

ZAMEEN ZAMEEN KI LADAI: THE CONTEMPORARY IMPLICATIONS OF THE PROPERTY LAW INCONSISTENCIES IN ‘M. SIDDIQ V. MAHANT SURESH DAS’

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The Babri Masjid– Ram Janmabhoomi dispute is a land ownership dispute which came to life over 134 years ago between two of India’s most numerically-dominant religious communities. A 1045 page long judgement, M. Siddiq v. Mahant Suresh Das (‘Siddiq’) is riddled with socio-political and religious complications, given the centuries-old tension between the two communities. This burdened the Supreme Court to disintegrate these complications and focus on the proprietary rights issues, including, inter alia, Title of Property, Exclusive Possession, and Dispossession of Property, which forms this dispute’s legal framework. In analysing this disintegration, certain visible inconsistencies occur within the legal reasonings used in the judgement with respect to the allocation of the 2.77 acres of land. However, in the process of delivering its verdict that the disputed fragment of land belonged to Bhagwan ShriRam Virajman, the Court reduced the questions of who has title over property to questions of which community’s faith is stronger, and thereby digressed from the legal framework of this dispute. This paper attempts to discover, disclose and discuss these very inconsistencies. It addresses the Supreme Court’s dilemma when resolving the property issues independent from the contemporary socio- religious issues. Finally, it also analyses the implications of the Siddiq Judgement on present and future mandir-masjid disputes in the backdrop of the Places of Worship Act, 1991.

TABLE OF CONTENTS

<i>I. Introduction.....</i>	<i>112</i>	<i>A. Existence of Exclusive Places of Worship</i>	<i>119</i>
<i>II. Inconsistent Reliance on Evidence Prior to 1856-57.....</i>	<i>115</i>	<i>B. The Opening of an Additional Door.....</i>	<i>120</i>
<i>III. Determining the Occupation and Possession of the Outer Courtyard.....</i>	<i>118</i>	<i>C. Assertions of the Muslim Community.....</i>	<i>121</i>

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<i>D. The Contested use of the Mosque</i>	121	<i>IV. Understanding the Implications of the Unlawful Placement of Idol in 1949</i>	125
<i>E. Report of the Waqf Inspector</i>	122	<i>V. Legal Representation of a Perpetual Minor Through a Next Friend</i>	127
<i>F. Landlocked Nature of the Inner Courtyard</i>	123	<i>VI. Conclusion</i>	129

I. INTRODUCTION

Originating in the nineteenth century, the Babri Masjid-Ram Janmabhoomi dispute is between the Hindus and Muslims, two of India's most numerically dominant religious communities, over the ownership of land.¹ The 'disputed land', located in Ayodhya, is claimed to have been the birthplace of Lord Ram by the Hindu community and was also the site of the Babri Masjid until its unlawful destruction in 1992.² On November 9, 2019, the landmark verdict on the dispute ('Siddiq judgement'/'Ayodhya judgement') was delivered by a five-judge bench of the Supreme Court ('Court'), that unanimously granted the 2.77 acres of disputed land to Bhagwan Shri Ram Virajman ('Lord Ram').³ However, the said verdict did not create the ceasefire that was envisaged but instead fuelled the ongoing tension between the two religious communities. This is also evident from the revival of the Gyanvapi Mosque-Kashi Vishwanath Temple ('Gyanvapi') and Krishna-Janmabhoomi-Shahi Idgah Mosque ('Krishna-Janmabhoomi') cases before the Indian Courts, soon after the landmark verdict on the Babri Masjid dispute was delivered.⁴ The Babri Masjid Demolition dispute⁵ reminds us of how important it is to resolve these conflicts before they escalate.

A reflection of the previous communal tensions in relation to the disputed site reveals a sequence of events originating from (i) an order passed in 1873

¹ M Siddiq v. Suresh Das, (2020) 1 SCC 1.

² *Id.*, ¶3.

³ *Id.*, ¶¶1238, 1243.

⁴ Aareb Uddin Ahmed, (*Krishna Janmabhoomi Case*) Hindu Body Moves Mathura Court, Offers Larger Piece of Land to Muslim Party if they agree to Demolish Mosque, BAR AND BENCH, June 26, 2021, available at <https://www.barandbench.com/news/litigation/krishna-janmabhoomi-case-hindu-outfit-mathura-court-offers-larger-land-muslims-demolish-mosque> (Last visited on May 16, 2022); Omar Rashid, *Gyanvapi Mosque Title Dispute | Allahabad High Court Stays Lower Court Proceedings*, THE HINDU, September 09, 2021, available at <https://www.thehindu.com/news/national/gyanvapi-mosque-title-dispute-allahabad-high-court-stays-lower-court-proceedings/article36381454.ece> (Last visited on May 16, 2022).

⁵ See generally, State Bureau Reports, *Bloody Aftermath of Babri Masjid Demolition Across India*, INDIA TODAY, December 5, 2011 (Last visited on May 16, 2022); ECONOMIC TIMES, *25 Years of Babri Masjid Demolition: How it all Began*, December 6, 2017, available at <https://economic-times.indiatimes.com/news/politics-and-nation/25-years-of-babri-masjid-demolition-how-it-all-began/plea-against-idols-inside-mosque/slideshow/58260273.cms> (Last visited on May 16, 2022).

directing the removal of an idol installed;⁶ (ii) the grant of permission to the Hindu community to open an additional door in 1877;⁷ (iii) the dismissal of a suit filed by the Mutawalli of Babri Masjid seeking rent from the Hindu community for the use of the chabutra situated near the mosque in 1882;⁸ (iv) the order passed to maintain status quo in a suit against the obstruction by Mahant Raghubar Das of the right of the Muslim community to whitewash the wall of the Mosque in 1884;⁹ and (v) the suit seeking grant of permission to construct a temple on the chabutra was dismissed by the Sub-Judge in 1885 to maintain peace between the two communities.¹⁰ Over time, with increasing communal tensions, these often minor and independent disputes escalated violently with the 1934 communal riots resulting in substantial damage to the domes of the mosque,¹¹ and the mosque's eventual destruction following the placement of idols by the Hindu community in 1949.¹² The escalation of communal violence stemming from a regional land dispute led to the eventual rise of similar mandir-masjid disputes across the nation. As can be inferred, the prolonged subsistence of the conflict transformed the quest for peaceful co-existence into unpeaceful land encroachment, highlighting the need for the speedy resolution of such conflicts before they escalate violently.

