DR. M. ISMAIL FARUQUI ETC. A

v.

UNION OF INDIA AND ORS.

OCTOBER 24, 1994

[M.N. VENKATACHALIAH, C.J., A.M. AHMADI, J.S. VERMA, G.N. RAY AND S.P. BHARUCHA, JJ.] B

Constitution of India—Article 143 (1)—Acquisition of Certain Area at Ayodhya Act, 1993—S.4 (3)—Constitutionality of—Whether reference made under Article 143 (1) is effective alternative dispute resolution mechanism—Held, (per majority) the question for determination in the suits not covered by the reference—Defences of the minority community, including that of adverse possession, not included in the reference—Answer to reference will also not answer core question in the suits—Reference by Article 143 (1), held, not effective alternative dispute resolution mechanism—S.4 (3), held, unconstitutional—Held, further, all pending suits and legal proceedings stand revived—Reference superfluous and unnecessary—Court declining to answer the reference. C D

Acquisition of Certain Area at Ayodhya Act, 1993—S.7—Whether provision to maintain status quo as on January 7, 1993 is slanted in favour of the Hindu community—Litigation history, and the acquisition of a larger area than the disputed site comprising properties of Hindus indicates that the rights of both the communities affected and not merely that of the minority community—In fact, S.7 (2) freezes the situation as on January 7, 1993 which was lesser right of worship for the Hindu devotees than that in existence for a long time earlier—However, this is reasonable and just since miscreants who demolished the mosque suspected to be persons professing to practice Hindu religion—Secularism. E F

Constitution of India—Articles 25 and 26—Whether a mosque is immuned from acquisition—Held, (per majority) a mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere—Accordingly, its acquisition not constitutionally prohibited—Status and immunity of a mosque from acquisition is the same and equal to that of the places of worship of other religious including church, temple—Held, further, every immovable property is liable to be acquired—However, acquisition of any religious place to be made only in unusual and extraordinary situations for larger national purpose which should not result in extinction of the right to practice the religion. G H

A *Constitution of India—Article 246 and Seventh Schedule—Acquisition of Certain Area at Ayodhya Act, 1993—Legislative competence—Pith and substance—Act, held, (per majority) traceable to List III entry 42 and not to List II entry 1—"Acquisition of property" and not "public order" is pith and substance of the statute—Article 356.*

B *Constitution of India—"Secularism"—Whether acquisition of properties by the Act against the concept of secularism—Held, (per majority) no step taken to arrest escalation of communal tension and to achieve communal accord and harmony can be termed non-secular, antisecular or against the concept of secularism—Held, further, factual foundation for challenge to the statute as a whole and S.7 (2) in particular*
C *on the grounds of secularism and the rights to equality and freedom of religion non-existent—Preamble and Articles 25 and 28—Acquisition of Certain Area at Ayodhya Act, 1993—S.7 (2).*

Acquisition of Certain Area at Ayodhya Act, 1993—Ss.3 and 6 read with s.7—"Vest"—Meaning of—Limited vesting or absolute vesting—Held,
D *(per majority) the meaning of "vest" takes colour from the context in which it is used and it is not necessarily the same in every provision or context—Held, further, while the disputed area vests with the Central Government as statutory receiver, vesting in the Central Government of the area in excess of disputed area is absolute—Acquisition of disputed area for purpose of subsequent transfer to person found, upon adjudication, to be entitled to*
E *it—S.6, held, constitutionally valid—Interpretation of Statutes—Contextual interpretation—Legislative intent.*

Acquisition of Certain Area at Ayodhya Act, 1993—Ss.7 (2) and 2 (a)—"Area"—Meaning of—Held, (per majority) "area" in s.7 (2) confined to the site on which the Ram Janam Bhumi-Babri Masjid structure stood,
F *while under S.2 (a) it means the entire area specified in the Schedule—Interpretation of Statutes—Contextual Interpretation.*

Interpretation of Statutes—Doctrine of severability—Acquisition of Certain Area at Ayodhya Act, 1993—S.4 (3)—Held, (per majority) S.4 (3), severable and its unconstitutionality not an impediment to the remaining
G *statute being upheld as valid.*

Acquisition of Certain Area at Ayodhya Act, 1993—S.8—Payment of compensation under, held, (per majority) only for property acquired absolutely—Disputed area being taken over by the Central Government only as a statutory receiver, held, no question of payment of compensation
H *as it is meant to be handed over to successful party in the suits.*

Interpretation of Statutes—Purposive construction—Held, construction which the language of the statute can bear and promotes the national purpose must be preferred to a strict and literal construction tending to promote factionalism and discord.

Following the demolition of the Rama Janma Bhumi-Babri Masjid structure at Ayodhya on 6 December, 1992, President's rule was proclaimed in the State of U.P. Thereafter, on 7 January, 1993, the Acquisition of Certain Area at Ayodhya Ordinance, 1993 was promulgated, such ordinance was later on replaced by an Act to the same effect. Simultaneously, a Reference under Article 143 (1) of the Constitution was made to the Supreme Court by the President of India.

The question referred to the Court was:

"Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

The reference was challenged as being vague and by itself not decisive of the real controversy. It was contended that the question was academic, and gave no definite indication of the manner in which the Central Government intends to act after the reference is answered and that it does not serve any constitutional purpose to subserve for which the advisory jurisdiction of the court could be invoked; and that the real purpose was to take away a place of worship of the Muslims and give it to the Hindus. It was therefore urged that this Court should decline to answer the reference.

The Solicitor-General, on behalf of the Union of India, made a statement, *inter alia*, that the government would treat the finding of this Court as final and binding, and in the light of this Court's opinion and consistent with it, the government would make efforts to resolve the controversy by a process of negotiations. If negotiated settlement would fail, government was committed to enforce a solution, consistent with this Court's opinion. If this Court were to find that a Hindu temple/structure did exist prior to the construction of the demolished structure, government action will be in support of the wishes of the Hindu community. If it were to find it in the negative, the government action would be in support of the wishes of the Muslim community.

A The focus of the challenge to the statute was on the grounds of secularism, right to equality and right to freedom of religion. It was contended that mosque, being a place of religious worship, is immuned from the state's power of acquisition and that the statute is violative of Articles 25 and 26 of the Constitution. It was further contended that the Act led to a deprivation of the judicial remedy of adjudication B without providing for an alternative dispute resolution mechanism; and that it extinguished the defences taken in the suits including that of adverse possession for over 400 years. It was also contended that Section 7 of the Act perpetuates the mischief of the demolition of the mosque by directing the maintenance of *status quo* as on 7th January, 1993 which enables the Hindus to exercise the right of worship of some C kind in the disputed site keeping the Muslims totally excluded from that area, and this discrimination may be perpetuated to any length by the Central Government. The validity of the acquisition was also challenged by those whose properties had been acquired though the properties were located outside the disputed area.

D The Central Government urged that in view of the communal flare-up, the acquisition under the Act and the Special Reference to decide the question addressed there in would facilitate a negotiated settlement of the problem and if it would fail, to bring out negotiated settlement, it would take on appropriate action as would deem expedient. It contended that the acquisition was not meant to deprive E the community found entitled to it, but for avoidance of escalation of the dispute in the wake of the incident at Ayodhya on 6th December, 1992 the Act was passed and that the Act was an essential step in that direction.

Returning the Reference and disposing of the matters, this Court

F

HELD : (per majority) *(By J.S. Verma, J. for himself M.N. Venkatachaliah, C.J., G.N. Ray, J.)*

1. The legislative competence of Parliament to enact the Acquisition of Certain Area at Ayodhya Act, 1993 is traceable to entry G 42, List III. The State of U.P. having been under President's Rule at the relevant time, the legislative competence of Parliament cannot be doubted. The pith and substance of the legislation is 'acquisition of property' and that falls squarely within the ambit of entry 42, List III. Competing entry set up is entry 1, List II relating to 'public order'. 'Acquisition of property' and not 'public order' is the pith and H substance of the statute. (39- G-H)

The amendment of entry 42, List III, and the omission of entry 33, List I and entry 36, List II by the Constitution (Seventh Amendment) Act leaves no doubt that an acquisition Act like this Act falls clearly within the ambit of entry 42, List III. (40-H, 41-A) A

State of Bihar **v.** *Maharajadhiraja Sir Kameshwar Singh of Darbhanga,* **[1952] SCR 889 and** *Deputy Commissioner and Collector, Kamrup* **v.** *Durga Nath Sharma,* **[1968] 1 SCR 561, referred to.** B

2. It is clear from the issues framed in the pending suits that the core question for determination in the suits is not covered by the Reference made. It also does not include therein the defences raised by the Muslim community, including that of adverse possession of the disputed area for over 400 years. It is also clear that the answer to the question referred, whatever it may be, will not lead to the answer to the core question for determination in the pending suits and it will not, by itself, resolve the long-standing dispute relating to the disputed area. Also, the Central Government, according to its statement, proposes to resort to a process of negotiations, and if it fails, to adopt such course as it may find appropriate in the circumstances. In these circumstances, Reference made under Article 143 (1) cannot be treated as an effective alternate dispute resolution mechanism in substitution of the pending suits which stand abated by Section 4 (3) of the Act. This is sufficient to invalidate Section 4 (3) of the Act. However, Section 4 (3) is severable, and therefore its invalidity is not an impediment to the remaining statute being upheld as valid. (41-C-E) C D E

Smt. Indira Nehru Gandhi **v.** *Shri Raj Narain,* **[1975] Supp. SCC 1, referred to.**

3.1. The constitutional scheme guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 and 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while understanding the constitutional validity of any legislation on the touchstone of the Constitution. (49-B) F G

M.C. Setalvad, *Patel Memorial Lectures* **1985** *on Secularism;* **Dr. Shanker Dayal Sharma, "Secularism in the Indian Ethos",** *Dr. Zakir Hussain Memorial Lecture* **(1989);** *S.R. Bommai* **v.** *Union of India,* **[1994]** H

A 3 SCC 1 and *M.N. Venkatachaliah, J.*, "Law in a Pluralist Society", referred to.

3.2. The demolition of the disputed structure on 6th December, 1992 resulted in a communal holocaust. Any step taken to arrest escalation of the communal tension and to achieve communal harmony
B can, by no stretch of argumentation, be termed non-secular much less anti-secular or against the concept of secularism. The facts also indicate that the acquisition of properties affects the rights of both communities and not merely those of the Muslim community. The maintenance of *status quo* as on 7th January, 1993, under Section 7 (2) confers a lesser right of worship for the Hindu devotees than that in existence earlier
C for a long time till the demolition of the disputed structure. It does not, therefore, have the effect of conferring or granting to the Hindu community any further benefit thereby. The provision does not curtail the right of worship of the Muslim community in the disputed area, there having been *de facto* no exercise of the practise or worship since 1949. (53-GH, 55-E, 56-C)

D

4. Subject to the protection under Articles 25 and 26 of the Constitution, places of religious worship like mosques, churches, temples, etc. can be acquired under the State's sovereign power of acquisition. Such acquisition does not *per se* violate either Article 25 or 26 of the Constitution. (64-E)

E

Khajamian Wakf Estates v. *State of Madras,* [1971] 2 SCR 791 and *Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj etc.* v. *State of Gujarat,* [1975] 2 SCR 317, relied on.

The protection under Articles 25 and 26 is to religious practice
F which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of that religion. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an
G essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially. (65-F-H)

Raja Suryapalsingh v. *U.P. Government,* AIR (1951) All 674 (FB),
H referred to.

5. A temple, church or mosque etc. are essentially immovable properties and subject to the protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions. (66-G)

6. A mosque is not an essential part of the practice of the religion of Islam and Namaz (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the Constitution of India. The status and immunity from acquisition of a mosque is the same and equal to that of the places of worship of the other religions, namely church, temple, etc. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practice the religion, if the significance of the place is as such. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right. (67-A-D)

M. Hidayatullah, *Mulla's Principles of Mahomedan Law* (19th edn.) Section 217 and AIR (1940) PC 116, referred to.

7.1. The view that once a constructed mosque, it remains always a place of worship as a mosque is not the Mahomedan law of India as approved by Indian courts. (62-G)

Mosque known as Masjid Shahid Ganj v. *Shiromani Gurudwara Prabhandak Committee,* AIR (1938) Lah 369, relied on.

Muthialu Chetti v. *Bapun Saib,* ILR 2 Mad 140 and *Sundram Chetti* v. *Queen* ILR 6 Mad 203, referred to.

7.2. The power of acquisition is the sovereign or prerogative power of the State to acquire property. Such power exists independent of Article 300A of the Constitution or the earlier Article 31 which merely indicate the limitations on the power of acquisition by the State. (63-G)

Chiranjitlal Chowdhuri v. *Union of India,* [1950] SCR 869 and *State of West Bengal* v. *Subodh Gopal Bose,* [1954] SCR 587, followed.

A **8.1. The meaning of the term 'vest' takes colour from the context in which it is used. It can vary in different parts of the same statute or even the same section, depending in the context of its use. (50-G)**

Maharaj Singh **v.** *State of U.P.,* **[1977] 1 SCR 1072, relied on.**

B **8.2. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of limited vesting, being limited in title and duration. The status of the Central Government as a result of vesting by virtue of Section 3 of the Act is of a statutory receiver in relation to the disputed area, coupled with a duty to manage and administer the disputed area maintaining the *status quo* therein till the** C **final outcome of adjudication of the long-standing dispute relating to the disputed structure at Ayodhya. Vesting in the Central Government of the area in excess of the disputed area is, however, absolute. The meaning of 'vest' has these different shades in Sections 3 and 6 in relation to the two parts of the entire area acquired by the Act. (59-A-B**

D **9. Section 6 (1) read with Section 7 (2) is an in-built indication in the statute of the intent that acquisition of the disputed area and its vesting in the Central Government is not absolute but for the purpose for its subsequent transfer to the person found entitled to it as a result of adjudication of the dispute for the resolution of which this step is part of the exercise. Reference under Article 143 (1) simultaneously** E **with issuance of the Ordinance, later replaced by the Act, also is an indication of the legislative intent that the acquisition of the disputed area was not meant to be absolute but limited. (57-F)**

10. The context in which the word 'area' is used in Section 7 (2) indicates that its meaning is not the same as in Section 2 (a) to mean the F **entire area specified in the Schedule since the words which follow qualify its meaning confining it only to the site on which this structure, commonly known as the Ram Janma Bhumi-Babri Masjid stood, which site or area in undoubtedly smaller and within 'the area specified in the Schedule'. (38-G)**

G **11.1. Section 7 is a transitory provision, intended to maintain *status quo* in the disputed area, till transfer of the property is made by the Central Government on resolution of the dispute. In deciding whether this provision which mandates the maintenance of *status quo*, and the statute as a whole which effects acquisition, is slanted in favour of the Hindu community, it is necessary to recall the comparative user of the** H **disputed area, and the right to worship practised therein by the two**

communities on 7th January, 1993 and for a significant period preceding it. Worship of the idols installed in the Ram chabutra which stood in the disputed site within the courtyard of the disputed structure had been performed without any objection of the Muslims even prior to the shifting of those idols from the Ram chabutra into the disputed structure in December 1949. By interim orders passed by the trial court in 1950, the idols remained at the place where they were installed and worship of the idols there by Hindu devotees continued. This interim order was confirmed by the High Court in 1955. The District Judge ordered the opening of the lock placed on a grill leading to the *sanctum* sanctorum of the shrine in the disputed structure on 1 February, 1986 and permitted worship of the idols there by Hindu devotees. This was the position till 6th December, 1992. Since the demolition, worship of the idols by a pujari alone is continuing. On the other hand, the Muslims have not been offering worship at any place in the disputed site, though it may turn out at the trial of the suits that they have a right to do so. (52, C, 53-A-F)

11.2. Moreover, even as Ayodhya is said to be of particular significance to the Hindus as the birth place of Rama, the mosque was of significance to the Muslim community as an ancient mosque built by Mir Baqi in 1526 AD. As a mosque it was just a religious place of worship by the Muslims. This indicates the comparative significance of the disputed site to the two communities, and also that the impact of the acquisition is equally on the right and interest of the Hindu community. The narration of facts indicates that the acquisition of properties under the Act affects the rights of both the communities and not merely those of the Muslim community. (55-D)

12. Although the persons responsible for the demolition of the disputed structure were some miscreants who cannot be equated with the entire Hindu community, and the act of vandalism cannot be treated as an act of the entire Hindu community, confining the exercise of the right to worship of the Hindu community enacted in Section 7 (2) appears to be reasonable and just in view of the fact that the miscreants who demolished the mosque are suspected to be persons professing to practise the Hindu religion. (55-G)

13. The justification for acquisition of a larger area, comprising in large part of properties belonging to Hindus, is that it is necessary to ensure that the final outcome of the adjudication is not rendered meaningless by the existence of properties belonging to Hindus in the

A vicinity of the disputed structure in case the Muslims are found entitled to the disputed site. The necessity of acquiring adjacent temples or religious buildings in view of their proximity to the disputed structure, which forms a unique class by itself, is permissible. (54 B&E)

M. Padmanabha Iyengar v. *Govt. of AP,* AIR (1990) AP 357 and
B *Akhara Shri Braham Buta* v. *State of Punjab*, AIR (1990) P and H 198, approved.

14. However, at a later stage when the exact area acquired which is needed for achieving the professed purpose of acquisition is determined, it would be open to the owner of any such property to
C challenge the superfluous acquisition. It would not merely be permissible but desirable that the superfluous area is released from acquisition and reverted to its earlier owner. (54-G)

15. Section 8 is meant only for property acquired absolutely, other than the disputed area, being adjacent to, and in the vicinity of the
D disputed area. The disputed area being taken over by the Central Government only as a statutory receiver, there is no question of payment of compensation for the same as it is meant to be handed over to the successful party in the suits. (60-G)

16. A construction which the language of the statute can bear and
E promotes a larger national purpose must be preferred to a strict literal construction tending to promote factionalism and discord. (61-B)

17. The statements of the Central Government soon after the demolition that the mosque would be rebuilt cannot limit the power of the Parliament, and are not material for adjudging the constitutional
F validity of the enactment. The validity of the statute has to be determined on the touchstone of the Constitution and not on any statements made prior to it. (56 G-H; 57A)

18. The entire statute except Section 4 (3) thereof being found to be valid, and the pending suits and legal proceedings wherein the dispute
G between the two parties has to be adjudicated being revived, the Reference made under Article 143 (1) becomes superfluous and unnecessary. This Court therefore declines to answer the Reference and returns the same. (67 E, F)

19. All pending suits and legal proceedings stand revived, and they
H shall be proceeded with, and decided, in accordance with law. The

disputed area is vested with the Central Government as a statutory receiver with a duty to manage and administer it in the manner provided in the Act maintaining the *status quo* therein by virtue of Section 7 (2). The Central Government would exercise its power of vesting that property further in another authority or body or trust in accordance with Section 6 (1) of the Act. The power of the courts in the pending legal proceedings to give directions to the Central Government as a statutory receiver would be circumscribed and limited to the extent of the area left open by the provisions of the Act. The Central Government would be bound to take all necessary steps to implement the decision in the suits and other legal proceedings and to hand over the disputed area to the party found entitled to the same on the final adjudication made in the suits. (67-G-H, 68-A-B)

White Paper on Ayodhya, referred to.

Per Minority (By S.P. Bharucha, J. for himself and A.M. Ahmadi, J.)

