have already discussed the survey report in detail in the preceding paragraphs and reproduced the brief of the survey report with our brief findings on the survey, therefore, now it would be relevant to consider the objections to the ASI report and videography. It would be apt to mention here that in the survey report, a core technical team of archaeologists was formed for conducting the survey. As per the Court order, a team of seven senior archaeologists headed by Additional Director General was constituted. It was also comprising ASI officers even belonging to the muslim community and two nominated representatives each of petitioners as well as respondent No.8 were also present at the time of photography and videography during the entire survey proceedings. Written objections have also been submitted to the ASI report, the survey report, and videography were not conducted in a fair and impartial manner. It is further alleged that their objections have not been decided and certain facts have been concealed. It was submitted that carbon dating method was not adopted by the ASI team.

[194] We have gone through the objections to the videography in details. The argument that the survey was not conducted in a fair and impartial manner cannot be accepted.

[195] We find that the survey was conducted by adopting scientific method in a fair and impartial manner. The presence of representatives of the petitioners and the respondent can be very well seen in the videography. The method which has been adopted by the

experts was as per their expertise. The carbon dating method is used to determine the age of material itself and not for the age of construction period. The scope of survey was regard to find out the period of architectural structure of the NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 disputed area. They have undertaken through absolute scientific dating methods, and typological or stylistic analysis. The architecture, inscriptions, sculptures, stylistic features, palaeography, and material composition are accepted archaeological methods for determining the age and period of structures. The expert committee adopted these accepted archaeological methods, and the conclusions were reached only after detailed expert examination. In Volume 5 of the ASI report, they have stated that the survey was conducted including analytical studies conducted through XRF spot analysis, compositional testing, and examination of construction material. Analysis revealed similarities in basalt composition, indicating use of material from the same geological source and similar construction phases. Similarly, analysis of bricks from different locations demonstrated similarities in elemental composition suggesting contemporaneous construction patterns. The findings scientifically supported the conclusions recorded in the report. The allegation regarding recovery of plastic bottles and modern waste during excavation has been explained that such material was found only in the uppermost heterogeneous debris layers, which already consisted of modern dumped material, conservation debris, ceramic pieces, wrappers and assorted waste. The report of ASI itself records existence of heterogeneous upper layers. We do not accept the objections to the ASI report and videography that the survey was not conducted in a fair and impartial manner and the findings were recorded with any bias or ulterior motive. Regarding the allegation that Goutam Budha idol was found, it was argued by the counsel of ASI that the no such idol was recovered, and the concerned artefact referred to by the other side was not in fact a Jain statue, which was duly recorded and catalogued. All artefacts recovered during investigation were separately numbered, documented, photographed, and incorporated in the report. It is again reiterated that the team which was framed for the survey was having the representation of all the parties, members of different communities including muslim members, therefore, the allegations of communal or institutional bias cannot be accepted and appreciated against a statutory body.

[196] Before coming to any conclusion, it would be relevant to consider about the idol Saraswati which is seriously disputed by the petitioner representing the Jain community and claiming to be idol of Jain religion Ambika.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [197] Maa Saraswati has a significant place in the Sanatan scriptures. In Rigveda, Devi Saraswati is lauded not less than seventy-two times. In a famous hymn, S'aunaka Gritasamda, the Rishi of the second Mandala in Rigveda lauds the Saraswati as ambitame, naditame, devitame Saraswati; (RV II.41.16):-

Ambitame devitame naditame Saraswati
Aprashastaaivasmasiprashastimambanaskridhi (Translation: Mother (Ambi) Supreme,
Devi Supreme, River Supreme Saraswati, consider me without recognition, Saraswati,
give me recognition, Ambaa).