The Places of Worship (Special Provisions) Act, 1991 ('POWA')¹³ was enacted when the Babri Masjid-Ram Janmabhoomi dispute was at its peak and communal tensions over the two other places of worship, Gyanvapi Mosque-Kashi Vishwanath Temple in Kashi and Shahi Idgah Mosque-Krishna Janmabhoomi in Mathura, were on the rise.¹⁴ The central object of POWA is to promote communal harmony and tolerance by preserving the religious character of a place of worship as it existed on August 15, 1947.¹⁵ In *Church of North India Trust Association v. Union of India*, it was emphasised that this Act would seek to prevent communal tensions that could arise from new claims over structures based on past status or events.¹⁶ However, this object seems to have failed. The recent Kashi Vishwanath Projects, requiring the clearance of 45,000 square feet of land surrounding the temple, seem to have sowed seeds for communal conflict and turmoil due to the

⁶ M. Siddiq v. Mahant Suresh Das, (2020) 1 SCC 1, ¶1046.

⁷ *Id.*, ¶1047.

⁸ *Id.*, ¶1051.

⁹ *Id.*, ¶1052.

¹⁰ *Id.*, ¶¶1053-1056.

¹¹ *Id.*, ¶¶1057-1058.

¹² K. Venkataramanan & Omar Rashid, *When did the Dispute Over Ram Janmabhoomi Start, and why did it Take so Long for a Resolution?*, THE HINDU, November 10, 2019 available at <https://www.thehindu.com/news/national/when-did-the-dispute-over-ram-janmabhoomi-start-and-why-did-it-take-so-long-for-a-resolution/article29933375.ece> (Last visited on May 16, 2022).

¹³ Places of Worship (Special Provisions) Act, 1991.

¹⁴ See Venkataramanan & Rashid *supra* note 12.

¹⁵ LOK SABHA DEBATES, *Places of Worship (Special Provisions) Bill*, V, Session Number 448, September 10, 1991, available at https://eparlib.nic.in/bitstream/123456789/8847/1/10_I_10091991_p180_p247_t260.pdf (Last visited on June 1, 2020).

¹⁶ Church of North India Trust Association v. Union of India, 2016 SCC OnLine All 1185.

proximity between the Gyanvapi Mosque and the temple.¹⁷ Further evidence of increasing communal tensions over mandir-masjid disputes includes the revival of the Gyanvapi and Krishna Janmabhoomi cases and an increase in politically charged statements made regarding such disputes.¹⁸

Notably, §3 of POWA prevents the conversion of a place of worship of any religious denomination.¹⁹ Furthermore, §4(2) of POWA bars the jurisdiction of courts over any dispute, pending or new, regarding the religious character of a place of worship post- independence.²⁰ However, the Babri Masjid-Ram Janmabhoomi ('Babri') dispute is, under §5 of POWA, exempted from the purview of POWA, which includes an exemption from this bar on the jurisdiction of courts as stipulated under §4(2) of POWA.²¹ While §3 of POWA prevents conversion, tension continues to exist between suits that centre around the conversion of a particular place of worship and those that centre around other concepts of property such as land acquisition or land ownership in relation to a particular place of worship.²² In *Yusuf Ajj Shaikh v. Special Land Acquisition Officer* ('Yusuf Ajj'), it was observed that POWA did not explicitly or impliedly prohibit the acquisition of the land on which the place of worship was situated under the Land Acquisition Act.²³ It further observed that the mere loss of a place of worship would not amount to conversion as contemplated by §3 of POWA.²⁴

There are similarities between the Babri dispute, the Gyanvapi Mosque, and Krishna Janmabhoomi disputes, especially in terms of the overarching subject of the disputes being a 17th Century Mosque allegedly constructed by a Mughal ruler after destroying an underlying temple. This may give rise to similar issues between two religious communities over conversion, possession, and ownership of the disputed properties. Notably, the Yusuf Ajj interpretation may allow the issues related to loss of possession or ownership of disputed land to be adjudicated upon freely. Thus, potentially exposing the Gyanvapi and Krishna Janmabhoomi disputes to follow the same legal footsteps as the Babri dispute. On the other hand, for adjudicating upon an issue on the conversion of a place of worship, the only legal roadblock would be §4(2) of POWA. Considering the recent PIL filed on June 12, 2020, challenging the validity of §4 of POWA and its conflict

¹⁷ Sushil Kumar, *How Modi's Kashi Vishwanath Corridor is Laying the Ground for Another Babri Incident*, THE CARAVAN, April 27, 2019, available at <https://caravanmagazine.in/religion/how-modi-kashi-vishwanath-corridor-is-laying-the-ground-for-another-babri-incident> (Last visited on May 16, 2022).

¹⁸ Teesta Setalvad, *'Kashi-Mathura Baaqi Hain': Why the Ayodhya Verdict Won't Offer Any Respite From Saffron Hatred*, THE WIRE, October 20, 2019, available at <https://thewire.in/communalism/kashi-mathura-baaki-hain-why-the-ayodhya-verdict-wont-offer-any-respite-from-saffron-hatred> (Last visited on May 16, 2022).

¹⁹ The Places of Worship (Special Provisions) Act, 1991, §3.

²⁰ *Id.*, §4(2).

²¹ *Id.*, §§4(2), 5.

²² *Id.*, §3.

²³ *Yusuf Ajj Shaikh v. Special Land Acquisition Officer No. 2*, 1994 SCC OnLine Bom 246.

²⁴ *Id.*

with ‘the ideas of secularism’,²⁵ it is not a far-reaching possibility that the intent of POWA to maintain tolerance and peace amongst different religious communities may be defeated and declared redundant. Keeping this and the increasing communal tensions in mind, it is highly possible for the legislature to easily amend POWA to insert these two disputes as an exception under §5 or abrogate POWA altogether. If such an amendment or abrogation takes place, the legal roadblock would be removed, and the Siddiq judgment would become a significant precedent to be relied upon.²⁶

This paper contends that the Court, in the process of delivering the Siddiq judgement, reduced the questions of who has title over property to questions of which community’s faith is stronger and thereby digressed from the legal framework of this dispute. The paper, thus, attempts to discover, disclose and discuss these very inconsistencies from a property law lens. It further argues that, given the current socio-political scenario in India, the reasonable doubt in outcome brought about by such inconsistencies in the Court’s reasoning coupled with the tension within the POWA could probably lead to misguided outcomes for future mandir-masjid disputes. To this effect, Part II delves into the evidentiary inconsistency within the judgement in terms of acts before 1856-57 and the lack of clarity regarding the relevance of historical evidence in mandir-masjid disputes. Part III discusses the inconsistencies in the reasons relied upon by the Court to determine the question of possession and occupation of the outer courtyard. Part IV discusses the ambiguities surrounding the implications of the forceful dispossession of the Muslim community on questions of property law. Part V discusses the consequences of a next friend representing a deity in a property law dispute when the *Shebait* is non-existent. Part VI provides a conclusion on the matter.