1. "Area" under Sections 2 (a) and 3 is that specified in the Schedule. By reason of Section 4 (1), "area" includes assets and all property, movable and immovable, and all other rights and interests in or arising out of such property. By reason of Section 4 (2), the whole bundle of property and rights vests in the Central Government freed and discharged from all encumbrances. The effect of Section 4 of the Act is that the Sunni Wakf Board, which administered the mosque that was housed in the disputed structure, and the Muslim community lose their right to plead adverse possession of the disputed site from 1528 A.D. until 1949, if not up-to-date, considering that the idols remained in the disputed structure only under the orders of the courts. (82-F, 87-B)

2. The disputes as to title survive for the purpose of compensation, for which purpose, under Section 8, title shall have to be established not before a court of law but before a Claims Commissioner to be appointed by the Central Government, who is entitled to device his own procedure. With the suits in the Allahabad High Court abating by reason of Section 4 (3), the forum for adjudication of the title to the disputed site is shifted from the courts to the Claims Commissioner. No right of appeal or reference to a civil court is provided for with the result that the decision of the Claims Commissioner would be final except for a remedy under Article 226/227 of the Constitution. (87-E-F)

A **3. The provisions of Sections 4 and 8 must, therefore, be held to be arbitrary and unreasonable. (87-F)**

4. More importantly, the provisions of Section 4 of the Act, inasmuch as they deprive the Sunni Wakf Board and the Muslim community of the right to plead and establish adverse possession and
B **restrict the redress of their grievance in terms of the limited question posed by the reference and to negotiations subsequent thereto, and the provisions of Section 3 of the Act, which vest the whole bundle of property and rights in the Central Government to achieve this purpose, offend the principle of secularism, which is a part of the basic structure of the Constitution, being slanted in favour of one religious community**
C **as against another. (87-G-H)**

Kesavananda Bharàti v. *State of Kerala*, **[1973] 4 SCC 225 and** *S.R. Bommai* v. *Union of India*, **[1994]3 SCC 1, relied on.**

The State has no religion. The State is bound to honour and to hold
D **the scales even between all religions. It may not advance the cause of one religion to the detriment of another. (89-A)**

5. The core provisions of the Act are Sections 3, 4 and 8. The other provisions of the Act are only ancillary and incidental to Sections 3, 4 and 8. Since the core provisions of Sections 3, 4 and 8 are
E **unconstitutional, the Act itself cannot stand. (89-B)**

6. The provisions of Section 7 are referred to in support of the finding that the Act is skewed in favour of one religion against another. The provision requires that the puja which had been begun following the demolition of the disputed structure must continue so long as the
F **management of the property under the Act continues. For how long such management is to continue and on the happening of what event it will come to an end is not indicated. Section 7 (2) therefore perpetuates the performance of the puja on the disputed site. No account is taken of the fact that the structure thereon had been destroyed in a**
G **reprehensible act, striking at the principles of secularism, democracy and the rule of law. Nor is the fact that there is a dispute in respect of the site on which puja is to be performed taken into account, and that until the night of 22/23 December, 1949, when the idols were placed in the disputed structure, the disputed structure was being used as a mosque; and that the Muslim community has a right to offer namaz**
H **therein. (89-F-G)**

White Paper on Ayodhya, referred to. A

7. Secularism is given pride of place in the Constitution. The object is to preserve and protect all religions, to place all religious communities on par. When, therefore, adherents of the religion of the majority of Indian citizens make a claim upon and assail the place of worship of another religion and, by dint of numbers, create conditions B that are conducive to public disorder, it is the constitutional obligation of the State to protect that place of worship and to preserve public order, using for the purpose such means and forces of law and order as are required. It is impermissible under the provisions of the Constitution for the State to acquire that place of worship to preserve public order. To condone the acquisition of a place of worship in such C circumstances is to efface the principle of secularism from the Constitution. (90-F, G)

8. However, it may be added that if the title to the place of worship is in dispute in a court of law, and public order is jeopardised, two courses are open to the Central Government: it may apply to the D concerned court to be appointed receiver of the place of worship, to hold it secure pending the final adjudication of its title, or it may enact legislation that makes it the statutory receiver pending adjudication. In either event, the Central Government would bind itself to hand over the place of worship to the party in whose favour title is found. (90-H. 91-A-B) E

Commissioner, HRE v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* [1954] SCR 1005, referred to.

9. Exercise of the right of the individual to profess, practise and propagate religion is subject to public order. Secularism is absolute; the F state may not treat religions differently on the ground that public order requires it. This is illustrated by the principle of secularism which illumines the provisions of Articles 15 and 16, the 'hands-off' approach required of the State in matters of religion by Article 27, and the absolute terms of Article 29 (2). (91-H, 92-C)

G

10.1. This Court is entitled to decline to answer a question posed to it under Article 143 if it considers that it is not proper or possible to do so, but it must indicate its reasons. (94-B)

In re Special Reference No. 1 of 1964, [1965] 1 SCR 413 and *In re the Special Courts Bill, 1978,* [1979] 3 SCR 476, relied on. H

A **10.2. The Reference must not be answered for the following reasons: The Act and the Reference favour one religious community and disfavour another; the purpose of the Reference is, therefore, opposed to secularism and is unconstitutional. Besides, the Reference does not serve a constitutional purpose. (94-D)**

B **Secondly, from the Reference it is clear that the Central Government does not propose to settle the dispute in terms of the Court's opinion, but to use it as a springboard for negotiations. Resolution of the dispute as a result of such negotiations cannot be said to be a resolution of the dispute 'in terms of the said opinion'. Thirdly, there is the aspect of evidence. Apart from the inherent inadvisability**
C **of rendering a judicial opinion which would have to be done for the court by experts, the opinion would be liable to the criticism of one or both sides that it was rendered without hearing them or their evidence. This would ordinarily be of no significance for they had chosen to stay away, but this opinion is intended to create a public climate for negotiations and the criticism would find the public ear, to say nothing**
D **of the fact that it would impair this Court's credibility. (94-E, 95-A-B)**

CIVIL ORIGINAL JURISDICTION : Transferred case (C) Nos. 41, 43 and 45 of 1993 etc.

From the Court's Order dated 24.9.93 of the Allahabad High Court in
E T.P. Nos. 669-75 of 1993.

Petitioner in-person in T.C. (C) Nos. 41 and 44/93.

D.P. Gupta, Solicitor General, Satish Chandra, Rajiv Dhawan, O.P. Sharma, M.K. Banerjee, P.P. Malhotra, Jitendra Sharma, V.M. Tarkunde,
F Anil B. Diwan, D.V. Sehgal, P.P. Rao, P.N. Duda, F.S. Nariman, Ashok H. Desai, Joseph Vellapalli, B.P. Agarwal, S. Venkata Reddy, P.L. Mishra, C.S. Ashri, R.P. Wadhwani, Arun Kumar Sinha, Zaki Ahmad Khan, Manoj Saxena, Irshad Ahmad, Ms. Aparna Viswanathan, Mustaq Ahmad, M.M. Kashyap, Ms. A. Subhashini, P. Parmeshwaran, Pawan Bahal, Navin Prakash, A. Subba Rao, Hemant Sharma, S.A. Syed, Shahid Rizvi, A.N.M.
G Tayyab Khan, Ms. Deepali Talwar, R.S. Messy Verma, M. Zakikhan, M.T. Khan, Abdul Mannan, Shakil Ahmad Syed, Z. Jilani, M.A. Siddiqui, Ms. Gunwant Dara, Ms. Nilofer Bhagwat, Ms. P. Gaur, R.C. Verma, R.B. Misra, A.P. Dhamija, S.K. Jain, Siba Sankar Mishra, A. Bhattacharji, P.P. Singh, Randhir Jain, K.C. Dua, Dharam Das, S.S. Misra, Uma Nath Singh,
H Ashok Kumar Singh, S.K. Agnihotri, S.K. Bandyopadhyay, Pradip Kumar,

Sarva Mitter, M. Veerappa, S.C. Sharma, K.H. Nobin Singh, S.M. Jadhav, A.S. Bhasme, V.K. Beeran, M.T. George, B.P. Agarwal, Aruneshwar Gupta, G. Prakash, Capt. K.S. Bhati, S. Venkata Reddy, Krishna Koundinya, Ms. Promila Choudhary, Nikhil Nayyar, T.V.S.N. Chari, N.K. Sharma, R.C. Misra, Dr. Meera Aggarwal, S.N. Bhuyan, S.K. Nandy, Bada Ahmed, J.B. Dadachanji, Ms. Tamali Sen Gupta, A.S. Parich, for JBD and Co., S.N. Mehta, R.P. Singh, H.K. Puri, S.K. Puri, Deoki Nandan Agrawal, I.S. Goyal, Ms. Indu Malhotra, A.K. Goel, A.S. Pundir, M.A. Firoz, Sanjay Parikh, L.K. Gupta, Ms. K. Chaudhary, Goodwill Indeever, Ms. Kusum Chaudhary, Ms. Madhu Moolchandani, Ms. Rani Jethmalani, R.K. Mehta, S.K. Sabharwal, C.D. Singh and Anip Sachthey for the appearing parties.

The Judgment of the Court were delivered by

J.S. VERMA, J. "We have just enough religion to make us hate, but not enough to make us love one another."

– Jonathan Swift

Swami Vivekananda said –

> "Religion is not in doctrines, in dogmas, nor in intellectual argumentation; it is being and becoming, it is realisation."

This thought comes to mind as we contemplate the roots of this controversy. Genesis of this dispute is traceable to erosion of some fundamental values of the plural commitments of our polity.

The constitutional validity of the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993) (hereinafter referred to as "Act No. 33 of 1993" or "the Act") and the maintainability of Special Reference No. 1 of 1993 (hereinafter referred to as "the Special Reference") made by the President of India under Article 143 (1) of the Constitution of India are the questions for decision herein. The background in which these questions are to be answered is contained in the facts stated in the White Paper on Ayodhya, February 1993, issued by the Government of India.

Certain undisputed facts emerging at the hearing may also have relevance for this purpose. These questions are answered on this basis, eschewing facts which are in the area of controversy and have yet to be adjudicated.

A *BACKGROUND*

The Bill was introduced in Parliament leading the above enactment and the said Reference to this Court was made in the historical background set out in the White Paper. Indeed, the two similtaneous acts are an indication of the legislative intent for enactment of the statute, the reference being B made as a part of the same exercise with a view to effectuate the purpose of the enactment. This is how, they have to be viewed.

The "Overview" at the commencement of the White Paper in Chapter 1 states thus :–

> C 1.1. Ayodhya situated in the north of India is a township in District Faizabad of Uttar Pradesh. It has long been a place of holy pilgrimage because of its mention in the epic Ramayana as the place of birth of Shri Ram. The structure commonly known as Ram Janma Bhumi-Babri Masjid was erected as a mosque by one Mir Baqi in Ayodhya in 1528 D AD. It is claimed by some sections that it was built at the site believed to be the birth-spot of Shri Ram where a temple had stood earlier. This resulted in a long-standing dispute.
>
> 1.2. The controversy entered a new phase with the placing E of idols in the disputed structure in December, 1949. The premises were attached under section 145 of the Code of Criminal Procedure. Civil suits were filed shortly thereafter. Interim orders in these civil suits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December, 1949 till December 6, F 1992 the structure had not been used as a mosque."

The movement to construct a Ram-temple at the site of the disputed structure gathered momentum in recent years which became a matter of great controversy and a source of tension. This led to several parleys the details of which are not very material for the present purpose. These parleys G involving the Vishva Hindu Parishad (VHP) and the All India Babri Masjid Action Committee (AIBMAC), however, failed to resolve the dispute. A new dimension was added to the campaign for construction of the temple with the formation of the Government in Uttar Pradesh in June 1991 by the Bhartiya Janata Party (BJP) which declared its commitment to the construction of the temple and took certain steps like the acquisition of land H adjoining the disputed structure while leaving out the disputed structure

itself from the acquisition. The focus of the temple construction movement from October 1991 was to start construction of the temple by way of 'kar-sewa' on the land acquired by the Government of Uttar Pradesh while leaving the disputed structure intact. This attempt did not succeed and there was litigation in the Allahabad High Court as well as in this Court. There was a call for resumption of kar-sewa from 6th December, 1992 and the announcement made by the organisers was for a symbolic kar-sewa without violation of the court orders including those made in the proceedings pending in this Court. In spite of initial reports from Ayodhya on 6th December, 1992 indicating an air of normalcy, around mid-day a crowd addressed by leaders of BJP, VHP, etc. climbed the Ram Janma Bhumi-Babri Masjid (RJM-BM) structure and started damaging the domes. Within a short time, the entire structure was demolished and razed to the ground. Indeed, it was an act of "national shame". What was demolished was not merely an ancient structure; but the faith of the minorities in the sense of justice and fairplay of majority. It shook their faith in the rule of law and constitutional processes. A five hundred year old structure which was defenceless and whose safety was sacred trust in the hands of the State Government was demolished.

After referring to the details on this tragedy, the White Paper in Chapter 1 on "OVERVIEW" concludes thus :–

> "1.25. The demolition of the Ram Janma Bhumi-Babri Masjid structure at Ayodhya on 6th December, 1992 was a most reprehensible act. The perpetrators of this deed struck not only against a place of worship, but also at the principles of secularism, democracy and the rule of law enshrined in our Constitution. In a move as sudden as it was shameful, a few thousand people managed to outrage the sentiments of millions of Indians of all communities who have reacted to this incident with anguish and dismay.
>
> 1.26. What happened on December 6, 1992 was not a failure of the system as a whole, nor of the wisdom inherent in India's Constitution, nor yet of the power of tolerance, brotherhood and compassion that has so vividly informed the life of independent India. It was, the Supreme Court observed on that day, "a great pity that a Constitutionally elected Government could not discharge its duties in a matter of this sensitiveness and magnitude," Commitments to the Court and Constitution, pledges to Parliament and the

A people, were simply cast aside. Therein by the failure, therein the betrayal.

1.27. Today India seeks to heal, and not reopen its wounds; to look forward with hope and not backwards with fear; to reconcile reason with faith. Above all, India is determined
B to press ahead with the National Agenda, undeterred by aberrations."

It may be mentioned that a structure called the Ram-chabutra stood on the disputed site within the courtyard of the disputed structure. This structure also was demolished on 6th December, 1992 (Appendix-V to the
C White Paper). Worship of the idols installed on the Ram-chabutra by Hindu devotees in general, it appears, had been performed for a considerable period of time without any objection by the Muslims to its worship at that place, prior to the shifting of the idols from the Ram-chabutra of the disputed structure in December 1948. As a result of demolition of Ram-chabutra also on 6th December, 1992, the worship by Hindus in general
D even at that place was interrupted. Thereafter, the worship of idols is being performed only by a priest nominated for the purpose without access to the public.

A brief reference to certain suits in this connection may now be made. In 1950, two suits were filed by some Hindus; in one of these suits in
E January 1950, the trial court passed interim orders whereby the idols remained at the place where they were installed in December 1949 and their puja by the Hindus continued. The interim order was confirmed by the High Court in April 1955. On 1st February, 1986, the District Judge ordered the opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine in the disputed structure and permitted puja by the
F Hindu devotees. In 1959, a suit was filed by the Nirmohi Akhara claiming title to the disputed structure. In 1961, another suit was filed claiming title to the disputed structure by the Sunni Central Wakf Board. In 1969, Deoki Nandan Agarwal, as the next friend of the Deity filed a title suit in respect of the disputed structure. In 1969, the aforementioned suits were transferred
G to the Allahabad High Court and were ordered to be heard together. On 14th August, 1989, the High Court ordered the maintenance of *status quo* in respect of the disputed structure (Appendix-I to the White Paper). As eariler mentioned, it is stated in para 1.2 of the White Paper that:

"interim orders in these civil suits restrained the parties
H from removing the idols or interfering with their worship.

In effect, therefore, from December, 1949 till December 8, 1992 the structure had not been used as a mosque." A

Prior to December 1949 when the idols were shifted into the disputed structure from the Ram-chabutra, worship by Hindu devotees at the Ram-chabutra for a long time without any objection from Muslims is also beyond controversy. A controversy, however, is raised about use of the disputed structure as a mosque from 1934 to December 1949. One version is that after some disturbances in 1934, the use of the disputed structure as a mosque had been stopped from 1934 itself and not merely from December 1949. The other side disputes the alleged disuse of the mosque for prayers prior to December 1949. The stand of the Uttar Pradesh Government in the suits was that the place was used as a mosque till 1949. B C

As a result of the incidents at Ayodhya on 6th December, 1992, the President of India issued a proclamation under Article 356 of the Constitution of India assuming to himself all the functions of the Government of Uttar Pradesh, dissolving the U.P. Vidhan Sabha. The White Paper in Chapter II mentions the "*BACKGROUND*" and therein it is stated as under : D

"2.1. At the centre of the RJB-BM dispute is the demand voiced by Vishwa Hindu Parishad (VHP) and its allied organisations for the restoration of a site said to be the birth place of Sri Ram in Ayodhya. Till 6th December, 1992 this site was occupied by the structure erected in 1528 by 'Mir Baqi' who claimed to have built it on orders of the first Mughal Emperor Babar. This structure has been described in the old Government records as Masjid Janmasthan. It is now commonly referred to as Ram Janma Bhumi-Babri Masjid. E F

2.2. The VHP and its allied organisations base their demand on the assertion that this site is the birth place of Sri Ram and a Hindu temple commemorating this site stood here till it was destroyed on Babar's command and a Masjid was erected in its place. The demand of the VHP has found support from the Bhartiya Janata Party (BJP). The construction of a Ram temple at the disputed site, after removal or relocation of the existing structure, was a major plank in BJP's campaign during elections held in 1989 and 1991. Other major political parties, however, had generally opposed this demand and had taken the stand that while a G H

temple should be built, the issues in dispute should be resolved either by negotiations or by orders of the Court.

2.2. During the negotiations aimed at finding an amicable solution to the dispute, one issue which came to the fore was whether a Hindu temple had existed on the site occupied by the disputed structure and whether it was demolished on Babar's orders for the construction of the Masjid. It was stated on behalf of the Muslim organisations, as well as by certain eminent historians, that there was no evidence in favour of either of these two assertions. It was also stated by certain Muslim leaders that if these assertions were proved, the Muslims would voluntarily handover the disputed shrine to the Hindus. Naturally, this became the central issue in the negotiations between the VHP and AIBMAC.

xxx xxx xxx

2.12. The historical debate has thus remained inconclusive although much progress has been made in identifying the areas of agreement and difference. Conclusive findings can be obtained only by way of reference to a competent authority. However, as brought out elsewhere in this Paper the negotiations were disrupted at a crucial phase. Now, the entire evidence has disappeared along with the disputed structure. It is tragic and ironical that the Ram-chabutra and Kaushalya Rasoi, which continued as places of worship during periods of Muslim and British rule have disappeared along with the RJB-BM structure at the hands of people professing to be 'devotees' of Lord Ram.

PLACING OF IDOLS IN THE DISPUTED STRUCTURE

2.13. As has been mentioned above, Hindu structures of worship already existed in the outer courtyard of the RJB-BM structure. On the night of 22nd/23rd December, 1949, however, Hindu idols were placed under the central dome of the main structure. Worship of these idols was started on a big scale from the next morning. As this was likely to disturb the public peace, the civil administration attached the premises under section 145 of the Code of Criminal Procedure. This was the starting point of a whole chain of

events which ultimately led to the demolition of the structure. The main events of this chain have been summarised in Appendix-I.

2.14. Soon after the installation of the idols two civil suits were filed by Hindu plaintiffs seeking to restrain the Administration from removing the idols from the disputed structure or placing any restrictions in the way of devotees intending to offer worship. Interim injunctions were issued by the civil court to this effect. These injunctions were confirmed by the Allahabad High Court in 1955.

2.15. The Hindu idols thus continued inside the disputed structure since 1949. Worship of these idols by Hindus also continued without interruption since 1949 and the structure was not used by the Muslims for offering prayers since then. The controversy remained at a low ebb till 1986 when the District Court of Faizabad ordered opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine. An organisation called the Babri Masjid Action Committee (BMAC), seeking restoration of the disputed shrine to the Muslims came into being and launched a protest movement. The Hindu organisations, on the other hand, stepped up their activities to mobilise public opinion for the construction of a Ram temple at the disputed site."

After the imposition of President's rule in the State of Uttar Pradesh as a consequence of the events at Ayodhya on 6th December, 1992, action taken by the Central Government is detailed in Chapter VIII of the White Paper with reference to the communal situation in the country which deteriorated sharply following the demolition of the RJB-BM structure on 6th December, 1992 and spread of communal violence in several other States Para 8.11 in Chapter VIII relating to the "*ACTION TAKEN BY THE CENTRAL GOVERNMENT*" is as under :–

"8.11. Mention has been made above (Over-view) of the decisions taken on 7th December by the Government to ban communal organisations, to take strong action for prosecution of the offences connected with the demolition, to fix responsibilities of various authorities for their lapses relating to the events of December 6, to rebuild the demolished structure and to take appropriate steps regarding

new Ram Temple. The last two decisions were further elaborated on 27th December as follows :

"The Government has decided to acquire all areas in dispute in the suits pending in the Allahabad High Court. It has also been decided to acquire suitable adjacent area. The acquired area excluding the area on which the disputed structure stood would be made available to two Trusts which would be set up for construction of a Ram Temple and a Mosque respectively and for planned development of the area.