[198] Our ancient sages have described Goddess Saraswati in the most ancient scripture Rigveda. The scholars have opined that Ambitame and Ambaa in the Rigveda is the same Amba mentioned on the inscription of Bhojshala Saraswati Pratima. The scholars have further described Goddess Saraswati in the following manner:-

—She is Divinity of learning which is evidenced by what is perhaps a writing stylus carried on her unbroken right hand (out of four hands) -- a writing stylus used for creating inscriptions. The object carried on her left hand is not of high resolution on the photograph and may be a portion of a measuring thread (sutra) used by sthapati (sculptors, mason artisans). A Gandharva seen above the right shoulder of the Pratima perhaps with a flower-garland venerating the divinity. The lady riding a lion at the bottom right of the Pratima may relate to the divine Durga form of Amba. The standing bearded person on the bottom left of the Pratima may be Brahma.¶ [199] The historical literature, architectural features clearly indicate that Bhojshala Complex for learning Sanskrit was constructed by Raja Bhoj in the year 1034 AD much prior to the claim of construction of mosque by the other community i.e. 28.4.1935. As we stated that goddess Saraswati is a goddess who represents the knowledge, and, therefore, at the ancient time it cannot be overruled that the place constructed for learning of Sanskrit was having a temple of Maa Saraswati. The recovery of the idol which has been claimed to be of Maa Ambika.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [200] In India, Jainism and Hinduism are not distinct entities. Although, the rituals of worship in these two religions may differ, both faiths have evolved side by side since ancient times, worshipping the same supreme being. Consequently, idols belonging to both Jain and Hindu traditions are frequently found within each others temples. In Ratlam, Madhya Pradesh, a Jain temple houses enshrined idols of lord Shiva in the form of Shivling and lord Ganesha. The legal basis of this is established under [Section 2\(1\)\(a\)](#) of Hindu Marriage Act, 1955 and [u/S.2\(1\)](#) of Hindu Succession Act, 1956 also where, Jainism and Budhism are considered to be part of Hinduism. Therefore, the discovery of a statue of a Jain Tirthankara within the disputed premises during the excavation conducted in accordance with the High Court's directives comes as no surprise.

[201] Based on the various documentaries, evidences available in all the cases, it is established as fact that British officials, recognizing their significance, removed and preserved two idols found near the disputed Bhojshala complex in Dhar, which is now housed in a museum in London.

[202] We will first examine the photograph of the idol of Vagdevi, located on the right side of Page 73 of the compilation submitted by Advocate Shri Vishnu Shankar Jain. This very photograph is available as P-8 on page 66 in M.P No.8986/2026, where the said idol has been addressed by the name of —Ambika||. The name —Vararuci|| is inscribed as the sculptor of the aforementioned idol, as per the available texts. He was an official in Parmar Kingdom. He had made two pratima, one of —Vagdevi|| and another of —Amba||. Both forms represent the divinity of —Saraswati||. [203] In the aforementioned idol, figures other than goddess Saraswati are also depicted. The aforementioned other small idols are being claimed to be statutes of Jain tirthankars, but there is no authentic evidence to support this. The idol of lord —Ganesha|| and the figure of goddess —Durga|| seated on a lion are clearly visible in the lower part of the Vagdevi statue. Now, it would be appropriate to consider the presence of the idols of goddess Durga and lord Ganesha alongside the idol of goddess Saraswati (Vagdevi).

[204] According to Hindu mythology and tradition, Goddess Saraswati has a deep and multifaceted relationship with Ganesha and Durga. This can be understood from three main perspectives:-

"1. Regional/cultural belief (Durga Puja tradition) NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 In eastern parts of India, especially Bengal, Goddess Durga along with her family is worshipped during Durga Puja.

Saraswati and Durga's connection: According to this belief, Goddess Durga is considered the mother of Goddess Saraswati. Saraswati is seated in the puja pandal as Ganesha's sister. Relationship between Saraswati and Ganesha: According to this belief they are brother and sister (Ganesh ji-brother, Saraswati/Lakshmi- sisters)

2. Mythological/Classical Approach (Aditya Shakti/Adi Shakti) According to the Puranas, Durga (Parvati), Lakshmi and Saraswati are all different forms of 'Adi Shakti'.