II. INCONSISTENT RELIANCE ON EVIDENCE PRIOR TO 1856-57

An alternate plea made by the Muslim community in the Siddiq judgement was that of ‘adverse possession of the disputed site’.²⁷ The concept of adverse possession refers to a ‘hostile possession’ that involves an initial acknowledgement of the title of another party.²⁸ However, this acknowledged title/possession

²⁵ See generally, Shruti Mahajan, *Right to Challenge Encroachments of Hindu Property by Another Faith Barred: Plea Filed in Supreme Court Challenging S. 4 Places of Worship Act*, BAR AND BENCH, June 14, 2020, available at <https://www.barandbench.com/news/litigation/plea-in-sc-says-section-4-places-of-worship-act-violates-secularism> (Last visited on May 16, 2022) (for a brief on the petition); See also, India Today, *Muslim Body Moves SC Opposing Hindu Organisations Plea Against Place of Worship Act 1991*, June 14, 2020, available at <https://www.indiatoday.in/india/story/muslim-body-moves-sc-opposing-hindu-organisation-s-plea-against-place-of-worship-act-1991-1688992-2020-06-14> (Last visited on May 16, 2022) (petition filed by ‘Jamiat Ulema- I-Hind’ on June 14, 2020 requesting the Supreme Court to not entertain the above-mentioned petition).

²⁶ See Ahmed *supra* note 4.

²⁷ M. Siddiq v. Suresh Das, (2020) 1 SCC 1, ¶1141.

²⁸ *Id.*, ¶¶1142-1143.

sion is dismissed when the party claiming adverse possession proves continuous, peaceful, and open possession of the disputed property.²⁹ In the *Siddiq* judgment, the Muslim community's plea of adverse possession was based on the assumption of the existence of an underlying Hindu temple on the disputed site. It was subsequently claimed that the Hindu community's pre-existing ownership or possessory right over the site would have been extinguished as it was adversely possessed by the Muslim community.

Consequently, if the Muslim community had substantiated their plea by proving peaceful, open, and continuous possession of the disputed site, then that may have been considered an acknowledgement of the Hindu community's title over the disputed site. However, in a conscious attempt to not acknowledge the title of the Hindu community over the disputed site, the Muslim community failed to discharge the threshold of proof required for adverse possession and furnished inadequate pleadings. Thus, failing to prove their peaceful, open, and continuous possession of the entire disputed site and therefore this plea of adverse possession was rejected by the Court.³⁰ Considering the historical complexity and obscurity associated with the ownership of the disputed site, along with the inability of the parties to present sufficient evidence as to who has title over the land, the Court attempted to resolve this question of title by determining the nature and use (length and extent) of the disputed premises by both the communities. In order to do so, it relied upon both documentary and oral evidence to assess which party could establish "long and continued possession"³¹ of the disputed site.³²

In *Secy. of State in Council of India v. Kamachee Boye Sahara*, the Privy Council, while discussing Acts of State and changes in sovereignty, observed that the legal consequences of actions and rights from a previous legal regime can only be enforced by municipal courts if such rights and actions have been given legal recognition by the new sovereign.³³ The applicability of this principle to questions of proprietary rights existing under a previous regime was then discussed and upheld by the Privy Council in *Secretary of State for India v. Bai Rajbai*.³⁴ Herein, the Privy Council also observed that the burden of proving the existence of such sovereign recognition is on the party claiming the existence of such a right.³⁵ This principle was accepted by the Supreme Court of India in *Promod Chandra Deb v. State of Orissa*³⁶ and later reaffirmed by a 7-judge bench in *State of Gujarat v. Vora Fiddal Badruddin Mithibarwala*.³⁷ The Court relied upon these and several

²⁹ *Id.*, ¶¶1142-1143.

³⁰ *Id.*, ¶¶1156-1157.

³¹ *Id.*, ¶1179.

³² See Indian Evidence Act, 1872, §110 (this section is based on the principle that title follows possession).

³³ *Secy. of State in Council of India v. Kamachee Boye Sahara*, 1859 SCC OnLine PC 8.

³⁴ *Secy. of State for India in Council v. Bai Rajbai*, 1915 SCC OnLine PC 22.

³⁵ *Id.*

³⁶ *Promod Chandra Deb v. State of Orissa*, AIR 1962 SC 1288.

³⁷ *State of Gujarat v. Vora Fiddal Badruddin Mithibarwala*, AIR 1964 SC 1043.

others³⁸ to arrive at the conclusion that all the acts that took place before 1856, i.e., prior to the annexation of Oudh and prior to the change in legal regime to British colonialism, were irrelevant and inconsequential due to the non-recognition of the legal rights under the old regime by the sovereigns of the new regime.³⁹ The Court also expressly stated that, “(t)he court cannot entertain claims that stem from the actions of the Mughal rulers against Hindu places of worship in a court of law today”.⁴⁰ It further noted that the existence of both the communities was recognised and permitted by the British government, post-annexation of Oudh.⁴¹ Ultimately, the Court concluded “the acts of the parties subsequent to the annexation of Oudh in 1856 form the continued basis of the legal rights of the parties in the present suits, and it is these acts that this Court must evaluate to decide the present dispute”.⁴² However, what is interesting is that the Court had, in a later part of the judgement, held that the inability of the Muslim community to present evidence as to the use of the mosque prior to 1856-57 was considered to be “a crucial aspect of evidentiary record”.⁴³ The Court’s reliance on such historical evidence or its lack thereof can also be observed from the following extract:

“The case of the plaintiffs in Suit No. 4 has to be evaluated on the basis of the entirety of the evidence on the record to deduce whether possession has been established on a preponderance of probabilities. The evidence reveals several significant features which must be noted: [...] Though the case of the plaintiffs in Suit No. 4 is that the mosque was constructed in 1528 by or at the behest of Babur, there is no account by them of possession, use or offer of namaz in the mosque between the date of construction and 1856-57. For a period of over 325 years [...] the Muslims have not adduced evidence to establish the exercise of possessory control over the disputed site. Nor is there any account in the evidence of the offering of namaz in the mosque over this period.”⁴⁴

The Court then relies on evidence of the travelogues during the 17th and 18th centuries indicating Hindu worship of Lord Ram at his birthplace in Ayodhya.⁴⁵ Ultimately placing evidentiary value on the ability of the Hindu community and the inability of the Muslim community to produce evidence as to the use of the disputed site prior to 1856-57.

³⁸ Pema Chibar v. Union of India, AIR 1966 SC 442; Union of India v. Sudhansu Mazumdar, (1971) 3 SCC 265; Cook v. James Gordon Sprigg, 1899 AC 572.

³⁹ M. Siddiq v. Suresh Das, (2020) 1 SCC 1, ¶¶981-991.

⁴⁰ *Id.*, ¶997.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*, ¶1028.

⁴⁴ *Id.*, ¶¶1200-1200.1.

⁴⁵ *Id.*, ¶¶1200.2-1200.3.