"The Government of India has also decided to request the President to seek the opinion of the Supreme Court on the question whether there was a Hindu temple existing on the site where the disputed structure stood. The Government has also decided to abide by the opinion of the Supreme Court and to take appropriate steps to enforce the Court's opinion. Notwithstanding the acquisition of the disputed area, the Government would ensure that the position existing prior to the promulgation of the Ordinance is maintained until such time as the Supreme Court gives its opinion in the matter. Thereafter the rights of the parties shall be determined in the light of the Court's opinion."

In pursuance of these decisions an ordinance named 'Acquisition of Certain Area at Ayodhya Ordinance' was issued on 7th January 1993 for acquisition of 67.703 acres of land in the Ram Janma Bhumi-Babri Masjid complex. A reference to the Supreme Court under article 143 of the Constitution was also made on the same day. Copy of the ordinance is at Appendix-XV and of the reference at *Appendix-XVI.*"

The Acquisition of Certain Area at the Ayodhya Ordinance, 1993 (No. 8 of 1993) has been replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993), the constitutional validity of which has to be examined by us.

The said Ordinance, later replaced by Act No. 33 of 1993, and the Special Reference under Article 143 (1) of the Constitution of India were made simultaneously the same day on 7th January, 1993. It would be appropriate at this stage to quote, *in extenso*, the Statement of Objects and Reasons for this enactment, the said Act No. 33 of 1993, and the Special Reference under Article 143 (1) of the Constitution.

"STATEMENT OF OBJECTS AND REASONS

There has been a long-standing dispute relating to the erstwhile Ram Janma Bhumi-Babri Masjid structure in Ayodhya which led to communal tension and violence from time to time and ultimately led to the destruction of the disputed structure on 6th December, 1992. This was followed by wide-spread communal violence which resulted in large number of deaths, injuries and destruction of property in various parts of the country. The said dispute has thus affected the maintenance of public order and harmony between different communities in the country. As it is necessary to maintain communal harmony and the spirit of common brotherhood amongst the people of India, it was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities can be set up.

2. The Acquisition of Certain Area at Ayodhya Ordinance, 1993 was accordingly promulgated by the President on 7th January, 1993. By virtue of the said Ordinance the right, title and interest in respect of certain areas at Ayodhya specified in the Schedule to the Ordinance stand transferred to, and vest in, the Central Government.

3. The Bill seeks to replace the aforesaid Ordinance.

S.B. CHAVAN

NEW DELHI;

The 9th March, 1993."

SPECIAL REFERENCE

"WHEREAS a dispute has arisen whether a Hindu temple or any Hindu religious structure existed prior to the construction of the structure (including the premises of the inner and outer courtyards of such structural, commonly known as the Ram Janma Bhumi-Babri Masjid, in the area in which the structure stood in village Kot Ramachandra in

Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

2. AND WHEREAS the said area is located in Revenue Plot Nos. 159 and 160 in the said village Kot Ramchandra;

3. AND WHEREAS the said dispute has affected the maintenance of public order and harmony between different communities in the country;

4. AND WHEREAS the aforesaid area vests in the Central Government by virtue of the Acquisition of Certain Area at Ayodhya Ordinance, 1993;

5. AND WHEREAS notwithstanding the vesting of the aforesaid area in the Central Government under the said Ordinance the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion;

6. AND WHEREAS in view of what has been hereinbefore stated it appears to me that the question hereinafter set out has arisen and is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

7. NOW, THEREFORE, in exercise of the powers conferred upon me by clause (1) of article 143 of the Constitution of India, I, Shanker Dayal Sharma, President of India, hereby refer the following question to the Supreme Court of India for consideration and opinion thereon, namely :

Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?

Sd/-
President of India

New Delhi;
Dated 7th January, 1993."

THE ACQUISITION OF CERTAIN AREA AT AYODHYA ACT, 1993 (NO. 33 OF 1993)

[3rd April, 1993]

"An act to provide for the acquisition of certain area at Ayodhya and for matters connected therewith or incidental thereto.

WHEREAS there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramachandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

AND WHEREAS the said dispute has affected the maintenance of public order and harmony between different communities in the country;

AND WHEREAS it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

AND WHEREAS with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows :–

CHAPTER 1

PRELIMINARY

1. Short title and commencement - (1) This Act may be called the Acquisition of Certain Area at Ayodhya Act, 1993.

(2) It shall be deemed to have come into force on the 7th day of January, 1993.

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

(a) "area" means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;

(b) "authorised person" means a person or body of persons or trustees of any trust authorised by the Central Government under section 7;

(c) "Claims Commissioner" means the Claims Commissioner appointed under sub-section (2) of section 8;

(d) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

ACQUISITION OF THE AREA IN AYODHYA

3. Acquisition of rights in respect of certain area – On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

4. General effect of vesting – (1) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties and all other rights and interests in, or arising out of, such properties as were immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature relating thereto.

(2) All properties aforesaid which have vested in the Central Government under section 2 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in

respect of the whole or any part of such properties shall cease to have any effect. A

(3) If, on the commencement of this Act, any suit, appeal or other proceeding in respect of the right, title and interest relating to any property which has vested in the Central Government under section 3, is pending before any court, tribunal or other authority, the same shall abate. B

5. Duty of person or State Government in charge of the management of the area to deliver all assets, etc. – (1) The Central Government may take all necessary steps to secure possession of the area which is vested in that Government under section 3. C

(2) On the vesting of the area in the Central Government under section 3, the person or State Government of Uttar Pradesh, as the case may be, in charge of the management of the area immediately before such vesting shall be bound to deliver to the Central Government or the authorised person, all assets, registers and other documents in their custody relating to such vesting or where it is not practicable to deliver such registers or documents, the copies of such registers or documents authenticated in the prescribed manner. D E

6. Power of Central Government to direct vesting of the area in another authority or body or trust – (1) Notwithstanding anything contained in sections 3, 4, 5 and 7 the Central Government may, if it is satisfied that any authority or other body, or trustees of any trust, set up on or after the commencement of this Act is or are willing to comply with such terms and conditions as that Government may think fit to impose, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust either on the date of the notification or on such later date as may be specified in the notification. F G

(2) When any right, title and interest in relation to the area or part thereof vest in the authority or body or trustees H

referred to in sub-section (1), such rights of the Central Government in relation to such area or part thereof, shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust.

(3) The provisions of sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government and for this purpose references therein to the "Central Government" shall be construed as references to such authority or body or trustees.

CHAPTER III

MANAGEMENT AND ADMINISTRATION OF PROPERTY

7. Management of property by Government – (1) Notwithstanding anything contained in any contract or instrument or order of any court, tribunal or other authority to the contrary, on and from the commencement of this Act, the property vested in the Central Government under section 3 shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by that Government in this behalf.

(2) In managing the property vested in the Central Government under section 3, the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in Teshil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh is maintained.

CHAPTER IV

MISCELLANEOUS

8. Payment of amount – (1) The owner of any land, building, structure or other property comprised in the area

shall be given by the Central Government, for the transfer to and vesting in that Government under section 3 of that land, building, structure or other property, in cash an amount equivalent to the market value of the land, building, structure or other property.

(2) The Central Government shall, for the purpose of deciding the claim of the owner or any person having a claim against the owner under sub-section (1), by notification in the Official Gazette, appoint a Claims Commissioner.

(3) The Claims Commissioner shall regulate his own procedure for receiving and deciding the claims.

(4) The owner or any person having a claim against the owner may make a claim to the Claims Commissioner within a period of ninety days from the date of commencement of this Act:

Provided that if the Claims Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of ninety days, the Claims Commissioner may entertain the claim within a further period of ninety days and not thereafter.

9. Act to override all 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 or any decree or order of any court, tribunal or other authority.

10. Penalties – Any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person any asset, register or other document in his custody relating to such area or, as the case may be, authenticated copies of such register or document, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both.

11. Protection of action taken in good faith – No suit, prosecution or other legal proceeding shall lie against the

Central Government or the authorised person or any of the officers or other employees of that Government or the authorised person for anything which is in good faith done or intended to be done under this Act.

12. Power to make rules – (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. Repeal and saving – (1) Subject to the provisions of sub-section (2), the Acquisition of Certain Area at Ayodhya Ordinance, 1993, is hereby repealed.

(2) Notwithstanding anything contained in the said Ordinance, –

(a) the right, title and interest in relation to plot No. 242 situated in village Kot Ramchandra specified against Sl. No. 1 of the Schedule to the said Ordinance shall be deemed never to have been transferred to, and vested in, the Central Government;

(b) any suit, appeal or other proceeding in respect of the right, title and interest relating to the said plot No. 242, pending before any court, tribunal or other authority, shall be deemed never to have abated and such suit, appeal or other proceeding (including the orders or interim orders of any court thereon) shall be deemed to have been restored to

the position existing immediately before the commencement of the said Ordinance; A

(c) any other action taken or thing done under that Ordinance in relation to the said plot No. 242 shall be deemed never to have been taken or done.

B

(3) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE C

[See section 2 (a)]

DESCRIPTION OF THE AREA

xxx xxx xxx" D

At the hearing, it was strenuously urged that the question of fact referred under Article 143 (1) of the Constitution is vague; the answer to it is by itself not decisive of the real controversy since the core question has not been referred, and it also gives no definite indication of the manner in which the Central Government intends to act after the Special Reference is E answered, to settle the dispute. It was urged that the question referred is, therefore, academic, apart from being vague, and it does not serve any constitutional purpose to subserve which the advisory jurisdiction of this Court could be invoked; that the real object and purpose of reference is to take away a place of worship of the Muslims and give it away to the Hindus F offending the basic feature of secularism; and that, therefore, we should decline to answer the Special Reference. The learned Solicitor General who appeared for the Union of India was asked to clarify the stand of the Central Government on this point. Initially, it was stated by the learned Solicitor General that the answer to the question would provide the basis for further negotiations between the different groups of settle the controversy and the G Central Government would then be able to decide the effective course available to it for resolving the controversy. On being asked to further clarify the stand of the Central Government about the purpose of the Special Reference, the learned Solicitor General made a statement in writing on behalf of the Union of India on 14th September, 1994 as under:– H

"Government stands by the policy of secularism and of even-handed treatment of all religious communities. The Acquisition of Certain Area at Ayodhya Act, 1993, as well as the Presidential Reference, have the objective of maintaining public order and promoting communal harmony and the spirit of common brotherhood amongst the people of India.

Government is committed to the construction of a Ram temple and a mosque, but their actual location will be determined only after the Supreme Court renders its opinion in the Presidential Reference.

Government will treat the finding of the Supreme Court on the question of fact referred under Article 143 of the Constitution as a verdict which is final and binding.

In the light of the Supreme Court's opinion and consistent with it, Government will make efforts to resolve the controversy by a process of negotiations. Government is confident that the opinion of the Supreme Court will have a salutary effect on the attitudes of the communities and they will no longer take conflicting positions on the factual issue settled by the Supreme Court.

If efforts at a negotiated settlement as aforesaid do not succeed. Government is committed to enforce a solution in the light of the Supreme Court's opinion and consistent with it. Government's action in this regard will be even-handed in respect of both the communities. If the question referred is answered in the affirmative, namely, that a Hindu temple/structure did exist prior to the construction of the demolished structure. Government action will be in support of the wishes of the Hindu community. If, on the other hand, the question is answered in the negative, namely, that no such Hindu temple/structure existed at the relevant time, then Government action will be in support of the wishes of the Muslim community."

This statement in writing made by the learned Solicitor General on behalf of the Union of India forms a part of the record and has to be taken into account to indicate the purpose for which the Special Reference under Article 143 (1) has been made to this Court.

The dispute and its background are mentioned in paras 2.1, 2.2, and 2.3 of Chapter II of the White Paper quoted earlier. This is the backdrop in which the constitutional validity of Act No. 33 of 1993 and the maintainability of the Special Reference made under Article 143 (1) of the Constitution of India have to be examined. A

VALIDITY OF ACT NO. 33 OF 1993 B

Broadly stated, the focus of challenge to the statute as a whole is on the grounds of secularism, right to equality and right to freedom of religion. Challenge to the acquisition of the area in excess of the disputed area is in addition on the ground that the acquisition was unnecessary being unrelated to the dispute pertaining to the small disputed area within it. A larger argument advanced on behalf of some of the parties who have assailed the Act with considerable vehemence is that a mosque being a place of religious worship by the Muslims, independently of whether the acquisition did affect the right to practise religion, is wholly immune from the State's power of acquisition and the statute is, therefore, unconstitutional as violative of Articles 25 and 26 of the Constitution of India for this reason alone. The others, however, limited this argument of immunity from acquisition only to places of special significance, forming an essential and integral part of the right to practise the religion, the acquisition of which would result in the extinction of the right to freedom of religion itself. It was also contended that the purpose of acquisition in the present case dose not bring the statute within the ambit of Entry 42, list III but is referable to Entry 1, List II and, therefore, the Parliament did not have the competence to enact the same. It was then urged by learned counsel canvassing the Muslim interest that the legislation is tilted heavily in favour of the Hindu interests and, therefore, suffers from the vice of non-secularism and discrimination in addition to violation of the right to freedom of religion of the Muslim community. It was also urged by them that the Central Government, after the Prime Minister's statement made on 7th December, 1992, to rebuild the demolished structure (para 1,22 in Chapter I of the White Paper) resiled from the same and by incorporating certain provisions in the statute has sought to perpetuate the injustice done to the Muslim community by the act of vandalism of demolition of the structure at Ayodhya on 6th December, 1992. On behalf of the Muslim community, it is urged that the statute read in the context of the content of the question referred under Article 143 (1) of the Constitution, as it must be, is a mere veiled concealment of a device adopted by the Central Government to perpetuate the consequences of the demolition of the mosque on 6th December, 1992. The grievance of the Hindu opponents is that the mischief C D E F G H

A and acts of vandalism committed by a few are being attributed to the entire Hindu community the majority of whom is equally hurt by, and critical of, the shameful act. They urge that this disapproval by the majority community is evident from the result of the subsequent elections in which the Bhartiya Janata Party was rejected at the hustings by the Hindu majority. They also submit that the fact of demolition of Hindu structures B like the Ram-chabutra and Kaushalya Rasoi which stood since ages in the disputed site resulting in interruption of even the undisputed right of worship of Hindus within that area is being ignored. It is also contended that there is no justification for acquisition of any property in excess of the disputed area and, therefore, the acquisition at least of the excess area belonging, admittedly, to Hindus is invalid.

C

On behalf of the Central Government, it is urged that in the existing situation and in view of the wide-spread communal flare-up throughout the country on account of the events at Ayodhya on 6th December, 1992, the most appropriate course, in the opinion of the Central Government, was to make this acquisition along with the Special Reference to decide the D question which would facilitate a negotiated solution of the problem, and if it failed, to enable the Central Government to take any other appropriate action to resolve the controversy and restore communal harmony in the country. It was made clear that acquisition of the disputed area was not meant to deprive the community found entitled to it, of the same, or to retain any part of the excess area which was not necessary for a proper E resolution of the dispute or to effectuate the purpose of the acquisition, it was submitted that an assurance of communal harmony throughout the country was a prime constitutional purpose and avoidance of escalation of the dispute in the wake of the incident at Ayodhya on 6th December, 1992 was an essential step in that direction, which undoubtedly promotes the creed of secularism instead of impairing it. It was submitted that the charge F levelled against the Central Government of discrimination against any religious community or of anti-secularism is wholly unwarranted.

Another argument advanced on behalf of the Muslim community was that the defences open to the minority community in the suits filed by the other side including that of adverse possession by virtue of long possession G of the disputed site for over 400 years since its construction in 1528 A.D. have also been extinguished by the acquisition, giving an unfair advantage to the other side. It was also urged that the core question in the dispute between the parties was not the subject-matter of the Special Reference made under Article 143 (1) of the Constitution and, therefore, answer to the H same would not result in a resolution of the dispute between the parties to

the suits. It was accordingly urged, there is deprivation of the judicial remedy for adjudication of the dispute without the substitution of an alternate dispute resolution mechanism, which is impermissible under the Constitution.

It is appropriate at this stage to refer to the provisions of the statute before we deal with the arguments challenging its constitutional validity. The Statement of Objects and Reasons says that there is a long-standing dispute relating to the disputed structure in Ayodhya which led to communal tension and violence from time to time and ultimately has led to the destruction of the disputed structure on 6th December, 1992 followed by wide-spread communal violence resulting in loss of many lives and destruction of property throughout the country. The said dispute has thus affected the maintenance of public order and communal harmony in the country. Obviously, it is necessary to maintain and promote communal harmony and fraternity amongst the people of India. With this objective in view it was considered necessary to acquire the site of the disputed structure and the requisite adjacent area to be utilised in an appropriate manner to achieve this object. For this purpose, the Acquisition of Certain Area at Ayodhya Ordinance, 1993 was promulgated by the President on 7th January, 1993 and, simultaneously, on the same day, this Reference was also made by the President to this Court under Article 143 (1) of the Constitution. The said Ordinance was replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993) to the same effect, and Section 1 (2) provides that the Act shall be deemed to have come into force on the 7th January, 1993. The provisions of the said Act are now considered.

Section 3 provides for acquisition of rights in relation to the "area" defined in Section 2 (a). It says that on and from the commencement of this Act the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government. It is well-settled that the meaning of "vest" takes colour from the context in which it is used and it is not necessarily the same in every provision or in every context. In *Maharaj Singh* v. *State of Uttar Pradesh and Others*, [1977] 1 SCR 1072 at page 1081, it was held,

> ".....Is such a construction of 'vesting' in two different senses in the same section, sound? Yes. It is, because 'vesting' is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme project the particular semantic shade or nuance of

A meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions....."

The meaning of "vest" in Section 3 and in Section 6 is of significance in the context of the constitutional validity of the statute. It can vary in different parts of the statute or even the same Section, depending on the B context of its use.

Section 4 then provides the general effect of vesting. Obviously, the effect of vesting will depend on the meaning of the word "vest" used in Section 3 and the kind of vesting in the present context. Sub-section (i) of Section 4 provides that the area shall be deemed to include all assets, rights, C etc. specified therein of whatever nature relating thereto. Sub-section (2) further says that all properties aforesaid which have vested in the Central Government under Section 3 shall, by force of such vesting, be freed and discharged from all encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any D receiver in respect of the whole or any part of the property shall cease to have effect. In other words, the effect of such vesting is to free all properties aforesaid which have vested in the Central Government under Section 3 of all encumbrances and the consequence of any order of any court or tribunal of any kind restricting their user in any manner. Sub-section (3) of Section 4 provides for abatement of all pending suits and E legal proceedings. The meaning of the word "vest" in Section 3 has a bearing on the validity of this provision since the consequence of abatement of suits etc. provided therein is relatable only to absolute vesting of the disputed area which is the subject matter of the suits and not to a situation where the vesting under Section 3 is of a limited nature for a particular purpose, and is of limited duration till the happening of a future event. F Section 5 indicates the duty of the person or State Government in charge of the management of the area to deliver all assets etc. to the Central Government on such vesting. Sub-section (1) empowers the Central Government to take all necessary steps to secure possession of the area which is vested in the Central Government under Section 3. Sub-section (2) obliges the person or State Government of Uttar Pradesh, as the case may G be, in charge of the management of the area immediately before such vesting to deliver to the Central Government or the authorised person all assets etc. in their custody relating to such vesting. In short, Section 5 provides the consequential action to be taken by the Central Government with the corresponding obligation of the person or State Government in charge of the management of the area to deliver possession of the area, H together with its management, to the Central Government, on such vesting.