Relationship with Ganesha: According to mythology. Saraswati is said to be the sister of Shiva (as the daughter of Brahma), and on this basis, she is also considered Ganesha's aunt Connection with Durga: While Durga is considered as 'Shakti', Saraswati is her child or a manifestation of her as Knowledge Energy.

3. Joint worship (wealth, knowledge and auspiciousness) The main spiritual reason for worshipping Ganesha, Lakshmi and Saraswati together is Ganesha: Removes obstacles and bestows wisdom. Saraswati Ji: Gives correct knowledge and intellect. Durga (Mahalakshmi): Provides prosperity and energy. Relation: Without knowledge (Saraswati), proper use of intelligence (Ganesha) and wealth (Lakshmi) is impossible, hence they are worshipped together."

[205] We shall now consider the second statue available in the London Museum, which is known as —Amba||. A photograph of the aforementioned idol, available on the left side of Page 73 of the compilation submitted by Advocate Shri Vishnu Shankar Jain. This very photograph is available as P-6(page 46&47), where the said idol has been addressed by the name of —Jain Vidyadevi||. In India, it is universally accepted that —Saraswati|| is the goddess of —Vidya|| (knowledge). People of both the Hindu and Jain faiths worship goddess Sarawati, the deity of knowledge. The presence of a small book in the hand of the said idol is also mentioned in the description corresponding to the London museum number 1880.349(P-6 in W.P No.8986/2026). In the aforementioned white marble statue of Amba (or Vidyadevi), several smaller figures are depicted alongside the central image. Among these some figure of a —Sadhak|| (spiritual seeker) or some figure of Jain Tirthankara seated in the —Padmasana|| posture is also visible. As discussed previously, the presence of a Jain Tirthankara or a —Sadhak|| or ascetic seated in —Padmasana|| in the background of the Hindu statue of goddess —Saraswati|| is entirely natural, given that Jainism is, in fact, a branch of Hinduism.

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [206] In view of the aforesaid, there is no reason to disbelieve that the disputed area was Bhojshala, having a temple of Maa Saraswati. Counsel for petitioner Shri Vishnu Shankar Jain in his submission submitted that once the deity is placed in a temple after Pran Pratishtha, it continued for all the time even if it is destroyed. The „Pran Prathishtha“ is a well known procedure in hindu religion for installation of an idol or statue of goddess in a temple, which reads as under:-

Consecration "pranpratishtha" of Deity: it's science and significance in Indian History (sculptures) " Religion is lame without science and science is blind without religion "

- Einstein Consecration or Pran Pratishtha is a live procedure. Just like, if you transform seed into food, it is called agriculture, food into human flesh, it is called digestion. Similarly if you transform stone into sculpture and a sculpture into divine possibility, it's called consecration.

An enormous amount of knowledge about this dimension of life was perpetuated particularly in this culture, as this was held as the most important thing.

The renowned Vedic text, the तैत्तिरीयउपत्तिषद् symbolically describes the descent of the Divine into the world of form -

"Aakaashaatvaayuhu, vaayor- agnihi Agner-aapaaha, aapahaprithivihyam" (From the pure formless Space emerged the element of Air, from air emerged Fire, from Fire, Water from Water, Earth...) ..everything in the world, including oneself can be a worthy vessel for the Divine energy.

The concept of many gods unique to the Vedic tradition stems from this view that everything in the world, including oneself can be a worthy vessel for the Divine energy. To commune directly with this energy is not easy for the average human mind, but to connect with it through a beloved form is a joy for the devotee.

When the Hindu worships the stone idol of his ishtadevata, his favorite deity he is hardly worshipping the stone itself but instead, is in direct communion with the Divine energy expressing through that idol - a subtle truth that many miss who condemn the worship of idols in the Vedic tradition.

Science behind PranPratishtha:-

This deeply mystical process can be explained to some extent by the principle of quantum entanglement. Entanglement is a term used in NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 quantum theory to describe the way that particles of energy or matter can become correlated to predictably interact with each other, regardless of how far apart they are. Which means, the state and actions of one of these particles can instantaneously influence the state and actions of other through the process of interference.