This approach may have significant implications in future and present *mandir- masjid* disputes. For instance, it is alleged that, in the 17th century, the Mughal ruler, Aurangzeb, built both the Gyanvapi Mosque and Shahi Idgah mosque after demolishing the Kashi Vishwanath temple and Krishna-Janmabhoomi temple, respectively.⁴⁶ The conflicting views of the Court regarding the relevance and reliability of historical evidence from previous regimes makes it unclear as to whether the ability or inability of either of the parties to the Gyanvapi and Krishna-Janmabhoomi land disputes or any other future *mandir-masjid* dispute spread across multiple legal regimes would weigh in while determining possession, ownership, and other property-related legal issues. Given that these two *mandir-masjid* land disputes were legally revived post the delivery of the Ayodhya judgement, it may not be a far-fetched possibility that this ambiguity may result in a Pandora's box of claims of possession and ownership involving or lacking historical evidence under previous legal regimes.

III. DETERMINING THE OCCUPATION AND POSSESSION OF THE OUTER COURTYARD

“A flashpoint of continued conflagration”,⁴⁷ remarked the Court about the premises under dispute, referring to the communal riots between the Hindu and Muslim communities over the disputed property, which were common and dated back to 1856-57.⁴⁸ Furthermore, the riots of 1856-57 resulted in the construction of a grill-brick wall (railing) by the colonial government, dividing the disputed site into two fragments: an inner courtyard and an outer courtyard used by the Muslims and Hindus, respectively.⁴⁹ This division, however, did not have the tranquilising outcome that was expected; rather, it resulted in several attempts by both the communities to exclude each other from their respective courtyards.⁵⁰ While the Court did mention these attempts of the two communities battling it out to eliminate the other from the use of their respective courtyards, it has omitted to construe these instances as evidence in a fair manner, while deciding upon questions of possession as deliberated upon below.

Furthermore, the Court solely sees the disputed site as one composite whole and the wall merely as a medium of maintaining peace and ‘law and order’.⁵¹ In order to attest to the same, the Court relied upon three instances.⁵² Firstly, the proximity, both in terms of time and distance, with which the Ramchabutra was set up in the outer courtyard. Secondly, “the continued assertion of rights to the inner courtyard by Hindus”.⁵³ Lastly, the Hindu devotees directing their worship

⁴⁶ See Ahmed *supra* note 4.

⁴⁷ M. Siddiq v. Suresh Das, (2020) 1 SCC 1, ¶10.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*, ¶1137.

⁵² *Id.*

⁵³ *Id.*

from outside the railing towards the three domed structure in the inner courtyard. By constantly only referring to the characteristics of the outer courtyard, the involvement of the Hindu community, and what this community identifies as its faith and belief, to decide upon the significance of a wall that affects both these communities and not just one, the Court has adopted a questionable approach. This led the Court to establish that the wall acted as a ‘smokescreen’ rather than a divider. The Court then fallaciously concluded that the inner and outer courtyards made up one entity and provided no clarity or reasoning on the possibility of the two courtyards being seen as two distinct properties with separate characteristics and the implications of the same.

The Court then stated eight reasons to observe that the Hindu community was in occupation and possession of the outer courtyard.⁵⁴ However, there are certain complexities in each of these reasons relied upon which the Court did not sufficiently substantiate. Therefore, the following paragraphs will disclose and deconstruct these eight reasons construed as evidence to back up the Hindu Community’s claims and extract the rationale used behind it, subsequently analysing the validity of the same.

A. EXISTENCE OF EXCLUSIVE PLACES OF WORSHIP

First, the Court stated that the outer courtyard harboured places of worship that were exclusively for Hindus.⁵⁵ What is suggestive here is that according to the Court, one of the factors establishing the possession and occupation of the Hindus in the outer courtyard would be the existence of the Ramchabutra, Sita Rasoi and the Bhandar in the outer courtyard, which are places of worship ‘exclusively’ for Hindus.⁵⁶ The Court also observed that the disputed structure located in the inner courtyard is a ‘Mosque’ according to the faith and belief of the Muslim community, who offered their namaz within the said mosque and this belief could not be contested.⁵⁷ On the other hand, the Court observed that, the acts of the Hindu community attempting to place idols within the precincts of the mosque and praying from the outer courtyard but directing it towards the ‘Garbh Grih’ in the inner courtyard, were evidences indicating that the possession of the mosque was not “exclusionary of the Hindus“ and consequently not ‘exclusive’ to the Muslim community.⁵⁸ This is questionable because in an earlier part of the judgement, the Court said that the definition of ‘possession’ depends upon the context present and that “[t]he doctrine coalesces a fact- that of being in possession- and an intent, the animus of being in possession”.⁵⁹

⁵⁴ *Id.*, ¶1109.

⁵⁵ *M. Siddiq v. Suresh Das*, (2020) 1 SCC 1, ¶1109.1.

⁵⁶ *Id.*, ¶¶1137, 1179-1180, 1200.4, 1200.7, 1213.

⁵⁷ *Id.*, ¶90.

⁵⁸ *Id.*, ¶1212.

⁵⁹ *Id.*, ¶1146.

The Court furthered this thought by relying on *Supt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja* ('Anil Bhunja') where it was observed that, possession encompassed "both a right (the right to enjoy) and a fact (the real intention)".⁶⁰ It further goes on to say that possession "involves power of control and intent to control".⁶¹ According to this, it is evident that there are two prerequisites while determining possession- actual possession of the disputed premises and the intention to possess the disputed premises. Therefore, the Court while accounting as evidence the prayers of Hindus 'directed' to the inner courtyard from the outer courtyard neglected to consider that this claim was independent of the physical ability to control the inner courtyard, and solely reflected the intention to possess this courtyard. It is possible to argue that the Muslim community's attempt to contest and claim the structures in the outer courtyard, including the request made by the Hindus to construct a temple over the Ramchabutra and the rent claimed 'for use of the Chabutra and Takht near the door of Babri Masjid',⁶² would also reflect that the Muslim community contested and intended to possess it, again independent of their physical control. However, the Court, by considering the places of worship in the outer courtyard to be 'exclusive' but the Mosque in the inner courtyard to be non-exclusive, despite both communities exercising a mere intention to possess these structures, is seen to be neglecting to apply the same standard for both communities.

B. THE OPENING OF AN ADDITIONAL DOOR

Second, the colonial government's act of opening up an additional door in the outer courtyard to accommodate the large number of devotees entering the same was considered to be a recognition of the Hindu community's possession and occupation of the said courtyard, by the Court.⁶³ However, while doing so, the Court also observed that the colonial government opened an additional door to accommodate the large number of devotees, solely to ensure public safety.⁶⁴ As noted earlier, the Court, while addressing the construction of a railing noted that it was built to maintain 'law and order' while ensuring peace and in no way was a determination of proprietary rights of either of the communities.⁶⁵ Drawing a parallel between the two, it can arguably be deciphered that, while the Court was placing reliance upon the presence of the large number of devotees to establish the importance of the additional door in its determination, neither their presence nor the establishment of an additional door for safety purposes can be considered as valid evidence establishing 'possession' of the outer courtyard by the Hindu community making this a weak rationale. Therefore, applying this standard in assessing the dispute, the act of opening an additional door would not amount to

⁶⁰ *Supt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja*, (1979) 4 SCC 274.