Then comes Section 6 which is the last Section in Chapter II, to which detailed reference would be made later. At this stage a general reference to its contents is sufficient. Section 6 contains the power of Central Government to direct vesting of the area in another authority or body or trust. Sub-section (1) provides that the Central Government may, notwithstanding anything contained in Sections 3, 4, 5 and 7, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust from the specified date. If it is satisfied that the same is willing to comply with such terms and conditions as the Central Government may think fit to impose. In short, sub-section (1) empowers the Central Government to transfer its right, title and interest or any of them in the area or any part thereof to any authority or other body or trustees of any trust on such terms and conditions as it may think fit.....of continuing to retain the same itself sub-section (2) provides for the consequences of the action taken under sub-section (1) giving recognition to the statutory transfer effected by the Central Government to effectuate the purpose of such transfer by the Central Government by declaring that the transfree would then step into the shoes of the Central Government acquiring the same right, title and interest in a area or part thereof which by virtue of enactment had earlier vested in the Central Government. Sub-section (2) is another consequence of the action taken under section (1) and provides that Sections 4, 5, 7 and 11 far as may be, would apply to such transfree as they apply in relation to the Central Government. It may here be recalled that Section 4 relates to the effect of vesting under Section 3; Section 5 to the duty of the person or State in charge of the management of the area to deliver possession etc. to the Central Government or the authorised person. Section 7 to the management and the administration of property by the Central Government on its vesting; and Section 11 gives protection to action taken in good faith by the Central Government or the authorised person or any one acting on its behalf under this Act.

A B C D E F G H

A Chapter III contains Section 7 alone which would be considered at length later in view of the serious challenge made to its constitutional validity. This Section deals with the management and administration of the property by the Central Government, on its vesting, Sub-section (1) provides for management of the property vested in the Central Government under Section 2 by the Central Government or by any authorised person, on B such vesting, notwithstanding anything to the contrary contained in any contract or instrument or order of any court, tribunal or other authority. In other words, in spite of any contrary provision in any contract of instrument or order of any court, tribunal or other authority, from the commencement of this Act, the management of the property vested in the Central Government under Section 2 shall be by the Central Government or by an C authorised person, so authorised by the Government its behalf and none else. This provision expressly supersedes any earlier provision relating to the management of the property so vested in the Central Government. Sub-section (2) then provides for the manner of the management of the property by the Central Government or the authorised person. It mandates the Central Government or the authorised person, in managing the property D vested in the Central Government under Section 3, to ensure that the position existing before the commencement of this Act "in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood" is maintained. This means that the power of management of the Central Government or the authorised person under E sub-section (1) of Section 7 is coupled with the duty contained in the mandate given by sub-section (2). The mandate is that in managing the property so vested in the Central Government, the Central Government or the authorised person shall ensure maintenance of the *status quo* "in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-F Babri Masjid, stood". There was some debate as to the meaning of the word "area" in this context. One construction suggested was that the word "area" used in this expression has the same meaning as in the definition contained in Section 2 (a), that is, the entire area specified in the Schedule to the Act. Section 2 itself says that the definitions therein give the meaning of the words defined "unless the context otherwise requires". The context in G which the word "area" is used in the expression in Section 7 (2) gives the clear indication that its meaning is not the same as in Section 2 (a) to mean the entire area specified in the Schedule since the words which follow qualify its meaning confining it only to the site on which this structure, commonly known as the Ram Janma Bhumi-Babri Masjid stood, which site or area is undoubtedly smaller and within "the area specified in the H Schedule."

Chapter IV contains the miscellaneous provisions. Therein Section 8 provides for payment of amount equivalent to the market value of the land, building, structure or other property by the Central Government for the transfer to, and vesting of the property in, the Government under Section 3, to its owner. Remaining part of Section 8 contains the machinery provisions for payment of the amount. Section 9 gives the overriding affect of the provisions of this Act on any other law or decree or order of any court, tribunal or other authority. Section 10 provides for penalties. It says that any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person the possession etc. required under this Act shall be punishable in the manner provided. Section 11 gives protection to the Central Government or the authorised person or any one acting on its behalf for anything done or intended to be done under this Act in good faith. Section 12 contains the rule making power of the Central Government to carry out the provisions of this Act and the manner in which the rules are to be made. Section 13 is the last section of the Act providing for repeal of the earlier Ordinance and savings.

The foregoing is a brief resume of the provisions of Act No. 33 of 1993, the constitutional validity of which has to be examined in the light of the grounds of challenge. The meaning of the word "vest" in Section 2 and the kind of vesting contemplated thereby, the effect of vesting including abatement of all pending suits and legal proceedings, according to Section 4, the power of Central Government to direct vesting of the area or any part thereof in another authority or body or trust and its effect according to Section 6, and Section 7 providing for management of property by the Central Government or the authorised person are the provisions of particular significance for deciding the question of constitutionality. Section 8 also is of some significance in this context.

We may now proceed to consider the merits of the grounds on which the Act is assailed as constitutionally invalid.

LEGISLATIVE COMPETENCE

The legislative competence is traceable to Entry 42. List III and the State of Uttar Pradesh being under President's rule at the relevant time, the legislative competence of the Parliament, in the circumstances, cannot be doubted. That apart, the pith and substance of the legislation is "acquisition of property" and that falls squarely within the ambit of Entry 42, List III. Competing entry set up is Entry 1, List II relating to "public order", "Acquisition of property" and not "public order" is the pith and substance of the statute.

A In *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, [1952] SCR 889, it was pointed out that where the dominant purpose of the Act was that of transference to the State of the interests of the proprietors and tenure holders of the land, the pith and substance of the legislation was the transference of ownership to the State Government and it was an "acquisition" Act. In *Deputy Commissioner and* B *Collector, Kamrup and Ors.* v. *Durga Nath Sarma*, [1968] 1 SCR 561, Bachawat, J. pointed out that a law for permanent acquisition of property is not a law for promotion of public health etc. since only the taking of temporary possession of private properties can be regarded as a law for promotion of public health.

C It is significant to bear in mind that Entry 42, List III, as it now exists, was substituted by the Constitution (Seventh Amendment) Act to read as under :–

"Acquisition and requisitioning of property."

D Before the Constitution (Seventh Amendment) Act, the relevant entries read as follows :–

"List I, Entry 33:

E Acquisition or requisitioning of property for the purposes of the Union.

List II, Entry 36:

Acquisition or requisitioning of property, except for the F purposes of the Union, subject to the provisions of Entry 42 of List III.

List III, Entry 42:

Principles on which compensation for property acquired is G requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

By the Amendment so made, Entry 42, List III reads as extracted H earlier while Entry 22, List I and Entry 26, List II have been omitted. The

comprehensive Entry 42 in List III as a result of the Constitution (Seventh Amendment) Act leaves no doubt that an acquisition Act of this kind fails clearly within the ambit of this Entry and therefore, the legislative competence of the Parliament to enact this legislation cannot be doubted. This ground of challenge is, therefore, rejected. A

SECULARISM, RIGHT TO FREEDOM OF RELIGION AND RIGHT TO EQUALITY B

It would be appropriate now to consider the attack based on secularism which is a basic feature of the Constitution, with the two attendant rights. The argument is that the Act read as a whole is anti-secular being slanted in favour of the Hindu community and against the Muslim minority since it seeks to perpetuate demolition of the mosque which scope on the disputed site instead of providing for the logical just action of rebuilding it, appropriate in the circumstances. It is urged that Section 4 (3) provides for abatement of all pending suits and legal proceedings depriving the Muslim community of its defences including that of adverse possession for over 400 years since 1528 A.D. when the mosque was constructed on that site by Mir Baqi, without providing for an alternate dispute resolution mechanism, and thereby it deprives the Muslim community of the judicial remedy to which it is entitled in the constitutional scheme under the rule of law. It is urged that the Special Reference under Section 143 (1) of the Constitution to this Court by the President of India is not of the core question, the answer to which would automatically resolve the dispute but only of a vague and hypothetical issue, the answer to which would not help in the resolution of the dispute as a legal issue. It is also urged that Section 6 enables transfer of the acquired property including the disputed area to any authority, body or trust by the Central Government without reference to the real title over the disputed site. It is further contended that Section 7 perpetuates the mischief of the demolition of the mosque by directing maintenance of the *status quo* as on 7th January, 1993 which enables the Hindus to exercise the right of worship of some kind in the disputed site keeping the Muslims totally excluded from that area and this discrimination can be perpetuated to any length of time by the Central Government. The provision in Section 7, it is urged, has the potential of perpetuating this mischief. Reference was also made to Section 8 to suggest that it is meaningless since the question of ownership over the disputed site remains to be decided and with the abatement of all pending suits and legal proceedings, there is no mechanism by which it can be adjudicated. The objection to Section 8 is obviously in the context of the disputed area over which the title is in dispute and not to the remaining area specified in the Schedule to the Act, the ownership of C D E F G H

A which is not disputed. The validity of acquisition is also challenged by others including those who own some of the acquired properties and in whose case the title is not disputed. Their contention is that acquisition of their property, title to which is undisputed, is unnecessary. Parties to the pending suits which have abated, other than the Sunni Central Wakf Board, have also challenged the validity of the Act, even though on other grounds.
B Violation of Articles 14, 25 and 26 also is alleged on these grounds. This discussion, therefore, covers these grounds.

For a proper consideration of the challenge based on the ground of secularism, it is appropriate to refer to the concept of secularism and the duty of the courts in construing a statute in this context.

C

The polity assured to the people of India by the Constitution is described in the Preamble wherein the word "secular" was added by the 42nd Amendment. It highlights the fundamental rights guaranteed in Articles 20 to 26 that the State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right
D freely to profess, practise and propagate religion of their own choice, in brief, this is the concept of secularism as a basic feature of the Constitution of India and the way of life adopted by the people of India as their abiding faith and creed. M.C. Setalvad in Patel Memorial Lectures - 1985, on Secularism, referring to the Indian concept of secularism, stated thus:

E

> ".....The coming of the partition emphasised the great importance of secularism. Notwithstanding the partition, a large Muslim minority, constituting a tenth of the population, continued to be the citizens of Independent India. There were also other important minority groups of citizens. In the circumstances, a secular constitution for
> F independent India, under which all religions could enjoy equal freedom and all citizens equal rights, and which could weld together into one nation the different religious communities, became inevitable."
>
> (at pages 481-82)

G

> ".....The ideal, therefore, of a secular State in the sense of a State which treats all religions alike and displays a benevolent neutrality towards them is in a way more suited to the Indian environment and climate than that of a truly secular State."

H

(at page 485)

A "....Secularism, in the Indian context, must be given the widest possible content. It should connote the eradication of all attitudes and practices derived from or connected with religion which impede our development and retard our growth into an integrated nation. A concerted and earnest endeavour, both by the State and citizen, towards secularisation in accordance with this wide concept alone B lead to the stabilisation of our democratic state and the establishment of a true and cohesive Indian nationhood."

(at page 488-89)

C A reference to the Address of the President of India, Dr. Shanker Dayal Sharma, as the then Vice-President of India, on "Secularism in the Indian Ethos" while delivering Dr. Zakir Hussain Memorial Lecture of Vishva-Bharati, Shantiniketan, on 29th April, 1989 is useful. Therein, he referred to the difference between our understanding of the word "secular" and that in the West or its dictionary meaning, and said :–

D "We in India, however, understand secularism to denote 'Sarva Dharma Samabhaav' an approach of tolerance and understanding of the equality of all religions."

xxx xxx xxx

E "This philosophical approach of understanding, co-existence and tolerance is the very spirit of our ancient thought...."

xxx xxx xxx

F The Yajurveda states :

मित्रस्य मा चक्षुषा सर्वाणि भूतानि समीक्षन्ताम्।

मित्रस्याहं चक्षुषा सर्वाणि भूतानि समीक्षे।

मित्रस्य चक्षुषा समीक्षामहे।। G

(यजुः ३८-१८)

"May all beings look on me with the eyes of a friend: May I look on all beings with the eyes of a friend. May we look on one another with the eyes of a friend." H

A very significant manifestation of secular outlook is contained in the Prithvi Sukta in the Atharva Veda:

जनं विभ्रति बहुधा विवाचसम्। नानाधर्माणां पृथिवी यथौकसम्।

This Earth, which accommodates peoples of different persuasions and languages, as in a peaceful home - may it benefit all of us.

ता नः प्रजाः बहुतां समग्रा वाचो मधु पृथिवि धेहि महयम्।

"Oh, Mother Earth, give to us, as your children the capacity to interact harmoniously; may we speak sweetly with one another."

And the Rg. Veda emphatically declares:

"एकैव मानुषी जातिः"

"All human beings are of one race."

Thus a philosophical and ethnological composite is provided by ancient Indian thought for developing *Sarva Dharma Samabhaav* or secular thought and outlook. This enlightenment is the true nucleus of what is now known as Hinduism."

Proceeding further, referring to the impact of other religions on the Indian ethos, he said:

"Two aspects in this regard are noteworthy. First, the initial appearance of Christianity or Islam or zoroastrianism in India and their establishment on the mainland did not occur as a result of military conquest or threat of conquest. These religions were given a place by virtue of the attitude of accommodation and co-existence displayed by local authorities - including the main religious authorities. The second aspect is even more important: Christianity, Islam and Zoroastrianism brought with them spiritual and humanistic thought harmonious and, in fact, identical to the core ideas of the established religious thought in India as exemplified by the basic beliefs of Vedic. Vedantic, Buddhist and Jain philosophy."

The influence of saints and holy persons was indicated thus: A

> ".....There was natural interest, therefore, in Islam as a revealed religion brought forth by a Prophet of profound charisma who had faced adversities, and in Christianity, which spread the light of Jesus Christ who had suffered a terrible crucification for humanity's sake. The Quran B moreover referred to great souls such as Abraham, Issac, Ishmael, Jacob, Moses mentioned in the Old Testament of the Christian faith, and Jesus, Al-Fatiha or Fatiha Tu Alfatha which is also referred to as Ummul Quran or the essence of the Quaran refers to 'Allah' as Rab-ul-Alamin or Lord of the entire universe. It does not confine him to C Muslims alone. The Second Surah in the Quran, titled "Al-Baqurah" gives a warning, which is repeated throughout the Quran, that it is not mere professing of one's creed, but righteous conduct, that is true religion. Verses 44, 81 and 82 from this Surah make this absolutely clear."

D

Dr. Sharma also adverted to the contribution made to growth of secularism by Akbar who founded "Din-e-Ilahi" and the support he was given by Abdul Rahim Khane Khana in addition to the secularism of Dara Shikoh. Impact of Muslim mysticism on Hinduism and contribution of Kabir to the Indian ethos has been lasting. Secular ideals led to formation of the Sikh faith and the Gurus have made a lasting contribution to it. He said: E

> "Guru Gobind Singh further magnified the secular ideal of the Sikh faith. The following lines composed by Guru Govind Singh come to mind.

F

> देहुरा मसीत सोई, पूजा ओ नमाज ओई,
> मानस सभै ऐक पै अनेक को प्रभाव है।
>
> अलह अभेख सोई, पुरान ओ कुरान ओई,
> ए ऐक ही सरूप सभै, एक ही बनाव है।

G

> "Mandir or Mosque, Puja or Namaz, Puran or Quran have no difference. All human beings are equal."

After adverting to the significant role of Mahatma Gandhi and Khan Abdul Gaffar Khan in recent times, Dr. Sharma concluded: H

A "The Constitution of India specifically articulated the commitment of secularism on the basis of clear understanding of the desirable relationships between the individual and Religion, between Religion and Religion, Religion and the State, and the State and the Individual....."

B

xxx xxx xxx

"I shall conclude with a few words, very meaningful made from a speech by Dr. Zakir Hussain. "We want peace between the individual and groups within no time. These C are all vitally interdependance. If the spirit of the Sermon on the Mount, Buddha's philosophy of compassion, the Hindu concept of Ahimsa, and the passion of Islam for obedience to the will of God can combine, then we would succeed in generating the most potent influence for world peace."

D

In S.*R. Bommai* v. *Union of India*, [1994] 3 SCC 1, a nine-Judge Bench referred to the concept of "secularism" in the Indian context. Sawant, J. dealt with this aspect and after referring to the Setalvad Lecture, stated thus:

"As stated above, religious tolerance and equal treatment of E all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our Constitution. We have accepted the said goal not only because it is our historical legacy and a need of our national unity and integrity but also as a creed of universal brotherhood and humanism, it is our cardinal F faith. Any profession and action which go counter to the aforesaid creed are a *prima facie* proof of the conduct in defiance of the provisions of our Constitution...."

(at pages 147-48)

G Similarly, K. Ramaswamy, J. in the same decision stated:

".....Though the concept of "secularism" was not expressly engrafted while making the Constitution, its sweep, operation and visibility are apparent from fundamental rights and directive principles and their related provisions. H It was made explicit by amending the preamble of the

Constitution 42nd Amendment Act. The concept of secularism of which religious freedom is the foremost appears to visualise not only of the subject of God but also an understanding between man and man. Secularism in the Constitution is not anti-God and it is sometimes believed to be a stay in a free society. Matters which are purely religious are left personal to the individual and the secular part is taken charge by the State on grounds of public interest, order and general welfare. The State guarantee individual and corporate religious freedom and dealt with an individual as citizen irrespective of his faith and religious belief and does not promote any particular religion nor prefers one against another. The concept of the secular State is, therefore, essential for successful working of the democratic form of Government. There can be no democracy if anti-secular forces are allowed to work dividing followers of different religious faith flying at each other's throats. The secular Government should negate the attempt and bring order in the society. Religion in the positive sense, is an active instrument to allow the citizen full development of his person, not merely in the physical and material but in the non-material and non-secular life."

(at page 163)

"....It would thus be clear that Constitution made demarcation between religious part personal to the individual and secular part thereof. The State does not extend patronage to any particular religion, State is neither pro particular religion nor anti particular religion, it stands aloof, in other words maintains neutrality in matters of religion and provides equal protection to all religions subject to regulation and actively acts on secular part."

(at page 168)

B.P. JEEVAN REDDY, J. in the same context in the decision stated thus :

"....While the citizens of this country are free to profess, practice and propegate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person

A is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, B faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? *Secularism is thus more than a passive attitude or religious tolerance. It is a positive concept of equal treatment of all* C *religions.* This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time. That is not material. D *What is material is that it is a constitutional goal and a basic feature of the Constitution* as affirmed in *Kesavananda Bharati,* [1973] 4 SCC 225; [1973] Suppl. SCR 1 and *Indira N. Gandhi* v. *Raj Narain;* [1975] Suppl. SCC 1: [1976] 2 SCR 847. *Any step inconsistent with this constitutional policy is, in plain words, unconstitutional.* E This does not mean that the State has no say whatsoever in matters of religion. Laws can be made regulating the secular affairs of temples, mosques and other places of worships and maths. (See *S.P. Mittal* v. *Union of India,* [1983] 1 SCC 51; [1983] 1 SCR 729)."

(emphasis supplied)

F

(at page 233)

Ahmadi, J. while expressing agreement with the views of Sawant, Ramaswamy and Jeevan Reddy, JJ. stated thus:

G

"Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined H presumably because it is a very elastic term not capable of a

precise definition and perhaps best left undefined. By this amendment what was implicit was made explicit....." A

(at page 77)

It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution. B C

It is useful in this context to refer to some extracts from a paper on "Law in a Pluralist Society" by M.N. Venkatachaliah, J., as he then was, (one of us). Therein, he said : D

"The purpose of law in plural societies is not the progressive assimilation of the minorities in the majoritarian milled. This would not solve the problem but would but would vainly seek to dissolve it. What then is its purpose? Again in the words of Lord Scarman (Minority Rights in a Plural Society, P. 63): E

".....The purpose of the law must be not to extinguish the groups which make the society but to devise political, social and legal means of preventing them from falling apart and so destroying the plural society of which they are members." F

In a pluralist, secular polity law is perhaps the greatest integrating force. A cultivated respect for law and its institutions and symbols; a pride in the country's heritage and achievements; faith that people live under the protection of an adequate legal system are indispensable for sustaining unity in pluralist diversity. Rawlsian pragmatism of "justice as fairness" to serve as an 'over-lapping consensus' and deep seated agreements on fundamental questions of basic structure of society for deeper social G H

A unity is a political conception of justice rather than a comprehensive moral conception."