Entanglement is one of the many mysterious truths that Newtonian science could not even have imagined, for it questions the concepts of time, space and Reality itself. ..the idols energized by Nithyananda practically become extensions of Himself no matter where they are located physically - even halfway across the planet.

A colossus of extraordinary yogic powers and enlightened consciousness, Paramahansa Nithyananda has the rare ability to subtly force dead matter to enter into entanglement with his own super conscious energy and thus become an alive, conscious power.

Once the cycle of entanglement is established, the idols energized by Nithyananda practically become extensions of Himself no matter where they are located physically - even halfway across the planet. They become pure channels of cosmic energy functioning with independent intelligence yet in instantaneous contact with his own super conscious space.

Significance in Ancient Indian sculptures:-

The Consecration ceremony holds varied significance across Hinduism, Tibetan Buddhism, and other traditions. In Hinduism, it involves rituals for both Varuna and the Sacrificer, focusing on anointment, sacredness, and royal eligibility. Tibetan Buddhism emphasizes the sanctification of objects, like statues, and highlights communal participation.

The Arthashastra notes its role in exempting religious goods from tolls, while the Purana describes rituals for dedicating ceremonial items. Overall, the Consecration ceremony is vital for marking sacredness and legitimacy in religious and royal contexts.

In Hinduism:- The Consecration ceremony in Hinduism is a vital ritual symbolizing sanctification and elevation, especially for royal appointments. It involves dedicating items to divine energies and includes atonement actions, ultimately purifying and making sacred various elements of worship.

(Source:-Satapatha-brahmana by Julius Eggeling |1882 | 730,838 words | ISBN-13: 9788120801134)

1. The formal act of making something sacred through specific rituals, often involving prayers and blessings.
2. The ritual of anointing that he performs without shaving his hair, which symbolizes the retention of vigor and glory.
3. The ceremony for dedicating sacrificial offerings, signified by a sitting down or session, which involves subsequent actions such as performing sacrifices and rising after completion.

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4. A ritual involving the anointment of Varuna where his lustre, or vigour, is thought to have departed due to the essence of the waters used.
5. A specific ritual involving Varuna and the preparation of offerings to consecrate him, which is central to the overall sacrificial practice.

[207] Pursuant to the order of this Court, a multi-disciplinary scientific survey was conducted and a committee of experts (7-8 members) representing both communities was constituted. The survey culminated in a comprehensive report in 10 volumes, including introduction, structural description, scientific analysis, epigraphy, archaeology, photographic & videographic documentation. Importantly, representatives of both contesting sides were present throughout, ensuring transparency and eliminating allegations of bias. The survey was not a routine exercise, but a scientifically rigorous investigation, involving archaeologists, epigraphists, chemists, conservators, surveyors, photographers, use of modern techniques such as GPR (Ground Penetrating Radar) and GPS mapping Examination of Walls, pillars, floors, ceilings, structural layers and stratigraphy artefacts and inscriptions. The site (including 50-meter peripheral area) was systematically divided into 5×5 meter grids, and every structural component was numbered and documented. Excavation was conducted carefully and minimally invasive, without disturbing the standing structure, with continuous documentation (video + photography), followed by restoration of trenches to original condition. There was no change in the character of the monument occurred during excavation. The site shows multiple structural layers (stratigraphy). The upper layer is a later construction, while beneath it lies a pre-existing large structure extending up to 4-5 meters below present level. The findings clearly state the existing structure is constructed over a pre-existing structure, whose remains still exist in site. This earlier structure was built with brick and later expanded with basalt stone dates back to Paramara period (10th-11th century CE). The ASI report records extensive material indicating temple architecture and iconography, Sculptural Evidence. Total 94 sculptures and fragments recovered. Depictions include Ganesha, Brahma, Narasimha, Bhairava, Animal and mythological figures such as Lion, elephant, horse, snake, tortoise, etc. presence of Kirtimukha motifs and divine imagery. It is specifically noted that such human and animal figures are not permissible in a mosque, and several were defaced. Pillars and architectural members structure contains 106 pillars 82 pilasters. Many pillars are of temple style reused from earlier structure. Some composed by stacking multiple shafts. Inscriptions - crucial evidence, the report records More than NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 150 Sanskrit and Prakrit inscriptions. Literary and religious texts linked to Paramara rulers. The earlier structure was a center of learning and religious activity associated with Saraswati worship (Sharda Sadan). Subsequently the structure was modified, damaged, and reused, leading to its conversion into a mosque. A significant inscription (15th century, Khilji period) refers to destruction of idols, conversion of temple into mosque. Scientific Conclusion of ASI based on combined evidence are Stratigraphy, Archaeological excavation, Architectural analysis and epigraphy. The present structure was built over a pre-existing temple structure of the Paramara period, which was later modified and reused as a mosque. There was an earlier excavation (1972-73), which also found temple architectural fragments, sculptures (including Vishnu fragment) and Iron tools and artifacts. This reinforces continuity of findings across decades. The judgment passed by Apex Court in [M Siddiq \(D\) Thr.Lrs v Mahant Suresh Das & Ors.](#) (supra) is relevant. Key propositions relied upon are; Para 629 -