⁶¹ *Id.*

⁶² *M. Siddiq v. Suresh Das*, (2020) 1 SCC 1, ¶¶53.10, 53.12.

⁶³ *Id.*, ¶1109.3.

⁶⁴ *Id.*, ¶¶53.8, 1048, 1185.6.

⁶⁵ *Id.*, ¶1137.

any recognition by the colonial administration of the Hindus' possession over the outer courtyard. Hence, the inference that the additional door determined proprietary rights, leaves a huge gap in the logical and legal coherence of this argument provided by the Court.

C. ASSERTIONS OF THE MUSLIM COMMUNITY

Third, according to the Court, the inability of the Muslim community to present 'any' evidence of their assertion for 'any' right of possession or occupation over the outer courtyard was another reason to be considered.⁶⁶ This is peculiar because the Court, at multiple instances, referred to evidence and considered instances which signified the assertions made by the Muslim community over the same. This can be discerned from the judgement that the Muslims contested both the opening of the additional door and the request made by the Hindus to construct a temple over the Ramchabutra in the outer courtyard.⁶⁷ Similarly, a suit was filed by Mohd Asghar against Mahant Raghubar Das, claiming rent for use of the Chabutra and Takht near the door of Babri Masjid and for organising the Kartik Mela on the occasion of Ram Navami in 1288 Fasli.⁶⁸ All of these are contestations made over the outer courtyard by the Muslim community, which were sought through legal recourses and are proof of the fact that the possession of the outer courtyard was contested and were not merely recorded instances frozen in time. Despite this, the Court failed to factor in these instances as evidence of assertions made by the Muslim community and questionably stated that no evidence was asserted by them. Therefore, placing reliance on the 'absence' of 'any' evidence of such assertion by the Muslim community as a factor for determining possession and occupation of the outer courtyard by the Hindu community.

D. THE CONTESTED USE OF THE MOSQUE

Fourth, another factor relied upon by the Court to establish possession of the outer courtyard by the Hindus was the existence of certain incidents indicating that the use of the mosque was contested.⁶⁹ However, in doing so, the Court cumulatively referred to several incidents, specifically to form a part of the conclusive evidence, which entailed that the Hindu community contested the possession of the inner courtyard. These incidents and their aftermaths shall now be summarised. To begin with, in 1858, Nihang Singh performed *puja* before an idol erected inside the mosque.⁷⁰ Subsequently, orders were passed for undoing his acts as well as his removal from the premises of the mosque.⁷¹ Additionally, in 1860, an application was filed by Mir Rajjab Ali seeking the removal of the

⁶⁶ *Id.*, ¶1109.4.

⁶⁷ *Id.*, ¶¶53.8, 53.10, 53.12, 1048, 1185.6.

⁶⁸ *Id.*, ¶53.10.

⁶⁹ *Id.*, ¶1109.5.

⁷⁰ *Id.*, ¶¶1040–1040.8.

⁷¹ *Id.*

chabutra in the graveyard.⁷² Another application was filed by him in 1861 for the eviction of Imkani Sikh from the occupation of the chabutra and removing the hut, an order for the same was passed.⁷³ Moreover, an order was passed in 1864 stating that “Hindus should not encroach on the boundaries of the mosque and Ramchabutra”,⁷⁴ i.e., the grill brick wall.

Furthermore, another suit was filed in 1870 for the eviction of a Faqir from the occupation of Imli trees, Khandal and graveyard.⁷⁵ Lastly, an order was passed in 1873 for the removal of the Charan Padhuka, which had not been complied with.⁷⁶ Nonetheless, it is visible that most of the ‘incidents’ that the Court referred to were considered to be unlawful as they resulted either in the removal of the Hindu parties entering the inner courtyard/ mosque or the chabutras being constructed inside the mosque. Furthermore, the placement of the idols in the mosque in 1949 was recognised as a ‘desecration’ of the mosque, while the destruction of the mosque in 1992 was recognised by the Court as an “egregious violation of the rule of law”.⁷⁷ Therefore, while these incidents may indicate that the use of the mosque (not inner or outer courtyard) was contested, the Court’s reliance on the same as evidence of Hindu community’s possession of the outer courtyard is questionable because it is unclear as to why the incidents highlighting contestation of the use of the mosque in the ‘inner’ courtyard is relevant while determining whether the Hindu community had occupation and possession over the ‘outer’ courtyard.

E. REPORT OF THE WAQF INSPECTOR

Fifth, the Court also relied upon the Waqf Inspector’s report, which complained about how the Muslims were being obstructed from entering the mosque to offer namaz.⁷⁸ However, it cannot be denied that the obstruction of the Muslim community from accessing the mosque to offer namaz was unwarranted and should not have been recognised as a valid proof of possession. It is a well-settled principle of law that no one can take advantage of their own wrong or be rewarded for their unlawful acts.⁷⁹ Yet, the Court, by considering this unlawful ‘obstruction’ and ‘harassment’⁸⁰ as one of the factors establishing possession and occupation of Hindus over the outer courtyard, adopted a questionable approach and justified an unwarranted activity. This may also incentivise a religious community in other mandir- masjid disputes to obstruct and harass members of

⁷² *Id.*, ¶1041.

⁷³ *Id.*, ¶1042.

⁷⁴ *Id.*, ¶1044.

⁷⁵ *Id.*, ¶1045.

⁷⁶ *Id.*, ¶1046.

⁷⁷ *Id.*, ¶¶1221-1222.

⁷⁸ *Id.*, ¶1109.6.

⁷⁹ *See also* Hariganga Security Services Ltd. v. Industrial Court, 1990 SCC OnLine Bom 75; Musthafa Ahamed Dossa v. Govt. of India, 2005 SCC OnLine Bom 91.

⁸⁰ *M. Siddiq v. Suresh Das*, (2020) 1 SCC 1, ¶¶1187, 1191.6.1, 1202.

another religious community because such harassment may ultimately be used as evidence of possession in favour of the former.

F. LANDLOCKED NATURE OF THE INNER COURTYARD

Finally, the Court also relied on the ‘landlocked nature’ of the inner courtyard as evidence of possession of Hindus of the outer courtyard.⁸¹ It is imperative to introspect over the nature of the inner courtyard, which was such that it compelled Muslims to have to access the outer courtyard in order to access the former. The Hindu community, nonetheless, did not have to access the inner courtyard in order to be able to access the outer courtyard. Moreover, as discussed earlier, most of the attempts made by the Hindu community to access the inner courtyard were considered to be unlawful, and hence, such coercive attempts to access cannot be considered ‘lawful’ access. While it may be true that the landlocked nature of the inner courtyard would not *ipso facto* be proof of possession of the inner courtyard,⁸² this factor, though the weightage assigned to the same is uncertain, may influence the determination of possession when combined with the other questionable reasoning of the Court, as discussed above.