XXX XXX XXX

"What are the limitations on laws dealing with issues of
B pluralism? Law should not accentuate the depth of the cleavage and become in itself a source of aggravation of the very condition it intends to remedy...."

XXX XXX XXX

C "To those that live in fear and insecurity all the joys and bright colours of life are etched away. There is need to provide a reassurance and a sense of belonging. It is not enough to say "look here.... I never promised you a rose garden. I never promised you perfect justice." But perfect justice may be an unattainable goal. At least it must be a
D tolerable accommodation of the conflicting interests of society. Though there may really be no "Royal road to attain such accommodations concretely". Bentham alluded to the pursuit of equality as 'Disappointment-preventing' principle as the principle of distributive justice and part of the security-providing principle."

E

Keeping in mind the true concept of secularism, and the role of judiciary in a pluralist society, as also the duty of the court in interpreting such a law, we now proceed to consider the submissions with reference to the provisions of the enactment.

F It is necessary to first contrue the provisions of Act No. 33 of 1993 with reference to which the grounds of challenge have to be examined.

The meaning of the word "vest" as earlier stated has different shades taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the
G meaning of a limited vesting, being limited, in title as well as duration. Thus the meaning of "vest" used in Section 3 has to be determined in the light of the text of the statute and the purpose of its use. If the vesting be absolute being unlimited in any manner, there can be no limitation on the right to transfer or manage the acquired property. In the event of absolute vesting, there is no need for a provision enabling the making of transfer
H after acquisition of the property, right to transfer being a necessary incident

of absolute title. Enactment of Section 6 in the same statute as a part of the scheme of acquisition of the property vesting it in the Central Government is, therefore, contra indication of the vesting under Section 3 in the Central Government being as an absolute owner without any particular purpose in view. The right to manage and deal with the property in any manner of an absolute owner being unrestricted, enactment of Section 7 which introduces an express limitation on the power of management and administration of property comprising the disputed area till the transfer is effected in the manner indicated in Section 6, is a clear indication of the acquisition of only a limited and not an absolute title in the disputed property by the Central Government. Sections 6 and 7 read together give a clear indication that the acquisition of the disputed property by this Act is for a particular purpose and when the purpose is achieved the property has to be transferred in the manner provided in Section 6; and the Central Government is obliged to maintain the *status quo* as in existence on 7th January, 1993 at the site where the disputed structure stood, till the time of that transfer. The purpose to be effectuated is evidently the resolution of the dispute which has defied the steps taken for its resolution by negotiations earlier. The modes of resolution of the dispute contemplated are referrable to, and connected with, the question referred for the decision of this Court under Article 143 (1) of the Constitution. It is a different matter that the dispute may not be capable of resolution merely by answer of the question referred. That is material for deciding the validity of Section 4 (3) of the Act which brings about the abatement of all pending suits and legal proceedings indicating that the alternate dispute resolution mechanism adopted is only the Reference made under Article 143 (1) of the Constitution.

If the Presidential Reference is incapable of satisfying the requirement of alternate dispute resolution mechanism and, therefore, has the effect of denying a judicial remedy to the parties to the suit, this itself may have a bearing on the constitutional validity of Section 4 (3) of the Act. In that event Section 4 (2) may be rendered invalid resulting in revival of all pending suits and legal proceedings sought to be abated by Section 4 (3), the effect being that any transfer by the Central Government of the acquired disputed property under Section 6 would be guided and regulated by the adjudication of the dispute in the revived suits. This is, of course, subject to the severability of Section 4 (3).

It is, therefore, clear that for ascertaining the true meaning of the word "vest" used in Section 6 we must first consider the validity of Sections 6 and 7 of the Act on which it largely depends. If Sections 6 and 7 of the Act, which limit the title of the Central Government cannot be sustained, the

A limitation read in Section 3 to the title acquired by the Central Government under the Act through this mode would disappear. For this reason, we proceed to examine the validity of Sections 6 and 7.

Between Sections 6 and 7, it is Section 7 which imposes a greater restriction on the power of Central Government. It gives the mandate that in B management of the area over which the disputed structure stood, it has to maintain *status quo* as it existed at the time of acquisition on 7th January, 1993. Such a limitation is clearly inconsistent with the acquisition of absolute ownership of the property. The validity of Section 7 (2) of the Act must, therefore, be considered.

C Section 7 as we read it, is a transitory provision, intended to maintain *status quo* in the disputed area, till transfer of the property is made by the Central Government on resolution of the dispute. This is to effectuate the purpose of that transfer and to make it meaningful avoiding any possibility of frustration of the exercise as a result of any change in the existing situation in the disputed area during the interregnum. Unless *status quo* is D ensured, the final outcome on resolution of the dispute may be frustrated by any change made in the disputed area which may frustrate the implementation of the result in favour of the successful party and render it meaningless. A direction to maintain *status quo* in the disputed property is a well-known method and the usual order made during the pendency of a E dispute for preserving the property and protecting the interest of the true owner till the adjudication is made. A change in the existing situation is fraught with the danger of prejudicing the rights of the true owner, yet to be determined. This itself is a clear indication that the exercise made is to find out the true owner of the disputed area, to maintain *status quo* therein during the interregnum and to hand it over to the true owner found entitled F to it.

The question now is whether the provision in Section 7 containing the mandate to maintain the *status quo* existing at the disputed site as on 7th January, 1993 is a slant in favour of the Hindu community, intended to perpetuate an injustice done to the Muslim community by demolition of the G mosque on 6th December, 1992 and, therefore, it amounts to an anti-secular or discriminatory act rendering the provision unconstitutional. For this purpose it is necessary to recall the situation as it existed on 7th January, 1993 along with the significant events leading to that situation. It is necessary to bear in mind the comparative use of the disputed area and the right of worship practised therein, by the two communities on 7th January, H 1993 and for a significant period immediately preceding it. A reference to

the comparative user during that period by the two communities would indicate whether the provision in Section 7 directing maintenance of *status quo* till resolution of the dispute and the transfer by the Central Government contemplated by Section 6 is slanted towards the Hindu community to render the provision violative of the basic feature of secularism or the rights to equality and freedom of religion. A

B

As earlier stated, worship by Hindu devotees of the idols installed on the Ram chabutra which stood on the disputed site within the courtyard of the disputed structure had been performed without any objection by the Muslims even prior to the shifting of those idols from the Ram chabutra into the disputed structure in December 1949; in one of the suits filed in January 1950, the trial court passed interim orders whereby the idols remained at the place where they were installed in 1949 and worship of the idols there by the Hindu devotees continued; this interim order was confirmed by the High Court in April 1955; the District Judge ordered the opening of the lock placed on a grill leading to the sanctum-sanctorum of the shrine in the disputed structure on 1st February, 1986 and permitted worship of the idols there to Hindu devotees; and this situation continued till demolition of the structure on 6th December, 1992 when Ram chabutra also was demolished. It was only as a result of the act of demolition on 6th December, 1992 that the worship by the Hindu devotees in general of the idols at that place was interrupted. Since the time of demolition, worship of the idols by a pujari alone is continuing. This is how the right of worship of the idols practised by Hindu devotees for a long time from much prior to 1949 in the Ram chabutra within the disputed site has been interrupted since the act of demolition on 6th December, 1992 restricting the worship of the idols since then to only by one pujari. On the other hand, at least since December 1949, the Muslims have not been offering worship at any place in the disputed site though, it may turn out at the trial of the suits that they had a right to do so. C D E F

The communal holocaust unleashed in the country disrupting the prevailing communal harmony as a result of the demolition of the structure on 6th December, 1992 is well known to require further mention. Any step taken to arrest escalation of communal tension and to achieve communal accord and harmony can, by no stretch of argumentation, be termed non-secular much less anti-secular or against the concept of secularism - a creed of the Indian people embedded in the ethos. G

The narration of facts indicates that the acquisition of properties under the Act affects the rights of both the communities and not merely those of H

A the Muslim community. The interest claimed by the Muslims is only over the disputed site where the mosque stood before its demolition. The objection of the Hindus to this claim has to be adjudicated. The remaining entire property acquired under the Act is such over which no title is claimed by the Muslims. A large part thereof comprises of properties of Hindus of which the title is not even in dispute. The justification given for acquisition B of the larger area including the property respecting which title is not disputed is that the same is necessary to ensure that the final outcome of adjudication should not be rendered meaningless by the existence of properties belonging to Hindus in the vicinity of the disputed structure in case the Muslims are found entitled to the disputed site. This obviously means that in the event of the Muslims succeeding in the adjudication of the C dispute requiring the disputed structure to be handed over to the Muslim community, their success should not be thwarted by denial of proper success to, and enjoyment of rights in, the disputed area by exercise of rights of ownership of Hindu owners or the adjacent properties. Obviously, it is for this reason that the adjacent area has also been acquired to make available to the successful party, that part of it which is considered D necessary, for proper enjoyment of the fruits of success on the final outcome of the adjudication. It is clear that one of the purposes of the acquisition of the adjacent properties is the ensurement of the effective enjoyment of the disputed site by the Muslim community in the event of its success in the litigation; and acquisition of the adjacent area is incidental to the main purpose and cannot be termed unreasonable. The "Manas E Bhawan" and "Sita ki Rasoi", both belonging to the Hindus, are buildings which closely overlook the disputed site and are acquired because they are strategic in locations in relation to the disputed area. The necessity of acquiring adjacent temples or religious buildings in view of their proximity to the disputed structure area, which forms a unique class by itself, is F permissible. *See M. Padmanabha Iyengar* v. *Government of Andhra Pradesh and Ors.*, AIR (1990) AP 357 and *Akhara Shri Braham Buta, Amritsar* v. *State of Punjab and Others,* AIR (1990) P and H 198. We approve the principle stated in these decisions since it serves a larger purpose.

G However, at a later stage when the exact area acquired which is needed, for achieving the professed purpose of acquisition, can be determined, it would not merely be permissible but also desirable that the superfluous excess area is released from acquisition and reverted to its earlier owner. The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the objective of settling H the dispute relating to the disputed area cannot be examined at this stage

but, in case the superfluous area is not returned to its owner even after the exact area needed for the purpose is finally determined, it would be open to the owner of any such property to then challenge the superfluous acquisition being unrelated to the purpose of acquisition. Rejection of the challenge on this ground to acquisition at this stage, by the undisputed owners of any such property situate in the vicinity of the disputed area, is with the reservation of this liberty to them. There is no contest to their claim of quashing the acquisition of the adjacent properties by anyone except the Central Government which seeks to justify the acquisition on the basis of necessity. On the construction of the statute made by us, this appears to be the logical, appropriate and just view to take in respect of such adjacent properties in which none other than the undisputed owner claims title and interest.

It may also be mentioned that even as Ayodhya is said to be of particular significance to the Hindus as a place of pilgrimage because of the ancient belief that Lord Rama was born there, the mosque was of significance for the Muslim community as an ancient mosque built by Mir Baqi in 1526 A.D. As a mosque, it was a religious place of worship by the Muslims. This indicates the comparative significance of the disputed site to the two communities and also that the impact of acquisition is equally on the right and interest of the Hindu community. Mention of this aspect is made only in the context of the argument that the statute as a whole, not merely Section 7 thereof, is anti-secular being slanted in favour of the Hindus and against the Muslims. Section 7 (2) of the Act freezes the situation admittedly in existence on 7th January, 1993 which was a lesser right of worship for the Hindu devotees than that in existence earlier for a long time till the demolition of the disputed structure on 6th December, 1992; and it does not create a new situation more favourable to the Hindu community amounting to conferment on them of a larger right of worship in the disputed site than that practised till 6th December, 1992. Maintenance of *status quo* as on 7th January, 1993 does not, therefore, confer or have the effect of granting to the Hindu community any further benefit thereby. It is also pertinent to bear in mind that the persons responsible for demolition of the mosque on 6th December, 1992 were some miscreants who cannot be identified and equated with the entire Hindu community and, therefore, the act of vandalism so perpetrated by the miscreants cannot be treated as an act of the entire Hindu community for the purpose of adjudging the constitutionality of the enactment. Strong reaction against, and condemnation by the Hindus of the demolition of the structure in general bears eloquent testimony to this fact. Rejection of Bhartiya Janata Party at the hustings in the subsequent elections in Uttar

A Pradesh is another circumstance to that effect. The miscreants who demolished the mosque had no religion, caste or creed except the character of a criminal and the mere incident of birth of such a person in any particular community cannot attach the stigma of his crime to the community in which he was born.

B Another effect of the freeze imposed by Section 7 (2) of the Act is that it ensures that there can be no occasion for the Hindu community to seek to enlarge the scope of the practice of worship by them as on 7th January, 1993 during the interregnum till the final adjudication on the basis that in fact a larger right of worship by them was in vogue upto 6th December, 1992. It is difficult to visualise how Section 7 (2) can be construed as a C slant in favour of the Hindu community and, therefore, anti-secular. The provision does not curtail practice of right of worship of the Muslim community in the disputed area, where having been *de facto* no exercise of the practice or worship by them there at least since December 1949; and it maintains *status quo* by the freeze to the reduced right of worship by the Hindus as in existence on 7th January, 1993. However, confining exercise D of the right of worship of the Hindu community to its reduced form within the disputed area as on 7th January, 1993, lesser than that exercised till the demolition on 6th December, 1992, by the freeze enacted in Section 7 (2) appears to be reasonable and just in view of the fact that the miscreants who demolished the mosque are suspected to be persons professing to practise E the Hindu religion. The Hindu community must, therefore, bear the cross on its chest, for the misdeed of the miscreants reasonably suspected to belong to their religious fold.

This is the proper perspective, we say, in which the statute as a whole and Section 7 in particular must be viewed. Thus the factual foundation for F challenge to the statute as a whole and Section 7 (2) in particular on the ground of secularism, a basic feature of the Constitution, and the rights to equality and freedom of religion is non-existent.

Reference may be made to the statements of the Central Government soon after the demolition on 7th December, 1992 and 27th December, 1992 G wherein it was said that the mosque would be rebuilt. It was urged that the action taken on 7th January, 1993 to issue an Ordinance, later replaced by the Act, and simultaneously to make the Reference to this Court under Article 143 (1) of the Constitution amounts to resiling from the earlier statements for the benefit of the Hindu community. It is sufficient to say that the earlier statements so made cannot limit the power of the Parliament H and are not material for adjudging the constitutional validity of the

enactment. The validity of the statute has to be determined on the touchstone of the Constitution and not any statements made prior to it. We have therefore no doubt that Section 7 does not suffer from the infirmity of being anti-secular or discriminatory to render it unconstitutional. A

We would now examine the validity of Section 6. Sub-section (1) of Section 6 empowers the Central Government to direct vesting of the area acquired or any part thereof in another authority or body or trust. This power extends to the entire acquired area or any part thereof. This is notwithstanding anything contained in Sections 3, 4, 5 and 7. Section 3 provides for acquisition of the area and its vesting in the Central Government. It is, therefore made clear by sub-section (1) of Section 6 that the acquisition of the area and its vesting in the Central Government is not a hindrance to the same being vested thereafter by the Central Government in another authority or body or trust. Section 4 relates to the effect of vesting and Section 5 to the power of the Central Government to secure possession of the area vested, with the corresponding obligation of the person or the State Government in possession thereof to deliver it to the Central Government or the authorised person. Section 4 (3) relating to abatement of pending suits and legal proceedings would be considered separately. Section 7 which we have already upheld, relates to management and administration of the property by the Central Government or the authorised person during the interregnum till the exercise of power by the Central Government under Section 6 (1). Section 7 has been construed by us as a transitory provision to maintain *status quo* in the disputed area and for proper management of the entire property acquired during the interregnum. Thus, sub-section (1) of Section 6 read with sub-section (2) of Section 7 is an in-built indication in the statute of the intent that acquisition of the disputed area and its vesting in the Central Government is not absolute but for the purpose of its subsequent transfer to the person found entitled to it as a result of adjudication of the dispute for the resolution of which this step was taken, and enactment of the statute is part of that exercise. Making of the Reference under Article 143 (1) simultaneously with the issuance of Ordinance, later replaced by the Act, on the same day also is an indication of the legislative intent that the acquisition of the disputed area was not meant to be absolute but limited to holding it as a statutory receiver till resolution of the dispute; and then to transfer it in accordance with, and in terms of the final determination made in the mechanism adopted for resolution of the dispute. Sub-section (2) of Section 6 indicates consequence of the action taken under sub-section (1) by providing that as a result of the action taken under sub-section (1), any right, title and interest in relation to the area or part thereof would be deemed to have become B C D E F G H

A those of the transferee. Sub-section (3) of Section 6 enacts that the provisions of Sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government. The expression "so far as may be" is indicative of the fact that all or any of these provisions may or may not be applicable to the transferee under sub-section (1). This provides for the situation of transfer B being made, if necessary, at any stage and of any part of the property, since Section 7 (2) is applicable only to the disputed area. The provision however does not countenance the dispute remaining unresolved or the situation continuing perpetually. The embargo on transfer till adjudication, and in terms thereof, to be read in Section 6 (1), relates only to the disputed area, while transfer of any part of the excess area, retention of which till C adjudication of the dispute relating to the disputed area may not be necessary, is not inhibited till then, since the acquisition of the excess area is absolute subject to the duty to restore it to the owner if its retention is found, to be unnecessary, as indicated. The meaning of the word "vest" in Sections 3 and 6 has to be so construed differently in relation to the disputed area and the excess area in its vicinity.

D

Acquisition of the adjacent undisputed area belonging to Hindus has been attacked on the ground that it was unnecessary since ownership of the same is undisputed. Reason for acquisition of the larger area adjacent to the disputed area has been indicated. It is, therefore, not unrelated to the resolution of the dispute which is the reason for the entire acquisition. Even E though, *prima facie*, the acquisition of the adjacent area in respect of which there is no dispute of title and which belongs to Hindus may appear to be a slant against the Hindus, yet on close scrutiny it is not so since it is for the larger national purpose of maintaining and promoting communal harmony and in consonance with the creed of secularism. Once it is found that it is permissible to acquire an area in excess of the disputed area alone, adjacent F to it, to effectuate the purpose of acquisition of the disputed area and to implement the outcome of the final adjudication between the parties to ensure that in the event of success of the Muslim community in the dispute their success remains meaningful, the extent of adjacent area considered necessary is in the domain of policy and not a matter for judicial scrutiny or a ground for testing the constitutional validity of the enactment, as earlier G indicated. However, it is with the caveat of the Central Government's duty to restore it to its owner, as indicated earlier, if it is found later to be unnecessary; and reservation of liberty to the owner to challenge the needless acquisition when the total need has been determined.

H We find no infirmity in Section 6 also to render it unconstitutional.

The status of the Central Government as a result of vesting by virtue of Section 3 of the Act is, therefore, of a statutory receiver in relation to the disputed area, coupled with a duty to manage and administer the disputed area maintaining *status quo* therein till the final outcome of adjudication of the long-standing dispute relating to the disputed structure at Ayodhya. Vesting in the Central Government of the area in excess of the disputed area, is, however, absolute. The meaning of "vest" has these different shades in Sections 3 and 6 in relation to the two parts of the entire area acquired by the Act.

The question now is of the mode of adjudication of the dispute, on the final outcome of which the action contemplated by Section 6 (1) of the Act of effecting transfer of the disputed area has to be made by the Central Government.

Sub-section (2) of Section 4 provides for abatement of all pending suits and legal proceedings in respect of the right, title and interest relating to any property which has vested in the Central Government under Section 2. The rival claims to the disputed area which were to be adjudicated in the pending suits can no longer be determined therein as a result of the abatement of the suits. This also results in extinction of the several defences raised by the Muslim community including that of adverse possession of the disputed area for over 400 years since construction of the mosque there in 1528 A.D. by Mir Baqi. Ostensibly, the alternate dispute resolution mechanism adopted is that of a simultaneous Reference made the same day under Article 143 (1) of the Constitution to this Court for decision of the question referred. It is clear from the issues framed in those suits that the core question for determination in the suits is not covered by the Reference made, and it also does not include therein the defences raised by the Muslim community. It is also clear that the answer to the question referred, whatever it may be, will not lead to the answer of the core question for determination in the pending suits and it will not, by itself, resolve the long-standing dispute relating to the disputed area. Reference made under Article 143 (1) cannot, therefore, be treated as an effective alternate dispute resolution mechanism in substitution of the pending suits which are abated by Section 4 (3) of the Act. For this reason, it was urged, that the abatement of pending suits amounts to denial of the judicial remedy available to the Muslim community for resolution of the dispute and grant of the relief on that basis in accordance with the scheme of redress under the rule of law envisaged by the Constitution. The validity of sub-section (5) of Section 4 is assailed on this ground.