Standard of proof for ASI reports, Paras 727-731 - Evidentiary value of archaeological findings, Paras 732-735 - Issue of temple beneath structure, Paras 855-870 - Limits of travelogues and secondary material, Paras 1204-1223 - Title based on evidence, not faith.

[208] The Archaeological evidence is admissible, relevant, and can form basis of judicial conclusions, even if it does not conclusively prove demolition. The monument is a protected monument of national importance under statutory control of ASI. Scientific survey conclusively shows the existence of pre-existing temple structure, later conversion/modification. Earlier inconsistencies in ASI replies are irrelevant, must give way to latest scientific report. The Court must rely on Scientific archaeological evidence and not on speculative historical narratives. In substance, the ASI report establishes a pre-existing temple structure, whose remains form the base of the present monument. ||

[209] Thus, it can easily be held that the idol which was recovered in excavation and is claimed to be in British Museum in London is of goddess Saraswati. Shri Dinesh P. Rajbhar - counsel for petitioner in WP No.8986/202 to be the representative of Jain community in his petition claimed that said statue is of Ambika of Jain heritage as in one of the images 'Theerthankar' has also seen, however, none of the historical, archaeological and ASI survey indicate that the disputed area was a Jain temple. Even if accepting the submission of Shri Rajbhar - Advocate that the idol may be of Maa NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 Ambika, his claim that the disputed area be declared to be Jain temple, cannot be accepted. Whether the idol is of Saraswati or of Ambika would not render much assistance to his submission that the disputed area was a Jain temple as we held that no material has been placed before us either by way of historical literature, architectural features or in ASI survey suggesting that the disputed area was a Jain temple.

[210] We have considered the archaeological, historical facts, ASI notifications and survey report on the anvil of the statutory provisions of the ASI Act as well as on the basis of the principles [laid down in](#) the Ayodhya case, that archaeology is a science that draws on multidisciplinary or transdisciplinary approaches and considering the nature of archaeological evidence. It is noteworthy to remember that archaeology as a branch of knowledge draws sustenance from the science of learning, it is the wisdom and experience and the vision which underlines the process of interpretation. Therefore the Court can safely rely upon the conclusions derived on the basis of such multidisciplinary scientific studies by the ASI and the fundamental rights guaranteed under [Article 25](#) and [26](#) of the Constitution of India. Every Government has the constitutional obligation to ensure preservation and protection of not only the ancient monuments and structures including temples of archaeological and historical importance, but also of sanctum sanctorum as well as the deity of spiritual importance. There is a constitutional duty even to sanction funds for providing basic amenities to pilgrims, proper arrangements for shelter places, maintenance of law and order and the preservation of purity and pristine character of the deity. We have noted the continuity of hindu worship at the site

through regulated over time has never been extinguished. We record finding that historical literature placed established that the character of the disputed area was Bhojshala as a Centre of Sanskrit learning associated with Raja Bhoj of Parmar dynasty and the literature and architectural reference including those connected with the period of Raja Bhoj indicate the existence of temple dedicated to the goddess Saraswati at Dhar.