Furthermore, it was observed in Anil Bhunja that the concept of possession is ‘polymorphous’.⁸³ Multiple ideas of possession have surfaced within different spheres of law, some of which have been taken into cognisance by this judgement to decide the dispute. One such definition is that of ‘open’ possession, which is contested when addressing the claims of adverse possession, wherein a prerequisite of such a possessor would require his claim over the land to be open and obvious.⁸⁴ In the Ayodhya case, the Court observed that the Muslim community did not have open possession over the inner courtyard because several incidents on record “indicate that the possession of the inner courtyard was a matter of serious contest”.⁸⁵ Conversely, it was observed that “possession of the Hindu devotees over the outer courtyard was open and to the knowledge of the Muslims”.⁸⁶ However, as discussed earlier, the Muslim community did contest the possession and occupation of the outer courtyard, including their opposition to the opening of the additional door, the organisation of the Kartik Mela, and the construction of a temple over the chabutra. Given this, it could be argued that the possession of the outer courtyard was contested and, consequently, not open. Therefore, the Court arguably neglected to apply the same standard while determining open possession across both courtyards.

⁸¹ *Id.*, ¶1109.8.

⁸² *Id.*, ¶392.

⁸³ *Supdt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja*, (1979) 4 SCC 274.

⁸⁴ Legal Information Institute, *Adverse Possession*, CORNELL LAW SCHOOL, June 2017, available at https://www.law.cornell.edu/wex/adverse_possession (Last visited on May 16, 2022).

⁸⁵ *M. Siddiq v. Suresh Das*, (2020) 1 SCC 1, ¶1137.

⁸⁶ *Id.*

To conclude, it can be derived from the above mentioned arguments that the Court's reasoning in deciding matters of possession and occupation of the outer courtyard was not reasoned or sufficiently substantiated through the reasons specified. It is well established that the standard of proof adopted in civil matters such as a property dispute, as also reinstated by this Court, is that of preponderance of probabilities.⁸⁷ This requires the existence of a fact to be founded on a balance of probabilities.⁸⁸ The Court is required to apply the standard of a prudent man by fixing the probabilities and weighing them to ascertain the existence of a contested fact.⁸⁹ As discussed, the Court relied upon eight reasons to conclude that the possession and occupation of the outer courtyard were with the Hindu community. However, the weights assigned to each of these reasons are uncertain from the judgement. Given that a majority of these reasons relied upon by the Court are questionable, it is not improbable that the evidence on record may have, on a preponderance of probabilities, altered the conclusion arrived at by the Court.

This is relevant because the Siddiq judgement may also have a significant bearing on other mandir-masjid property disputes, both present and future. It is alleged by the Hindu communities in the Krishna Janmabhoomi and Gyanvapi disputes that the mosques in question were constructed in the 17th century by Mughal ruler, Aurangzeb, after the destruction of the underlying temples resulting in disputes over the possession and ownership of the property by two religious communities.⁹⁰ Furthermore, in the Krishna Janmabhoomi dispute, it is also claimed that the disputed land is the birthplace of Lord Krishna.⁹¹ In both cases, the temple and mosque are closely situated to each other, with accompanying communal tensions.⁹² Given some of these similarities between the two disputes and the Babri Masjid- Ram Janmabhoomi dispute and their recent revival before the Indian courts, it can be observed that these two cases may shadow the same issues that arose in the Siddiq judgement. Therefore, it can arguably be assumed

⁸⁷ *Id.*, ¶1201.

⁸⁸ Patel Ramanbhai Mathurbhai v. Govindbhai Chhotabhai Patel, 2018 SCC OnLine Guj 4763.

⁸⁹ *Id.*

⁹⁰ Areeb Uddin Ahmed, [*Krishna Janmabhoomi Case*] Hindu body moves Mathura Court, Offers Larger Piece of Land to Muslim Party if they Agree to Demolish Mosque, BAR AND BENCH, June 26, 2021, available at <https://www.barandbench.com/news/litigation/krishna-janmabhoomi-case-hindu-outfit-mathura-court-offers-larger-land-muslims-demolish-mosque> (Last visited on May 16, 2022); Omar Rashid, *Gyanvapi Mosque Title Dispute | Allahabad High Court Stays Lower Court Proceedings*, THE HINDU, September 9, 2021, available at <https://www.thehindu.com/news/national/gyanvapi-mosque-title-dispute-allahabad-high-court-stays-lower-court-proceedings/article36381454.ece> (Last visited on May 16, 2022).

⁹¹ Express Web Desk, *Mathura Court Admits Appeal Seeking Removal of Mosque from 'Krishna Birthplace'*, THE INDIAN EXPRESS, October 16, 2020, available at <https://indianexpress.com/article/cities/lucknow/mathura-court-idgah-mosque-krishna-birthplace-katra-keshav-dev/> (Last visited on May 16, 2022).

⁹² Sushil Kumar, *How Modi's Kashi Vishwanath Corridor is Laying the Ground for Another Babri Incident*, THE CARAVAN, April 27, 2019 (Last visited on May 16, 2022); Teesta Setalvad, *'Kashi-Mathura Baaqi Hain': Why the Ayodhya Verdict Won't Offer any Respite from Saffron Hatred*, THE WIRE, October 20, 2019, available at <https://thewire.in/communalism/kashi-mathura-baaki-hain-why-the-ayodhya-verdict-wont-offer-any-respite-from-saffron-hatred> (Last visited on May 16, 2022).

that similar reasoning as in the Siddiq judgement may be adopted to resolve these issues. However, the implications of the questionable reasoning adopted by the Court and their weightage while determining questions of property law based on preponderance of probabilities on these and future *mandir-masjid* disputes remain undetermined.

IV. UNDERSTANDING THE IMPLICATIONS OF THE UNLAWFUL PLACEMENT OF IDOL IN 1949

This part will address the Court's ignorance of the implications of the Muslim community's dispossession of the mosque while deciding the question of possession. Primarily, the law respects peaceful possession and frowns upon the person who takes the law into his own hands.⁹³ Presently, the Muslim community were dispossessed of the inner courtyard when the Hindu community unlawfully placed idols beneath the three-domed structure of the Babri Masjid on the intervening night between December 22-23, 1949.⁹⁴ Under Black's Law Dictionary, 'Dispossession' is defined as the "deprivation of, or eviction from, rightful possession of property; the wrongful taking or withholding of possession of land from the person lawfully entitled to it; ouster".⁹⁵ Along with P. Ramanatha Aiyar's *Advanced Law Lexicon*, "Dispossession or ouster is wrongfully taking possession of land from its rightful owner".⁹⁶ These definitions, as used by the Court, point to two ideas, one that had the Muslims had their land dispossessed then they should have been the rightful owners of the inner courtyard. Secondly, they should have been 'wrongfully deprived' of a property that they had dominion or possession over. Furthermore, the Court's remark that "the Muslims have been wrongly deprived of a mosque which had been constructed well over 450 years ago"⁹⁷ also proves that the Court takes cognisance of the wrongful and forceful interference made by the Hindu community by placing the idol inside. The Court also stated that "[...] the very fact that worship was offered exclusively by the Hindus within the precincts of the mosque after the placement of the idols indicates a loss of possession by the Muslims".⁹⁸ Consequently, it very much takes cognisance of the rightful and lawful possession and title of the inner courtyard by the Muslim community. Though the Court refers to the unlawfulness of the said act at several instances throughout the judgement, it fails to factor in the repercussions of the same on questions of possession, including the possibility of restoration of possession to the Muslim community.⁹⁹

⁹³ Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350.