A To appreciate the stand of the Central Government on this point, we permitted the learned Solicitor General to make a categorical statement for the Union of India in this behalf. The final statement made by the learned Solicitor General of India in writing dated 14.9.1994 forming a part of the record, almost at the conclusion of the hearing, also does not indicate that the answer to the question referred would itself be decisive of the core B question in controversy between the parties to the suits relating to the claim over the disputed site. According to the statement, the Central Government proposes to resort to a process of negotiation between the rival claimants after getting the answer to the question referred, and if the negotiations fail, then to adopt such course as it may find appropriate in the circumstances. There can be no doubt, in these circumstances, that the Special Reference C made under Article 143 (1) of the Constitution cannot be construed as an effective alternate dispute resolution mechanism to permit substitution of the pending suits and legal proceedings by the mode adopted of making this Reference. In our opinion, this fact alone is sufficient to invalidate sub-section (3) of Section 4 of the Act. *See Smt. Indira Nehru Gandhi/Shri Raj Narain* v. *Shri Raj Narain/Smt. Indira Nehru Gandhi,* [1975] Supp. SCC 1. D We accordingly declare sub-section (3) of Section 4 to be unconstitutional. However, sub-section (3) of Section 4 is severable, and, therefore, its invalidity is not an impediment to the remaining statute being upheld as valid.

There is no serious challenge to the validity of any other provision of E the Act except a feeable attack on Section 8. For Section 8, it was urged, that performance of the exercise of payment of compensation thereunder would be impractical in respect of the property of which ownership is in dispute. This argument itself does not visualise any such difficulty in respect of the remaining undisputed property. In the view we have taken that the vesting in the Central Government by virtue of Section 3 in relation F to the disputed are is only as a statutory receiver, and Section 4 (3) being declared invalid results in revival of the pending suits and legal proceedings, the application of Section 8 would present no difficulty. Section 8 is meant only for the property acquired absolutely, other than the disputed area, being adjacent to, and in the vicinity of the disputed area. The disputed area being taken over the Central Government only as a G statutory receiver, there is no question of payment of compensation for the same as it is meant to be handed over to the successful party in the suits, in terms of the ultimate judicial verdict therein, for the faithful implementation of the judicial decision. The exercise of the power under Section 8 by the Central Government is to be made only then in respect of the disputed area, H in accordance with the final judicial decision, preserving *status quo* therein

in terms of Section 7 (2) till then. No further discussion of this aspect is necessary. A

A construction which the language of the statute can bear and promotes a larger national purpose must be preferred to a strict literal construction tending to promote factionalism and discord.

MOSQUE – IMMUNITY FROM ACQUISITION B

A larger question raised at the hearing was that there is no power in the State to acquire any mosque, irrespective of its significance to practice of the religion of Islam. The argument is that a mosque, even if it is of no particular significance to the practice of religion of Islam, cannot be acquired because of the special status of a mosque in Mahomedan Law. This argument was not confined to a mosque of particular significance without which right to practise the religion is not conceivable because it may form an essential and integral part of the practice of Islam. In the view that we have taken of limited vesting in the Central Government as a statutory receiver of the disputed area in which the mosque stood, for the purpose of handing it over to the party found entitled to it, and requiring it to maintain *status quo* therein till then, this question may not be of any practical significance since there is no absolute divesting of the true owner of that property. We may observe that the proposition advanced does appear to us to be too broad for acceptance inasmuch as it would restrict the sovereign power of acquisition even where such acquisition is essential for an undoubted national purpose, if the mosque happens to be located in the property acquired as an ordinary place of worship without any particular significance attached to it for the practice of Islam as a religion. It would also lead to the strange result that in secular India there would be discrimination against the religions, other than Islam. In view of the vehemence with which this argument was advanced by Dr. Rajeev Dhawan and Shri Abdul Hannan to contend that the acquisition is invalid for this reason alone, it is necessary for us to decide this question. C D E F

It has been contended that acquisition of a mosque violates the right given under Articles 25 and 26 of the Constitution of India. This requires reference to the status of a mosque under the Mahomedan Law. G

Even prior to the Constitution, places of worship had enjoyed a special sanctity in India. In order to give special protection to places of worship and to prevent hurting the religious sentiments of followers of different religious in British India, Chapter XV of the Indian Penal Code, 1860 was enacted. This Chapter exclusively deals with the offences relating to H

A religion in Sections 295, 295A, 296, 297 and 298 of the Indian Penal Code. Lord Macaulay in drafting the Indian Penal Code, had indicated the principle on which it was desirable for all governments to act and the British Government in India could not depart from it without risking the disintegration of society. The danger of ignoring the religious sentiments of the people of India which could lead to spread of dissatisfaction throughout
B the country was also indicated.

In British India, the right to worship of Muslims in a mosque and Hindus in a temple had always been recognised as a civil right. Prior to 1950, the Indian Courts in British India had maintained the balance between the different communities or sects in respect of their right of
C worship.

Even prior to the guarantee of freedom of religion in the Constitution of India. Chief Justice Turner in *Muthialu Chetti and Ors.* v. *Bapun Saib,* ILR 2 Madras 140, had held that during the British Administration all religions were to be treated equally with the State maintaining neutrality
D having regard to public welfare. In *Sundram Chetti and Ors.* v. *The Queen,* ILR 6 Madras 203 (FB) approving ILR 2 Madras 140, Chief Justice Turner said:

> "...But with reference to these and to other privileges claimed on the ground of caste or creed, I may observe that
E they had their origin in times when a State religion influenced the public and private law of the country, and are hardly compatible with the principles which regulate British administration, the equal rights of all citizens and the complete neutrality of the State in matters of religion.....When anarchy or absolutism yield place to well
F ordered liberty, change there must be, but change in a direction which should command the assent of the intelligence of the country."

(at page 217)

G In *Mosque known as Masjid Shahid Ganj and Others* v. *Shiromeni Gurdwara Prabhandhak Committee, Amritsar,* AIR (1938) Lahore 369, it was held that where a mosque has been adversely possessed by non-Muslims, it lost its sacred character as mosque. Hence, the view that once a constructed mosque, it remains always a place of worship as a mosque was not the Mahomedan Law of India as approved by Indian Courts. It was
H further held by the majority that a mosque in India was an immovable

property and the right of worship at a particular place is lost when the right to property on which it stands is lost by adverse possession. The conclusion reached in the minority judgment of Din Mohd., J. is not the Mahomedan Law of British India. The majority view expressed by the learned Chief Justice of Lahore High Court was approved by the Privy Council in AIR (1940) PC 116, in the appeal against the said decision of the Lahore High Court. The Privy Council held :

> ".....It is impossible to read into the modern *Limitation Acts* any exception for property made wakf for the purposes of mosque whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with the religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely to the wakf, or that it is not so possessed so long as it is referred to as "mosque" or unless the building is razed to the ground or loses the appearance which reveals its original purpose."
>
> (at page 121)

It may also be indicated that the Land Acquisition Act, 1894 is applicable uniformly to all properties including places of worship. Right of acquisition thereunder was guided by the express provisions of the Land Acquisition Act, 1894 and executive instructions were issued to regulate acquisition of places of worship. Clause 102 of the Manual of Land Acquisition of the State of Maharashtra which deals with the acquisition of religious places like churches, temples and mosques, is of significance in this context.

The power of acquisition is the sovereign or prerogative power of the State to acquire property. Such power exists independent of Article 300A of the Constitution or the earlier Article 31 of the Constitution which merely indicate the limitations on the power of acquisition by the State. The Supreme Court from the beginning has consistently upheld the sovereign power of the State to acquire property. B.K. Mukherjee, J. (as he then was) held in *Chiranjitlal Chowdhuri* v. *The Union of India and Others,* [1950] SCR 869 at pages 901-902 as under:

> "It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens

A for public use. This right, which is described as eminent domain in American law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit
B irrespective of the wishes of the owner...."

Patanjali Sastri, C.J., in the *State of West Bengal* v. *Subodh Gopal Bose and others.*, [1954] SCR 587 at page 605 held as under:

> "....and among such powers was included the power of
C "acquisition or requisitioning of property" for Union and State purposes in entry No. 33 of List I and No. 36 of List II respectively. Thus, what is called the power of eminent domain, which is assumed to be inherent in the sovereignty of the State according to Continental and American jurists and is accordingly not expressly provided for in the
D American Constitution, is made the subject of an express grant in our Constitution....."

It appears from various decisions rendered by this Court, referred later, that subject to the protection under Articles 25 and 26 of the Constitution, places of religious worship like mosques, churches, temples etc. can be
E acquired under the State's sovereign power of acquisition. Such acquisition *per se* does not violate either Article 25 or Article 26 of the Constitution. The decisions relating to taking over of the management have no bearing on the sovereign power of the State to acquire property.

Khajamian Wakf Estates etc. v. *State of Madras and Another*, [1971] 2
F SCR 791 at page 797, has held:

> "It was next urged that by acquiring the properties belonging to religious denominations the legislature violated Art. 26 (c) and (d) which provide that religious denominations shall have the right to own and acquire
G movable and immovable property and administer such property in accordance with law. These provisions do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own or acquire properties and administer them in accordance with law. That does not mean that the property
H owned by them cannot be acquired. As a result of

acquisition they cease to own that property. Thereafter their right to administer that property ceases because it is no longer their property. Article 26 does not interfere with the right of the State to acquire property." A

Acharaya Maharajshri Narandra Prasadji Anand Prasadji Maharaj etc. etc. v. *The State of Gujarat and others*, [1975] 2 SCR 317 at pages 327-328, has held : B

> ".....One thing is, however, clear that Article 26 guarantees inter alia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property.....*If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light."* C D
>
> (emphasis supplied)

It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place *per se* may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. E F

While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially. G H

A A five-Judge Full Bench of the Allahabad High Court, in *Raja Suryapalsingh others* v. *The U.P. Govt.,* AIR (1951) All. 674, held :

> "Arguments have been advanced by learned counsel on behalf of certain waqfs and Hindu religious institutions based on Articles 25 (1) and 26, cl.(c) of the Constitution.....
>
> B
>
> It is said that a mutawalli's right to profess his religion is infringed if the waqf property is compulsorily acquired, but the acquisition of that property under Article 31 (to which the right conferred by Article 25 is expressly subject) has nothing to do with such rights and in no way interferes with
> C this exercise."
>
> (at page 690)

It has been contended that a mosque enjoys particular position in Muslim Law and once a mosque established and prayers are offered in such
D a mosque the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque and any person professing Islamic faith can offer prayer in such a mosque and even if the structure is demolished, the place remains the same where the Namaz can be offered. As indicated hereinbefore, in British India, no such protection was given to a mosque and the mosque was subjected to the
E provisions of statute of limitation thereby extinguishing the right of Muslims to offer prayers in a particular mosque lost by adverse possession over that property.

Section 3 (26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 387 of the Constitution adopts
F this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious places of worship of other religions.

G

The correct position may be summarised thus, under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession. (*See* Mulla's Principles of Mahomedan Law, 19th Edn. by M. Hidaytullah - Sec. 217: and AIR (1940) PC 116). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher
H than that of the places of worship of other religions in secular India to make

it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and Namaz (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of a mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.

MAINTAINABILITY OF THE REFERENCE

In the view that we have taken on the question of validity of the statute (Act No. 33 of 1993) and as a result of upholding the validity of the entire statute, except Section 4 (3) thereof, resulting in revival of the pending suits and legal proceedings wherein the dispute between the parties has to be adjudicated, the Reference made under Article 143 (1) becomes superfluous and unnecessary. For this reason, it is unnecessary for us to examine the merits of the submissions made on the maintainability of this Reference. We accordingly, very respectfully decline to answer the Reference and return the same.

RESULT

The result is that all the pending suits and legal proceedings stand revived, and they shall be proceeded with, and decided, in accordance with law. It follows further as a result of the remaining enactment being upheld as valid that the disputed area has vested in the Central Government as a statutory receiver with a duty to manage and administer it in the manner provided in the Act maintaining *status quo* therein by virtue of the freeze enacted in Section 7 (2); and the Central Government would exercise its power of vesting that property further in another authority or body or trust

A in accordance with Section 6 (1) of the Act in terms of the final adjudication in the pending suits. The power of the courts in the pending legal proceedings to give directions to the Central Government as a statutory receiver would be circumscribed and limited to the extent of the area left open by the provisions of the Act. The Central Government would be bound to take all necessary steps to implement the decision in the suits
B and other legal proceedings and to hand over the disputed area to the party found entitled to the same on the final adjudication made in the suits. The parties to the suits would be entitled to amend their pleadings suitably in the light of our decision.

Before we end, we would like to indicate the consequence if the entire
C Act had been held to be invalid then we had declined to answer the Reference on that conclusion. It would then result in revival of the abated wits along with all the interim orders made therein. It would also then result automatically in revival of the worship of the idols by Hindu devotees, which too has been stopped from December 1992, with all its ramificance without granting any benefit to the Muslim community whose practice of
D worship in the mosque (demolished on 6th December, 1992) had come to a stop, for whatever reason, since at least December 1949. This situation, unless altered subsequently by any court order in the revived suits, would, therefore, continue during the pendency of the litigation. This result could be no solace to the Muslims whose feelings of hurt as a result of the
E demolition of mosque, must be assuaged in the manner best possible without giving cause for any legitimate grievance to the other community leading to the possibility of reigniting communal passions detrimental to the spirit of communal harmony in a secular state.

The best solution in the circumstances, on revival of suits is, therefore,
F to maintain *status quo* as on 7th January, 1993 when the law came into force modifying the interim orders in the suits to that extent by curtailing the practice of worship by Hindus in the disputed area to the extent it stands reduced under the Act instead of conferring on them the larger right available under the court orders till intervention was made by legislation.

G Section 7 (2) achieves this purpose by freezing the interim arrangement for worship by Hindu devotees reduced to this extent and curtails the larger right they enjoyed under the court orders, ensuring that it cannot be enlarged till final adjudication of the dispute and consequent transfer of the disputed area to the party round entitled to the same. This being the purpose and true effect of Section 7 (2), it promotes and strengthens the
H commitment of the nation to secularism instead of negating it. To hold this

provision as anti-secular and slanted in favour of the Hindu community would be to frustrate an attempt to thwart anti-secularism and unwittingly support the forces which were responsible for the events of 6th December, 1992. A

GENERAL

B

Some general remarks are appropriate in the context. We must place on record our appreciation and gratitude to the learned members of the Bar who assisted us at the hearing of this matter of extraordinary and unusual importance to the national ethos. The learned Attorney General, the learned Solicitor General, the learned Advocate General of Madhya Pradesh, the learned Advocate General of Rajasthan, Shri F.B. Nariman, Shri Soli J. Sorabjee, Late Shri R.K. Garg, Dr. Rajeev Dhawan, Shri Anil B. Divan, Shri Satish Chandra, Shri P.P. Rao, Shri Abdul Mannan, Shri O.P.Sharma, Shri S.N. Mehta, Shri P.N.Duda, Shri V.M. Tarkunde, Shri Ashok H. Desai, Shri Shakil Ahmed Syed, Ms. N. Bhagat and the other learned counsel who assisted them rendered their valuable assistance with great zeal after considerable industry in the highest traditions of the Bar. Shri Deoki Nandan Agarwal, one of the parties in a suit as the next friend of the Deity appeared in person and argued with complete detachment. Dr. M. Ismail Faruqui also appeared in person, it was particularly heartening to find that the cause of the Muslim community was forcefully advocated essentially by the members of the Bar belonging to other communities. Their commitment to the cause is evident from the fact that Shri Abdul Mannan who appeared for the Sunni Central Wakf Board endorsed the arguments on behalf of the Muslim community. The reciprocal gesture of Shri Mannan was equally heartening and indicative of mutual trust. The congenial atmosphere in which the entire hearing took place was a true manifestation of secularism in practice. C D E F

The hearing left us wondering why the dispute cannot be resolved in the same manner and in the same spirit in which the matter was argued, particularly when some of the participants are common and are in a position to negotiate and resolve the dispute. We do hope this hearing has been the commencement of that process which will ensure an amicable resolution of the dispute and it will not end with hearing of this matter. This is a matter suited essentially to requisition by negotiations which does not end in a winner and a loser while adjudication leads to that end. It is in the national interest that there is no loser at the end of the process adopted for resolution of the dispute so that the final outcome does not leave behind any randour in anyone. This can be achieved by a negotiated solution on the basis of G H

A which a decree can be obtained in terms of such solution in these suits. Unless a solution is found which leaves everyone happy, that cannot be the beginning for continued harmony between "we the people of India."

In 1993 World's Parliament of Religions was held in Chicago. The Chairman of the Parliament John Henry Barrows indicated its object and
B observed. "It was felt to be wise and advantageous that the religions of the world, which are competing at so many points in all the continents, should be brought together not for contention but for loving conference, in one room." In the Parliament Swami Vivekananda spoke of 'Hinduism as the religion that has taught the world both tolerance and universal acceptance' and described the diversity of religions as "the same light coming through
C different colours." The assembly recited the Lord's Prayer as a universal prayer and Rabbi Emli Hirsch proclaimed "The day of national religions is past. The God of the universe appease of all mankind". At the closing session Chicago lawyer Charles Bonney, one of the Parliament's Chief visionaries, declared, "Henceforth the religions of the world will make war, not on each other, but on the giant evils that afflict mankind." Have we,
D during the last century, moved towards the professed goal?

"As 1993 began, communal violence returned to India, sparked by the Controversy over a 16th century mosque said to stand on the ruins of an ancient Hindu temple honouring Lord Rama." It may be said that 'fundamentalism and pluralism pose the two challenges that people of all
E religious traditions face' and "to the fundamentalists, the borders of religious certainty are tightly guarded; to the pluralist, the borders are good fences where one meets the neighbour. To many fundamentalists, secularism, seen as the denial of religious claims, is the enemy; to pluralists, secularism, seen as the separation of government from the domination of a
F single religion, is the essential concomitant of religious diversity and the protection of religious freedom." The present state may be summarised thus: "At present, the greatest religious tensions are not those between any one religion and another; they are the tensions between the fundamentalist and the pluralist in each and every religious tradition." The spirit of universalism popular in the late 19th century was depicted by Max Muller
G who said, "The living kernel of religion can be found. I believe in almost every creed, however much the husk may vary. And think what that means. It means that above and beneath and behind all religions there is one eternal, one universal religion."

The year 1993 has been described as the "Year of Inter-religious
H Understanding and Co-operation." Is that century old spirit of conciliation

and co-operation reflected in reactions of the protagonists of different religious faiths to justify 1993 being called the "Year of Inter-religious Understanding and Co-operation"? ("Reflections on Religious Diversity" by Diana L. BCK in SPAN - September 1994). It is this hope which has to be realised in the future.

A neutral perception of the requirement for communal harmony is to be found in the Baha'i faith. In a booklet, "Communal Harmony - India's Greatest Challenge," forming part of the Baha'i literature, it is stated thus:

> ".....The spirit of tolerance and assimilation are the hall marks of this civilisation. Never has the question of communal harmony and social integration raised such a wide range of emotions as today...."
>
> xxx xxx xxx
>
> "Fear, suspicion and hatred are the fuel which feed the flame of communal disharmony and conflict. Though the Indian masses would prefer harmony between various communities, it cannot be established through the accommodation 'separate but equal', nor through the submergence of minority culture into majority culture - whatever that may be....."
>
> "Lasting harmony between heterogeneous communities can only come through a recognition of the oneness of mankind, a realization that differences that divide us along ethnic and religious lines have no foundation. Just as there are no boundaries drawn on the earth of separate nations, distinctions of social, economic, ethnic and religious identity imposed by peoples are artificial; they have only benefitted those with vested interests. On the other hand, naturally occurring diverse regions of the planet or the country, such as mountain and plains, each have unique benefits. The diversity created by God has infinite value, while distinctions imposed by man have no substance."