[211] Accordingly, the WP No.10497/2022 (Hindu Front for Justice (Regd. Trust No.976) through its President Ms. Ranjana Agnihotri & Ors.) and WP No.10484/2022 (Kuldeep Tiwari & Ors.) are allowed and disposed with the following directions:-

NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 [i] The disputed area of _Bhojshala and Kamal Maula Mosque' is held to be a protected monument under 1958 Act with effect from 18.3.1904.

[ii] The religious character of disputed area of the Bhojshala Complex and Kamal Maula Mosque is held to be a Bhojshala with a temple of goddess Vagdevi (Saraswati).

[iii] The impugned order dated 7.4.2003 passed by the Director, ASI (paragraph 3 of the said order) to the extent restricting right of Hindus to worship within the Bhojshala complex, in the property in question at land No.604 (Old No.313) and also permitting the prayer by the Muslim community are quashed.

[iv] The Government of India and the ASI will take a decision for the purpose of administration and management of the affairs of the Bhojshala temple and Sanskrit learning within the property in question at Land No.604 (Old No.313) situated at Dhar, District Dhar and the ASI will continue to have overall administration and management of the property in accordance with the provisions of the Act 1958.

[v] The ASI shall have full supervisory control over the preservation, conservation and regulation of religious access.

[vi] So far the relief claimed by the petitioners to bring back the Pratima of goddess Saraswati from London Museum, UK and re-establish same within the Bhojshala complex, the petitioners in WP No.10497/2022 and WP No.10484/2022 have already made number of representations to the Government of India, the Government of India may consider their representations to bring back the Pratima of goddess Saraswati from London Museum and re-establish the same within the complex.

[vii] In order to secure the religious rights of the Muslim community and to ensure complete justice between the parties, in case if the respondent No.8 submits an application for allotment of a suitable land within the Dhar district for the construction of a Mosque or a place for prayer, the State Government may consider the said application in accordance with law for allotment of a suitable and permanent part of land in Dhar district to the Muslim community which may be represented either NEUTRAL CITATION NO. 2026:MPHC-IND:8805 WP-10497-2022 through the respondent No.8, appellant, interveners or a duly constituted Waqf body for the construction, administration of a mosque and associated religious facilities.

[212] Accordingly, the WP No.10497/2022 filed by Hindu Front for Justice (Reg. Trust No.976) through its President Ms.Ranjana Agnihotri & Ors and WP No.10484/2022 filed by Kuldeep Tiwari are allowed and disposed of. WP No.8986/2026 filed by Salek Chand Jain is hereby dismissed. WP No.28334/2019 filed by Maulana Kamlauddin Welfare Society through its President Abdul Samad Khan S/o Sirajuddin Khan and WA No.559/2026 filed by Qazi Zakullah & Ors. are also dismissed. No order as to costs.

[213] So far the petition filed by Antar Singh & Ors.WP No.6514/2013 is concerned, the said petition was seeking certain reliefs to use the disputed area in such a manner so that the clash between both the communities are avoided, now need not to be addressed as we have already decided the character of the disputed area in WP No.10497/2022 and WP No.10484/2022. Accordingly, the same is disposed of without deciding on merits.

[214] We express our sincere appreciation to all learned Senior Counsels Shri Salman Khurshid, Ms. Shobha Menon, Shri A.K. Chitale, Shri Prashant Singh, Advocate General, Shri Sunil Jain, Addl. Solicitor General and other counsels for the petitioners, respondents, interveners who argued the case with dignity, restraint in a congenial and harmonious atmosphere which reflects the finest tradition of the legal profession.

[215] Principal Registrar, High Court of Madhya Pradesh, Indore is directed to return the hard disc of videography to the Counsel for Archaeological Survey of India.

(VIJAY KUMAR SHUKLA)
JUDGE

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