⁹⁴ M. Siddiq v. Suresh Das, (2020) 1 SCC 1, ¶1097.

⁹⁵ BLACK'S LAW DICTIONARY (10th ed., 2014).

⁹⁶ P. RAMANATHA AIYAR'S ADVANCED LAW (5th ed., 2017).

⁹⁷ M. Siddiq v. Mahant Suresh Das, (2020) 1 SCC 1, ¶1236.

⁹⁸ *Id.*, ¶973.

⁹⁹ Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729.

Another concept of property law engaged with by the Court is that of ‘discontinuance’.¹⁰⁰ Discontinuance means ‘a person in possession goes out and is followed into possession by another person’ and implies a voluntary cessation of possession.¹⁰¹ Thus, should a person want to discontinue their possession, they are required to ‘actually withdraw, with the intention to abandon, and another should step in and begin to occupy after withdrawal’.¹⁰² This would mean that, had the Court recognised the act of placement of idols to result in discontinuance of possession by the Muslim community, the idol’s possession would have remained rightful as this transaction would have been voluntary, which does not happen when a property is dispossessed. According to the Court, “the ouster of the Muslims on that occasion was not through any lawful authority but through an act which was calculated to deprive them of their place of worship”.¹⁰³ This clearly highlights that the act of placing idols inside the mosque resulted in dispossession and not discontinuance. However, the extent to which the Court discussed the forceful installation of the idol was limited to deciding the applicability of Article 142 of the Limitation Act, 1908, which includes both dispossession and discontinuance under its ambit.¹⁰⁴ Consequently, the Court did not consider these as independent concepts having nuanced implications on possession.

Given that this dispute was to be decided based on which community could prove their long and continued use of the disputed property, this difference between discontinuance and dispossession is arguably significant. This is because the implications of discontinuance on the determination of the issue of possession would be insignificant, given that the cessation of possession and use of the disputed property would have been voluntary. Consequently, the inability of the Muslim community to provide evidence post-1949 would have been a result of their own doing. However, it has been established expressly from the Court’s observations that the Muslim community were indeed ‘dispossessed’ from the inner courtyard. Despite this acknowledgement of dispossession, the Court neglected to explore the evidentiary value of the illegal acts and their implications on the inability and ability of the Muslim and Hindu communities, respectively, to prove their use and possession of the inner courtyard post-1949. Additionally, this would arguably encourage the forceful dispossession of communities from places of worship in other mandir-masjid disputes either through placing idols of another religious community within its precincts or through its forceful and wrongful desecration. For instance, the attempt to bury the Nandi Idols in the Gyanvapi dispute.¹⁰⁵

¹⁰⁰ M Siddiq v. Mahant Suresh Das, 2019 SCC OnLine SC 1440, ¶1962.

¹⁰¹ Vasudeo Atmaram Joshi v. Eknath Balkrishna Thite, 1910 SCC OnLine Bom 43; Qadir Bux v. Ram Chand, 1969 SCC OnLine All 63; Tajibai v. Hasan Khan, 1986 SCC OnLine MP 97.

¹⁰² Tajibai v. Hasan Khan, 1986 SCC OnLine MP 97.

¹⁰³ M. Siddiq v. Mahant Suresh Das, (2020) 1 SCC 1, ¶1236.

¹⁰⁴ *Id.*, ¶1238.

¹⁰⁵ Sushil Kumar, *How Modi’s Kashi Vishwanath Corridor is Laying the Ground for Another Babri Incident*, THE CARAVAN, April 27, 2019, available at <https://caravanmagazine.in/religion/how-modi-kashi-vishwanath-corridor-is-laying-the-ground-for-another-babri-incident> (Last visited on May 16, 2022).

Furthermore, an act of dispossession, despite being forceful and wrongful, would now be considered an issue of possessory title and could open up avenues to circumvent the POWA, as this would no longer be limited to the religious character of the property in dispute but a legal dispute involving questions of property law. While Yusuf Ajj proceeded to limit the scope of POWA “to prohibit and punish one section or community who illegally takes over the land of religious worship of another community or section and changes its character”,¹⁰⁶ the increasing tension surrounding the applicability of POWA on suits filed under the premise of property law disputes requires the Court to reaffirm this position of law. This is not a far-fetched possibility since both the Gyanvapi and Krishna Janmabhoomi disputes have been revived in the Indian Courts on the premise of property disputes claiming that the POWA is inapplicable to their dispute.¹⁰⁷

V. LEGAL REPRESENTATION OF A PERPETUAL MINOR THROUGH A NEXT FRIEND

This part is relevant to understand the formation of *locus standi* for the representation of the deity in future mandir masjid disputes when there exists no generally recognised legal guardian, i.e., the *Shebait*. This analysis is crucial at this juncture as, like the Babri-masjid dispute, the Gyanvapi dispute was also revived through a next friend.¹⁰⁸ Similarly, several future Mandir—Masjid disputes could also not have an authorised *Shebait*, thus seeking the recourse of using the next friend to bring matters to Court. It is therefore important to understand the *locus standi* of a next friend when representing a deity in property lawsuits, especially to substantiate whether this representation can be validly upheld.

A debutter property encompasses land devoted to the deity that is solely used for religious purposes.¹⁰⁹ Hindu idol, as a juristic person in addition to being the “owner of the debutter property but only in an ideal sense”¹¹⁰ is also seen as a perpetual minor in law. Having said this, the Court noted that, “a right to sue for the recovery of property is an inherent component of the rights that flow from the ownership of property”.¹¹¹ Additionally, it is important to note that under

¹⁰⁶ Yusuf Ajj Shaikh v. Special Land Acquisition Officer No. 2, 1994 SCC OnLine Bom 246.

¹⁰⁷ Express Web Desk, *Mathura Court Admits Appeal Seeking Removal of Mosque from ‘Krishna Birthplace’*, THE INDIAN EXPRESS, October 16, 2020, <https://indianexpress.com/article/cities/lucknow/mathura-court-idgah-mosque-krishna-birthplace-katra-keshav-dev/> (Last visited on May 16, 2022); Bismee Taskin, *Decoding the Kashi Vishwanath-Gyanvapi dispute, and why Varanasi Court has Ordered ASI Survey*, THE PRINT, April 10, 2021, available at <https://theprint.in/theprint-essential/decoding-the-kashi-vishwanath-ghanvapi-dispute-and-why-varanasi-court-has-ordered-asi-survey/637411/> (Last visited on May 16, 2022).