We conclude with the fervent hope that communal harmony, peace and tranquility would soon descend in the land of Mahatma Gandhi, Father of the Nation, whose favourite bhajan (hymn) was -

A "ईश्वर अल्लाह तेरे नाम,
सबको सन्मति दे भगवान्।"

"Ishwar and Allah are both your names,
Oh God! Grant this wisdom to all."

B We do hope that the people of India would remember the gospel he preached and practised, and live up to his ideals. "Better late than never."

CONCLUSION

As a result of the above discussion, our conclusions, to be read with the C discussion are as follows:–

(1) (a) Sub-section (3) of Section 4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute resolution mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the D dispute amounting to negation of rule of law. Sub-section (3) of Section 4 of the Act is, therefore, unconstitutional and invalid.

(1) (b) The remaining provisions of the Act do not suffer from any invalidity on the construction made thereof by us. Sub-section (3) of Section 4 of the Act is severable from the remaining Act. Accordingly, the E challenge to the constitutional validity of the remaining Act, except for sub-section (3) of Section 4 is rejected.

(2) Irrespective of the status of a mosque under the Muslim law applicable in the Islamic countries, the status of a mosque under the Mahomedan Law applicable in secular India is the same and equal to that of F any other place of worship of any religion and it does not enjoy any greater immunity from acquisition in exercise of the sovereign or prerogative power of the State, than that of the places of worship of the other religions.

(3) The pending suits and other proceedings relating to the disputed area within which the structure (including the premises of the inner and G outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid stood, stand revived for adjudication of the dispute therein, together with the interim orders made, except to the extent the interim orders stand modified by the provisions of Section 7 of the Act.

(4) The vesting of the said disputed area in the Central Government by H virtue of Section 3 of the Act is limited, as a statutory receiver, with the

duty for its management and administration according to Section 7 requiring maintenance of *status quo* therein under sub-section (2) of Section 7 of the Act. The duty of the Central Government as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired. A B

(5) The power of the courts in making further interim orders in the suits is limited to, and circumscribed by, the area outside the ambit of the Section 7 of the Act.

(6) The vesting of the adjacent area, other than the disputed area acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in view of the purpose of its acquisition. C D

(7) The meaning of the word "vest" in Section 3 and Section 6 of the Act has to be so understood in the different contexts.

E

(8) Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits. F

(9) The challenge to acquisition of any part of the adjacent area on the ground that it is unnecessary for achieving the professed objective of settling the long-standing dispute cannot be examined at this stage. However, the area found to be superfluous on the exact area needed for the purpose being determined on adjudication of the dispute, must be restored to the undisputed owners. G

(10) Rejection of the challenge by the undisputed owners to acquisition of some religious properties in the vicinity of the disputed area, at this stage H

A is with the liberty granted to them to renew their challenge, if necessary at a later appropriate stage, in case of continued retention by Central Government of their property in excess of the exact area determined to be needed on adjudication of the dispute.

(11) Consequently, the Special Reference No. 1 of 1993 made by the B President of India under Article 143 (1) of the Constitution of India is superfluous and unnecessary and does not require to be answered. For this reason we very respectfully decline to answer it and return the same.

(12) The question relating to the constitutional validity of the said Act and maintainability of the Special Reference are decided in these terms.

C

These mattes are disposed of, accordingly, in the manner stated above.

BHARUCHA, J. We have had the benefit of reading the erudite Judgment of our learned brother, Verma, J. We are unable to take the view D expressed by him and must respectfully dissent.

It is convenient to deal with the validity of The Acquisition of Certain Area At Ayodhya Act, 1993, and the maintainability of the Presidential Reference dated 7th January, 1993 under Article 143 (1) of the Constitution of India in a common opinion.

E

The historical background, as now set out, is drawn from the White Paper on Ayodhya issued by the Government of India in February, 1993. This was the basis upon which the Bill to bring the said Act upon the statute book was prepared and the Reference was made.

F "Ayodhya.....has long been a place of holy pilgrimage because of its mention in the epic Ramayana as the place of birth of Shri Ram. The structure commonly known as Ram Janma Bhumi-Babri Masjid was erected as a mosque by Mir Baqi in Ayodhya in 1528 AD. It is claimed by some sections that it was built at the site believed to be the birth-spot of Shri Ram where a temple had stood earlier." (Para 1.1 of the White Paper). The G disputed structure was used by the Muslims for offering prayers until the night of 22nd/23rd December, 1949, "when Hindu idols were placed under the central dome of the main portion of the disputed structure. Worship of these idols was started on a big scale from the next morning. As this was likely to disturb the public peace the civil administration attached the H premises under the provisions of Section 145 of the Criminal Procedure

Code. This was the starting point of a whole chain of events which ultimately led to the demolition of the structure." (Paras 2.13 and 2.15). In 1950 two suits were filed by Hindu gentlemen; in one of these suits, in January 1950, the Civil Judge concerned passed interim orders whereby the idols remained in place and puja continued. The interim order was confirmed by the High Court in April 1955. On Ist February, 1986, the District Judge concerned ordered the opening of the locks upon the disputed structure and permitted puja by devotees. In 1959 a suit was filed claiming title to the disputed structure by the Nirmohi Akhara. In 1961 another suit was filed claiming title to the disputed structure by the Sunni Central Wakf Board. In 1989 Devki Nandan Agarwal as the next friend of the deity, that is to say, the said idols, filed a title suit in respect of the disputed structure. In 1989.the suits aforementioned were transferred to the Allahabad High Court and were ordered to be heard together. On 14th August, 1989, the High Court ordered the maintenance of *status quo* in respect of the disputed structure. (Appendix I to the White Paper). "The controversy entered a new phase with the placing of idols in the disputed structure in December 1949. The premises were attached under Section 145 of the Code of Criminal Procedure. Civil suits were filed shortly thereafter. The interim orders in these civil suits restrained the parties from removing the idols or interfering with their worship. In effect, therefore, from December 1949 till December 1992 the structure had not been used as a mosque." (Para 1.2) On 6th December, 1992, the disputed structure was demolished. "The demolition .....was a most reprehensible act. The perpetrators of this deed struck not only against a place of worship but also at the principles of secularism, democracy and the rule of law....." (Para 1.35.) At 5.45 p.m. on that day the idols were replaced where the disputed structure had stood and by 7.30 p.m. work had started on the construction of a temporary structure for them. (Para 1.20.) At about 9.10 p.m. the President of India issued a proclamation under the provisions of Article 356 assuming to himself all the functions of the Government of Uttar Pradesh and dissolving its Vidhan Sabha. (Para 1.21.)

A structure called the Ram chabutra stood on the disputed site, within the courtyard of the disputed structure. This structure was also demolished on 6th December, 1992 (Appendix V of the White Paper). As a result, worship by the Hindus thereat, which, it appears, had been going on for a considerable period of time without objection by the Muslims, came to an end.

After the imposition of President's rule, the Central Government took, *inter alia*, the following decision: "the Government will see to it that the

demolished structure is re-built; and appropriate steps will be taken regarding new Ram temple." (Para 1.22)

On 27th December, 1992, the aforesaid decisions taken on 7th December, 1992 "to re-build the demolished structure and to take appropriate steps regarding new Ram temple" were "elaborated.....as follows:

The Government has decided to acquire all areas in dispute in the suits pending in the Allahabad High Court. It has also been decided to acquire suitable adjacent area. The acquired area excluding the area on which the disputed structure stood would be made available to two trusts which would be set up for construction of a Ram Temple and a Mosque respectively and for planned development of the area.

The Government of India has also decided to request the President to seek the opinion of the Supreme Court on the question whether there was a Hindu temple existing on the site where the disputed structure stood. The Government has also decided to abide by the opinion of the Supreme Court and to take appropriate steps to enforce the Court's opinion. Notwithstanding the acquisition of the disputed area, the Government would ensure that the position existing prior to the promulgation of the Ordinance is maintained until such time as the Supreme Court gives its opinion in the matter. Thereafter the rights of the parties shall be determined in the light of the Court's opinion." (Para 8.11).

An Ordinance, which was replaced by the said Act, was issued on 7th January, 1993. The Reference under Article 143 was made on the same day. We shall refer to the provisions of the Act later. For the present, it is necessary to set out the Reference in full:

> "WHEREAS a dispute has arisen whether a Hindu temple or any Hindu religious structure existed prior to the construction of the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, in the area in which the structure stood in village Kot Ramachandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh.
>
> 2. AND WHEREAS the said area is located in Revenue Plot Nos. 159 and 160 in the said village not Ramachandra;

3. AND WHEREAS the said dispute has affected the maintenance of public order and harmony between different communities in the country;

4. AND WHEREAS the aforesaid area vests in the Central Government by virtue of the Acquisition of Certain Area at Ayodhya Ordinance, 1993;

5. AND WHEREAS notwithstanding the vesting of the aforesaid area in the Central Government under the said Ordinance the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion;

6. AND WHEREAS in view of what has been hereinbefore stated it appears to me that the question hereinafter set out has arisen and is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

7. NOW, THEREFORE, in exercise of the powers conferred upon me by clause (1) of article 143 of the Constitution of India, I, Shanker Dayal Sharma, President of India, hereby refer the following question to the Supreme Court of India for consideration and opinion thereon, namely,

Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

It will be seen that the fifth recital of the Reference states that "the Central Government proposes to settle the said dispute after obtaining the opinion of the Supreme Court of India and in terms of the said opinion." The learned Solicitor General, appearing for the Central Government, submitted that this meant that the Central Government "was committed to bring about a settlement in the light of the Supreme Court opinion and consistent therewith. However, at this stage it cannot be predicated as to the precise manner in which progress towards a solution could be made." If, he submitted orally, no amicable solution was reached, the Central Government would take steps to enforce the Supreme Court's opinion. To

A avoid ambiguity, the learned Solicitor General was asked to take instructions and put in writing the Central Government's position in this behalf: if the answer to the question posed by the Reference was that no Hindu temple or religious structure had stood on the disputed site prior to the construction of the disputed structure, would the disputed structure be re-built? On 14th September, 1994, the learned Solicitor General made the
B following statement in response:

> "Government stands by the policy of secularism and of even-handed treatment of all religious communities. The Acquisition of Certain Area at Ayodhya Act, 1993, as well as the Presidential Reference, have the objective of
> C maintaining public order and promoting communal harmony and the spirit of common brotherhood amongst the people of India.
>
> Government is committed to the construction of a Ram temple and a mosque, but their actual location will be
> D determined only after the Supreme Court renders its opinion in the Presidential Reference.
>
> Government will treat the finding of the Supreme Court on the question of fact referred under Article 143 of the Constitution as a verdict which is final and binding.
>
> E
>
> In the light of the Supreme Court's opinion and consistent with it, Government will make efforts to resolve the controversy by a process of negotiations. Government is confident that the opinion of the Supreme Court will have a salutary effect on the attitudes of the communities and they
> F will no longer take conflicting positions on the factual issue settled by the Supreme Court.
>
> If efforts at a negotiated settlement as aforesaid do not succeed, Government is committed to enforce a solution in the light of the Supreme Court's opinion and consistent
> G with it, Government's action in this regard will be even-handed in respect of both the communities. If the question referred is answered in the affirmative, namely, that a Hindu temple/structure did exist prior to the construction of the demolished structure, Government action will be in support of the wishes of the Hindu community. If, on the
> H other hand, the question is answered in the negative,

> namely, that no such Hindu temple/structure existed at the relevant time, then Government action will be in support of the wishes of the Muslim community.

The learned Solicitor General was asked to clarify whether the Central Government proposed to act in support of either community's wishes as presently known or as ascertained after the answer to the Reference was given and negotiations had failed. The learned Solicitor General was unable to get instructions in this behalf from the Central Government. It is fair to say that he had not much time to do so as the arguments were closed on the day after the clarification was sought.

It is relevant now to refer to the content of the dispute. "At the centre of the dispute is the demand voiced by the Vishwa Hindu Parishad (VHP) and its allied organisations for the restoration of a site said to be the birth place of Shri Ram in Ayodhya. Till 6th December, 1992, this site was occupied by the structure erected in 1528 by Mir Baqi who claimed to have built it on orders of the first Mughal Emperor Babar." "The VHP and its allied organisations based their demand on the assertion that this site is the birth place of Shri Ram and a Hindu temple commemorating this site stood here till it was destroyed on Babar's command and a masjid was erected in its place." "During the negotiations aimed at finding an amicable solution to the dispute one issue which came to the fore was whether a Hindu temple had existed on the site occupied by the disputed structure and whether it was demolished on Babar's order for the construction of the masjid. .....It was stated by certain Muslim leaders that if these assertions were proved, the Muslims would voluntarily hand over the disputed shrine to the Hindus." [Paras 2.1, 2.2 and 2.3 of the White Paper.]

The Statement of Objects and Reasons for the Act states :

> "It was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities can be set up."

The Act has been placed on the statute book to provide for the acquisition of "certain area at Ayodhya and for matters connected therewith or incidental thereto." The Act recites that there had "been a long-standing dispute" relating to the structure aforementioned which had affected the maintenance of public order and harmony between different communities in the country. It was "necessary to maintain public order and promote

A communal harmony and the spirit of common brotherhood among the people of India." It was necessary to acquire certain areas in Ayodhya "with a view to achieve the aforesaid objectives."

The Act, by reason of Section 1 (2), is deemed to have come into force on 7th January, 1993 (which is the date on which the Ordinance was B passed). Section 2 (a) defines "area" to mean the area specified in the Schedule to the Act, including the buildings, structures or other properties comprised therein. Section 2 (b) defines "authorised person" to mean "a person or body of persons or trustees of any trust authorised by the Central Government under Section 7."

C By reason of Section 3, on and from the commencement of the Act, the right, title and interest in relation to the area stands transferred to and vests in the Central Government.

Section 4 (1) states that the "area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, D movable and immovable,.....and all other rights and interests in or arising out of such properties as were immediately before the commencement of this Act in the ownership or control of any person or the State Government.....and all registers, maps, plans, drawings and other documents of whatever nature relating thereto." By reason of Section 4 (2) all the properties which have vested in the Central Government under E Section 3 shall, by the force of such vesting, stand freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect. Section 4 (3) F states that any suit, appeal or other proceedings in respect of the right, title and interest relating to any property which is vested in the Central Government under Section 3 which was pending before any court, tribunal or other authority on the date of the commencement of the Act "shall abate."

G Section 5 empowers the Central Government to take all steps necessary to secure the possession of the area that vests in it.

Section 6 reads thus :

"(1) Notwithstanding anything contained in sections 3, 4, 5 H and 7 the Central Government may, if it is satisfied that any

authority or other body, or trustees of any trust, set up on or after the commencement of this Act is or are willing to comply with such terms and conditions as that Government may think fit to impose, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body of trustees of that trust other on the date of the notification or on such later date as may be specified in the notification.

(2) When any right, title and interest in relation to the area or part thereof vest in the authority or body or trustees referred to in sub-section (1), such rights of the Central Government in relation to such area or part thereof, shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust.

(3) The provisions of sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to the Central Government and for this purpose references therein to the Central Government shall be construed as references to such authority or body or trustees."

Section 7 is the only section under the Chapter entitled "Management and Administration of Property", and it reads thus:

"(1) Notwithstanding anything contained in any contract or instrument or order of any court, tribunal or other authority to the contrary, on and from the commencement of this Act, the property vested in the Central Government under section 3 shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by that Government in this behalf.

(2) In managing the property vested in the Central Government under section 3, the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood in village Kot

A Ramachandra in Ayodhya, in Pargana Haveli Avadh, in Tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh is maintained."

By reason of Section 8 the owner of any land, building, structure or other property comprised in the "area" shall be given by the Central B Government in cash all amount equivalent to the market value of the land, building, structure or other property that has been transferred to and vests in the Central Government under Section 3. For the purpose of deciding the claim of the owner, the Central Government is to appoint a Claims Commissioner. Claims are required to be made within a period of 90 days from the date of the commencement of the Act.

C

Section 9 makes it clear that the provisions of the Act would 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 the Act or any decree or order of any court, tribunal or other authority. Section 10 provides for penalties for non-D compliance with the provisions of the Act. Section 11 provides for protection for action taken in good faith under the Act. Section 12 empowers the Central Government to make rules to carry out the provisions of the Act. By reason of Section 13 the Ordinance is repealed.

The Act may now be analysed.

E

"Area" under Section 2 (a) of the Act is that specified in the Schedule. Again, "area" under Section 3 is that specified in the Schedule. "Area" , by reason of Section 4 (1), includes assets and all property, movable and immovable, and all other rights and interests in or arising out of such property. "Area", in other words, includes the whole bundle of movable and F immovable property in the area specified in the Schedule and all other rights and interests therein or arising thereout. The whole bundle of property and rights vests, by reason of Section 4 (2), in the Central Government freed and discharged from all encumbrances.

Section 7 (1) speaks of property vested in the Central Government G under Section 3. It, therefore, speaks of the whole bundle of property and rights. These are to be managed by the Central Government or any person or body of persons or trustees of any trust so authorised. In managing the whole bundle of property and rights "the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the H premises of the inner and outer court-yards).....stood.....is

maintained." This provision in Section 7 (2) relates only to that part of the area upon which the disputed structure stood (the disputed site). A

Now, as to the "authorised person", Section 7 (1) says that the whole bundle of property and rights shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by the Central Government. This, as Section 7 (2) shows, is the "authorised person" under Section 2 (b). He or it may not be the authority or other body or trustees referred to in Section 6 (1). In other words, the power to manage the whole bundle of property and rights may be conferred upon any person or body of persons or trustees of any trust even though he or they are not required to comply with the terms and conditions that the Central Government may deem fit to impose under Section 6 (1). B C

"In managing the property vested in the Central Government under Section 3" (which, read with Section 4 (1), means the whole bundle of property and rights) "the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer court-yards of such structure).....stood.....is maintained." This provision in Section 7 (2) speaks of "the position existing before the commencement of this Act," i.e., existing before midnight on the night of 6th/7th January, 1993. This provision, therefore, requires the Central Government or the authorised person to ensure, in managing the whole bundle of property and rights, that the position existing on the disputed site before midnight on the night of 6th/7th January, 1993, is maintained. D E

The obligation is cast in regard to the "management" of the whole bundle of property and rights. This implies that the Central Government or the authorised person is required to continue with the puja that was being performed on the disputed site before 7th January, 1993. This is provided for even though, by reason of Section 4 (2), the orders of the court in this behalf cease to have effect. F

There is no provision in the Act which indicates in clear terms what use the whole bundle of property and rights, including the disputed site, will be put to by the Central Government. An indication in this behalf is provided by Section 6. Section 6 is an enabling provision. By reason of Section 6 (1), notwithstanding the vesting in the Central Government of the whole bundle of property and rights, "the Central Government may, if it is satisfied that any authority or other body or trustees of any trust set up on or after the G H

commencement of this Act is or are willing to comply with such terms and conditions as that Government might think fit to impose direct.....that the right, title and interest or any of them" in relation to the whole bundle of property or rights or any part thereof, instead of continuing to vest in the Central Government, shall vest in that authority or body or trustees of that trust. Thereupon, by reason of Section 6 (2), the rights of the Central Government in the whole bundle of property and rights or such part thereof as has been vested under Section 6 (1) shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust. In other words, when the vesting takes place in respect of the whole bundle of property and rights or of any part thereof, all the rights of the Central Government in the whole bundle of property and rights or such part thereof as has been vested, shall be deemed to be transferred to the authority or body or trust in which it is vested.

The provisions of Section 6 apply to the whole bundle of property and rights; that is to say, they apply also to the disputed site. The disputed site may also be vested in an authority or body or trust that is willing to comply with the terms and conditions that the Central Government might think fit to impose. Those terms and conditions are not specified in the Act, nor is there any indication in that behalf available. The only restriction imposed upon such authority or body or trust, apart from the terms and conditions that the Central Government may think fit to impose, are those provided in Section 7. This is set out in Section 6 (3). The provisions of Sections 4, 5 and 11 which are also mentioned in Section 6 (3) are provisions that empower and protect the authority or body or trust.

Section 7 relates to the management and administration of the whole bundle of property and rights. Section 7 (1) states that it shall be managed by the Central Government or by a body of persons or trustees of any trust authorised by the Government in this behalf; in other words, the authorised person. Section 7 (2) obliges the Central Government or the authorised person, in managing the whole bundle of property and rights, to ensure that "the position existing" before the commencement of the Act in the area on which the disputed structure stood "is maintained". The Central Government or the authorised person is, therefore, obliged to maintain the "position" in respect of the disputed site as it was before midnight on the night of 6th/7th January, 1993, and it is required to do so in "managing" the whole bundle of property and rights. This implies not only that the debris of the demolished structure must be maintained as it stands but also that the idols which had been placed on the disputed site after the demolition had taken place must be retained where they are and the puja carried on before them must be continued.

Since the Act does not spell out the use to which the whole bundle of property and rights is intended to be put and since the provisions of Section 7 are applicable even to the authority or body or trust in which the Central Government may vest the whole bundle of property and rights or any part thereof under the provisions of Section 6, it is possible to read the provisions of Section 7 as being of a permanent nature. The Act read by itself, therefore, suggests that the idols shall remain on the disputed site for an indefinite period of time and puja shall continue to be performed before them.

Section 8 gives to the owner of any land, building, structure or other property which is acquired compensation equivalent to the market value thereof. Claims in that behalf are to be entertained by a Claims Commissioner to be appointed by the Central Government. For the purposes of establishing his claim, the owner would have to establish his title to the property that has been acquired. The suits in the Allahabad High Court which abate by reason of Section 4 (3) relate to the title of the disputed site. In other words, the forum for the adjudication of the title to the disputed site is shifted from the courts to the Claims Commissioner.

The above is an analysis of the Act by itself. It is necessary to read it also in the context of its Statement of Objects and Reasons and the Reference.

The Statement of Objects and Reasons state that the acquisition of the whole bundle of property and rights is necessary for setting up a planned complete housing "a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities". The authority or other body or trustees of any trust willing to comply with such terms and conditions as the Central Government may think fit to impose would, under the provisions of Section 6, be vested with a part of the whole bundle of property and rights to construct and maintain a Ram temple and concommitant amenities. Another authority or body or trust so willing would be vested with another part of the whole bundle of property and rights to construct and maintain a mosque and concommitant facilities. So read, the provisions relating to the management and administration of the whole bundle of property and rights contained in Section 7 are interim provisions, to operate until vesting under Section 6 has taken place.

Having regard to the provisions of Section 6, the Statement of Objects and Reasons and the Reference, the acquisition of the disputed site and surrounding land is to hold the same pending the resolution of the dispute

A regarding the disputed site. The resolution of the dispute is to take place in the manner stated in the Reference. Upon such resolution the disputed site would be handed over for the construction of a mosque or a Ram temple, as the case may be, and the surrounding area would house a place of worship of the other religion and ancilliary facilities for the places of worship of both the Muslim and the Hindu communities. The validity of the provisions B of Section 3, by reason of which the whole bundle of property and rights stands transferred to and vests in the Central Government, and, therefore, of the Act itself. Depends upon the validity of the provisions that follow it, particularly, Section 4.

Section 4 (1) states that the "area shall be deemed to include all assets, C rights, leaseholds, powers, authority and privileges and all property, movable and immovable.....and all other rights and interests in or arising out of such properties as were immediately before the commencement of this Act in the ownership or control of any person or the State Government.....and all registers, maps, plans, drawings and other D documents of whatever nature relating thereto." By reason of Section 4 (2) all the properties which have vested in the Central Government under Section 3 shall, by the force of such vesting, stand freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such E properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect. Section 4 (3) states that any suit, appeal or other proceedings in respect of the right, title and interest relating to any property which is vested in the Central Government under Section 3 which was pending before any court, tribunal or other authority on the date of the commencement of the Act "shall F abate". By reason of Section 8 the owner of any land, building, structure or other property comprised in the "area" shall be given by the Central Government in cash an amount equivalent to the market value of the land, building, structure or other property that has been transferred to and vests in the Central Government under Section 3. Such claims are to be decided by G a Claims Commissioner, who is entitled to regulate his own procedure.

As the White Paper shows, the demolished structure was built as a mosque in 1528. It was used as a mosque from 1528 until the night of 22nd/23rd December, 1949, when the idols were placed therein. The idols continue in the disputed structure by reason of the orders of the courts. H Under the orders of the court passed in 1986 public worship of the idols

was permitted. This state of affairs continued until 6th December, 1992, when the disputed structure was demolished. A

The effect of Section 4 of the Act is that the Sunni Wakf Board, which administered the mosque that was housed in the disputed structure, and the Muslim community lose their right to plead adverse possession, of the disputed site from 1528 until 1949, if not up-to-date, considering that the idols remained in the disputed structure only under the orders of the courts. Instead of judicial determination of the title to the disputed site on the basis of the law, the disputed site, along with surrounding land, has been acquired and a complex with a mosque and a temple thereon is planned. What is to happen to the disputed site is to depend upon the answer to the question posed in the Reference and negotiations based thereon. The question posed in the Reference is: whether a Hindu temple or any other Hindu religious structure existed prior to the construction of the disputed structure on the disputed site. The learned Solicitor General fairly stated that the Court should read the question as asking whether any Hindu temple or other Hindu religious structure stood on the disputed site immediately before the disputed structure was built thereon. The dispute, it will be remembered, was that a Ram temple had stood on the disputed site and it was demolished to make place for the disputed structure; the question posed, however, is: was there "a Hindu temple or any Hindu religious structure" on the disputed site. Secondly, the salient fact as to whether the temple, if any, was demolished to make place for the disputed structure is not to be gone into. The disputes as to title to the disputed site survive for consideration for the purpose of award of compensation. For this purpose title shall have to be established not before a court of law but before a Claims Commissioner to be appointed by the Central Government, who is entitled to devise his own procedure. No right of appeal or reference to a Civil Court is provided for with the result that the decision of the Claims Commissioner would be final except for a remedy under Articles 226/227 of the Constitution. For the reasons aforesaid, the provisions of Sections 4 and 8 of the Act must be held to be arbitrary and unreasonable. B C D E F

More importantly, the provisions of Section 4 of the Act, inasmuch as they deprive the Sunni Wakf Board and the Muslim community of the right to plead and establish adverse possession as aforesaid and restrict the redress of their grievance in respect of the disputed site to the answer to the limited question posed by the Reference and to negotiations subsequent thereto, and the provisions of Section 3 of the Act, which vest the whole bundle of property and rights in the Central Government to achieve this purpose, offend the principle of secularism, which is a part of the basic G H

A structure of the Constitution, being slanted in favour of one religious community as against another.

That secularism is a part of the basic features of the Constitution was held in *Kesavananda Bharati* v. *State of Kerala*, [1973] 4 SCC 225. It was unanimously reaffirmed by the nine Judge Bench of this Court in *S.R.* B *Bommai* v. *Union of India*, [1994] 3 SCC 1. Sawant, J. analysed the Preamble of the Constitution and various articles therein and held that these provisions, by implication, prohibited the establishment of a theocratic State and prevented the State from either identifying itself with or favouring any particular religion. The State was enjoined to accord equal treatment to all religions. K. Ramaswamy, J. quoted the words written by Gandhiji that C are as apposite now as they were when he wrote them: "The Allah of Muslims is the same as the God of Christians and Ishwara of Hindus". B.P. Jeevan Reddy, J. said :

> "While the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they D choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment E of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? F Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by Western liberal thought or it may be, as some say, an abiding faith G with the Indian people at all points of time. That is not material. What is material is that it is a constitutional goal and a basic feature of the Constitution as affirmed in *Kesavananda Bharati* v. *State of Kerala*, [1973] 4 SCC 225 and *Indira N. Gandhi* v. *Raj Narain*, [1975] Supp. SCC 1: [1976] 2 SCR 347. Any step inconsistent with this H constitutional policy is, in plain words, unconstitutional."

The State has no religion. The State is bound to honour and to hold the scales even between all religions. It may not advance the cause of one religion to the detriment of another. A

The core provisions of the Act are Sections 3, 4 and 8. The other provisions of the Act are only ancillary and incidental to Sections 3, 4 and 8. Since the core provisions of Sections 3, 4 and 8 are unconstitutional, the Act itself cannot stand. B

The provisions of Section 7 are referred to in support of the finding that the Act is skewed to favour one religion against another.

The provisions of Section 7 (1) empower the Central Government to entrust the management of the acquired area to "any person or body of persons or trustees of any trust". Section 7 (2) states that "in managing the property vested in the Central Government under Section 3 the Central Government or the authorised person.....shall ensure that the position existing before the commencement of this Act in the area on which" the disputed structure "stood.....is maintained." It is relevant to note that "the position" is required to be maintained in the course of "managing the property". Before "the commencement of this Act" the disputed structure had been demolished, the idols had been placed on the disputed site and puja thereof had begun. Section 7 (2), therefore, requires that the puja must continue so long as the management continues. For how long such management is to continue and on the happening on what event it will come to end is not indicated. Section 7 (2), thus, perpetuates the performance of puja on the disputed site. No account is taken of the fact that the structure thereon had been destroyed in "a most reprehensible act. The perpetrators of this deed struck not only against a place of worship but at the principles of secularism, democracy and the rule of law....." (White Paper, para 1.35.) No account is taken of the fact that there is a dispute in respect of the site on which puja is to be performed; that, as stated in the White Paper, until the night of 22nd/23rd December, 1949, when the idols were placed in the disputed structure, the disputed structure was being used as a mosque; and that the Muslim community has a claim to offer namaaz thereon. C D E F G

Reference was made in the course of the proceedings to the provisions of the Places of Worship Special Provisions Act, 1991. It is a statute to prohibit the 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 15th August, 1947. It enjoins that no person shall convert any place of H

A 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. It declares that the religious character of a place of worship existing on 15th August, 1947, shall continue to be the same as it existed on that date. It is specified that nothing contained in the statute shall apply to the place of worship which B was the disputed structure at Ayodhya and to any suit, appeal or other proceedings relating to it. Based upon The Places of Worship Act, it was submitted that what had happened at Ayodhya on 6th December, 1992, could never happen again. The submission overlooks the fact that the Indian penal Code contains provisions in respect of offences relating to religion. Section 295 thereof states that whoever destroys, damages or C defiles any place of worship or any object held sacred by any class of persons with the object of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion shall be punished. Section 295 provides for punishment of a person who with the deliberate and malicious intention of outraging the religious feelings of any D class of citizens of India, by words, either spoken or written, or by signs or by visible representation or otherwise insults or attempts to insult the religion or religious beliefs of that class. Those who razed the disputed structure to the ground on 6th December, 1992, were not deterred by these provisions. Others similarly minded are as little likely to be deterred by the provisions of the Places of Worship Act.

E

The Preamble to the Constitution of India proclaims that India is a secular democratic republic. Article 15 in Part III of the Constitution, which provides for fundamental rights, debars the State from discriminating against any citizen on the ground of religion. Secularism is given pride of place in the Constitution. The object is to preserve and protect all religions, F to place all religious communities on a par. When, therefore, adherents of the religion of the majority of Indian citizens make a claim upon and assail the place of worship of another religion and, by dint of numbers, create conditions that are conducive to public disorder, it is the constitutional obligation of the State to protect that place of worship and to perverse public order, using for the purpose such means and forces of law and order G as are required. It is impermissible under the provisions of the Constitution for the State to acquire that place of worship to preserve public order. To condone the acquisition of a place of worship in such circumstances is to efface the principle of secularism from the Constitution.

We must add a caveat. If the title to the place of worship is in dispute H in a court of law and public order is jeopardised, two courses are open to

the Central Government. It may apply to the concerned court to be appointed Receiver of the place of worship, to hold it secure pending the final adjudication of its title, or it may enact legislation that makes it statutory Receiver of the place of worship pending the adjudication of its title by the concerned court. In either event, the Central Government would bind itself to hand over the place of worship to the party in whose favour its title is found.

The learned Solicitor General submitted :

> When conflicting claims are made and deep sentiments are involved, a solution may hurt one or other of the sentiments, but on that account it cannot be characterised as partial or lacking in neutrality.
>
> When amity and harmony between communities are threatened, it is one of the secular duties of the State to help the parties towards a solution which the Government feels will be accepted over the course of time, if not immediately, and which will have the effect of abating and blunting the violence of the strife and conflict. The Act and the Reference make an attempt in the direction of restoring amity and harmony between the communities. Their objective is secular.

We cannot, for the reasons stated above, agree.

A brief reference to Article 25 (1) may now be made. It reads :

> "25. Freedom of conscience and free profession, practice and propagation of religion - (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

Article 25 (1) protects the rights of individuals. See *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* [1954] S.C.R. 1005 at 1021. Exercise of the right of the individual to profess, practice and propagate religion is subject to public order. Secularism is absolute; the State may not treat religions differently on the ground that public order requires it.

A The principle of secularism illumines the provisions of Articles 15 and 16. Article 15 obliges the State not to discriminate against any citizen on the ground of religion. The obligation is not subject to any restriction. Article 16 (1) declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16 (2) puts the requirement negatively: no citizen B shall on the ground of religion be ineligible for or be discriminated against in respect of any employment or office under the State. Again, the obligation in this behalf is not subject to any restriction. The "hands-off" approach required of the State in matters of religion is illustrated also by Article 27, by reason whereof no person can be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses C for the promotion or maintenance of any particular religion. Article 29 (2) may also be noted for its absolute terms; no citizen can be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion.

This brings us to the Reference. The Act having been struck down, the D suits as to the title of the disputed site in the Allahabad High Court revive and the purpose for which the Reference was made may be said to have become redundant. On the other hand, it may be said that the revival of the suits does not debar the Central Government from negotiating to bring an amicable solution to the dispute at Ayodhya and such negotiations depend E upon the answer given to the question posed by the Reference. We shall, therefore, deal with the Reference, and proceed upon the basis that it is maintainable under the provisions of Article 143.

In Special Reference No. 1 of 1964, [1965] 1 S.C.R. 413, this Court held :

F

> "It is quite true that under Article 143 (1) even if questions are referred to this Court for its advisory opinion, this Court is not bound to give such advisory opinion in every case. Article 143 (1) provides that after the questions formulated by the President are received by this Court, it may, after G such hearing as it thinks fit, report to the President its opinion thereon. The use of the word "may" in contrast with the use of the word "shall" in the provision prescribed by Article 143 (2) clearly brings out the fact that in a given case, this Court may respectfully refuse to express its advisory opinion if it is satisfied that it should not express H its opinion having regard to the nature of the questions

forwarded to it and having regard to the other relevant facts and circumstances." A

In Reference the Special Courts Bill, 1978, [1979] 3 SCR 476, this Court said :

"Article 143 (1) is couched in broad terms which provide B that any question of law or fact may be referred by the President for the consideration of the Supreme Court if it appears to him that such a question has arisen or is likely to arise and if the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Court upon it. Though questions of fact have not C been referred to the Court in any of the six references made under Article 143 (1), that Article empowers the President to make a reference even on questions of fact provided the other conditions of the article are satisfied. It is not necessary that the question on which the opinion of the Supreme Court is sought must have arisen actually. It is D competent to the President to make a reference under article 143 (1) at an anterior stage, namely, at the stage when the President is satisfied that the question has arisen or is likely to arise and whether it is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, is a matter essentially for the E President to decide. The plain duty and function of the Supreme Court under article 143 (1) of the Constitution is to consider the question on which the President has made the reference and report to the President its opinion, provided of course the question is capable of being F pronounced upon and falls within the power of the Court to decide. If, by reason of the manner in which the question is framed or for any other appropriate reason the Court considers it not proper or possible to answer the question it would be entitled to return the reference by pointing out the impediments in answering it. The right of this Court to G decline to answer a reference does not flow merely out of the different phraseology used in clauses (1) and (2) of article 143, in the sense that clause (1) provides that the Court "may" report to the President its opinion on the question referred to it, while clause (2) provides that the Court "shall" report to the President its opinion on the H

A question. Even in matters arising under clause (2), though that question does not arise in this reference, the Court may be justified in returning the reference unanswered if it finds for a valid reason that the question is incapable of being answered. With these preliminary observations we will consider the contentions set forth above."

B

This Court is, therefore, entitled to decline to answer a question posed to it under Article 143 if it considers that it is not proper or possible to do so, but it must indicate its reasons.

In our view, the Reference must not be answered, for the following C reasons.

The Act and the Reference, as stated hereinabove, favour one religious community and disfavour another; the purpose of the Reference is, therefore, opposed to secularism and is unconstitutional. Besides, the Reference does not serve a constitutional purpose.

D

Secondly, the fifth recital to the Reference states that "*the Central Government proposes to settle the said dispute* after obtaining the opinion of the Supreme Court of India and *in terms of the said opinion.*" (Emphasis supplied.) It is clear that the Central Government does not propose to settle the dispute in terms of the Court's opinion, it proposes to use the Court's E opinion as a springboard for negotiations. Resolution of the dispute as a result of such negotiations cannot be said to be a resolution of the dispute "in terms of the said opinion." Asked to obtain instructions and tell the Court that the mosque would be rebuilt if the question posed by the Reference was answered in the negative, the learned Solicitor General made the statement quoted above. It leaves us in no doubt that even in the F circumstance that this Court opines that no Hindu temple or Hindu religious structure existed on the disputed site before the disputed structure was built thereon, there is no certainty that the mosque will be rebuilt.

Thirdly, there is the aspect of evidence in relation to the question referred. It is not our suggestion that a court of law is not competent to G decide such a question. It can be done if expert evidence of archaeologists and historians is led, and is tested in cross-examination. The principal protagonists of the two stands are not appearing in the Reference; they will neither lead evidence nor cross-examine. The learned Solicitor General stated that the Central Government would lead no evidence, but it would place before the Court the material that it had collected from the two sides H during the course of earlier negotiations. The Court being ill equipped to

examine and evaluate such material, it would have to appoint experts in the field to do so, and their evaluation would go unchallenged. Apart from the inherent inadvisability of rendering a judicial opinion on such evaluation, the opinion would be liable to the criticism of one or both sides that it was rendered without hearing them or their evidence. This would ordinarily be of no significance for they had chosen to stay away, but this opinion is intended to create a public climate for negotiations and the criticism would find the public ear, to say nothing of the fact that it would impair this Court's credibility.

Ayodhya is a storm that will pass. The dignity and honour of the Supreme Court cannot be compromised because of it.

No observation that we have made is a reflection on the referring authority. We have the highest respect for the office of the President of India and for its present incumbent; his secular credentials are well known.

Having regard to the construction that we have placed upon the Act and the Reference, it is neither necessary nor appropriate to discuss the other challenges to their validity and maintainability, respectively. It may, however, be said that we found the argument that the Act was public order legislation and, therefore, beyond the competence of Parliament very plausible.

We are indebted to the learned Attorney General for the assurance that he has rendered to the Court. We are indebted to counsel who have appeared in these matters; if we single out Mr. R.K. Garg, it is because of his untimely demise.

Before we pass final orders, some observations of a general nature appear to be in order. Hinduism is a tolerant faith. It is that tolerance that has enabled Islam, Christianity, Zoroastrianism, Judaism, Buddhism, Jainism and Sikhism to find shelter and support upon this land. We have no doubt that the moderate Hindu has little taste for the tearing down of the place of worship of another to replace it with a temple. It is our fervent hope that that moderate opinion shall find general expression and that communal brotherhood shall bring to the dispute at Ayodhya an amicable solution long before the courts resolve it.

To quote Gandhiji again, "India cannot cease to be one nation because people belonging to different religions live in it.....In no part of the world are one nationality and one religion synonymous terms, nor has it ever been so in India."

A The Acquisition of Certain Area at Ayodhya Act, 1993, is struck down as being unconstitutional. The writ petitions impugning the validity of the Act are allowed. The issues in the suits in the Allahabad High Court withdrawn for trial to this Court are answered accordingly.

The Presidential Reference is returned respectfully, unanswered.

B

There shall be no order as to costs.

U.R Matters disposed of.