¹⁰⁸ Prabhask K. Dutta, *Decoded: What is the Controversy over Varanasi’s Gyanvapi Masjid?*, INDIA TODAY, September 10, 2021, available at <https://www.indiatoday.in/india/story/decoded-controversy-over-varanasi-ghanvapi-masjid-1851344-2021-09-10> (Last visited on May 16, 2022).

¹⁰⁹ Profulla Chorone Requitte v. Satya Chorone Requitte, (1979) 3 SCC 409; Vidya Varuthi Thirtha v. Balusami Ayyar, 1921 SCC OnLine PC 58.

¹¹⁰ M. Siddiq v. Mahant Suresh Das, (2020) 1 SCC 1, ¶440.

¹¹¹ *Id.*

§11 of the Indian Contract Act, 1872,¹¹² a minor does not have the legal capacity to contract and neither does this Act nor any other statute extend to a Hindu idol's legal capacity to contract.¹¹³ Moreover, under §122 of Transfer of Property Act, 1882, a gift can be made in favour of minors and Hindu idols.¹¹⁴ Nonetheless, being a perpetual minor makes the idol “incapable of managing [its] properties and protecting [its] own interests”.¹¹⁵ In order to protect the purpose for which the endowment is made and subsequently the juristic person created, the role of the perpetual minority is seen to be important.¹¹⁶ However, while both can accept gifts and own property, “[the idol] has to act through human agency, and that agent is the *Shebait*, who is, in law, the person entitled to take proceedings on its behalf”.¹¹⁷ Thus, making this relationship analogous to the minor and its legal guardian.

Given that ‘without *Shebait* a deity cannot be recognised as a juridical person who is capable of suing or being sued’,¹¹⁸ it becomes imperative that the *Shebait* exercises his representative power to alienate the said property only for the benefit of the idol. The Court has the discretionary power to decide whether the alienation of property vested with the Hindu idol is one of compelling necessity.¹¹⁹ Therefore, the deity is merely a ‘device of expression of human intention’¹²⁰ and neither it nor its representative, the *Shebait*, benefit from the ownership or dispossession of the said property.¹²¹ This mechanism stood in Court to ensure bona fide representation, and is well within the bundle of duties of the *Shebait*.¹²²

Earlier, in cases where the *Shebait* acted adversely to the interest of the idol, the role of the worshipper was limited to uphold the process of changing the *Shebait*.¹²³ Given that such a process was time-consuming, a worshipper can now hold “an ad hoc power of representation”,¹²⁴ wherein he could represent the idol even in a suit for recovery of property. However, years of jurisprudence state that, “[t]he idol minus the *Shebait*, to say in a metaphorical sense, has practically no existence”.¹²⁵ In the Ayodhya judgement, the Court established that there exists no *Shebait* for the idol (Lord Ram) and therefore, a worshipper under the capacity of ‘next friend’ shall represent him.¹²⁶ This quintessentially becomes problematic because, in every case, recognised by this judgement for this purpose, there had

¹¹² The Indian Contract Act, 1872, §11.

¹¹³ Tarit Bhushan Rai v. Sri Sri Iswar Sridhar Salagram Shila Thakur, 1941 SCC OnLine Cal 107.

¹¹⁴ The Transfer of Property Act, 1882, §122.

¹¹⁵ *Id.*

¹¹⁶ Veruareddi Ramaraghava Reddy v. Konduru Seshu Reddy, AIR 1967 SC 436.

¹¹⁷ Bishwanath v. Shri Thakur Radhaballabhji, 1967 SCC OnLine SC 8.

¹¹⁸ Veruareddi Ramaraghava Reddy v. Konduru Seshu Reddy, AIR 1967 SC 436.

¹¹⁹ *Id.*

¹²⁰ Profulla Chorone Requitte v. Satya Chorone Requitte, (1979) 3 SCC 409.

¹²¹ Sardar Deorao Jadhav v. State of M.P. AIR 1991 MP 247.

¹²² K. Manathunainatha Desikar v. Sundaralingam, 1970 SCC OnLine Mad 12.

¹²³ Bishwanath v. Shri Thakur Radha Ballabhji, 1967 SCC OnLine SC 8.

¹²⁴ *Id.*

¹²⁵ Upendra Nath Biswas v. Haripada Saha Kundu, 8 DLR (1956) 374.

¹²⁶ M. Siddiq v. Mahant Suresh Das, (2020) 1 SCC 1, ¶539.

existed a *Shebait*, irrespective of how well he performed his role.¹²⁷ Consequently, it has been implied in multiple judgements that,¹²⁸ the next friend's ad hoc representation is valid only after it is established that there firstly, exists a *Shebait* for the idol, which would validate the idol's existence, and secondly, that the *Shebait* is acting adversely to the interests of the deity, requiring the next friend to step in. Therefore, it is established that in the absence of a *Shebait*, a deity cannot exist, and, in such cases, a next friend would essentially not have the capacity to represent such an entity.

Upon stating that 'there existed no recognised *Shebait* in law'¹²⁹ and yet permitting a next friend to represent the deity, the Court belittles the above mentioned legal fiction. Had this Court now addressed the issue of whether the ad hoc representation is *pari materia* to that of a legal guardian of a minor, such a shift in representation would still provide some clarity as this would mean that the next friend would be considered as the legal guardian of the idol, just as the *Shebait*, to firstly validate the existence of the deity as well as be capable of suing or being sued on behalf of it. Therefore, without a *Shebait*, how this minor is managed, and how this idol's properties are protected, such that it retains the debuted property are questions unanswered in this judgement. This further blur the future of *Shebait*-deity relationships that shall be envisaged in law. Additional clarification is also required to address the issue of the next friend who may be acting adversely to the interests of the idol. As mentioned earlier, this legal lacunae on the role of next friend, in the absence of a *Shebait*, is relevant as it jeopardises the authority of the next friend to bring in suits for recovery of property in similar mandir-masjid disputes, including the Gyanvapi dispute, wherein a suit has already been filed by the next friend.

VI. CONCLUSION

This paper was an attempt at deciphering the Court's legal reasoning, simultaneously while holding a discourse at understanding several integral implications of this dispute on present and future mandir-masjid disputes considering the POWA. As stated previously, considering the recent constitutional challenge to the validity of §4 of the POWA,¹³⁰ that bars adjudication upon any pending or new

¹²⁷ Bishwanath v. Shri Thakur Radhaballabhji, 1967 SCC OnLine SC 8; Vidya Varuthi Thirtha v. Balusami Ayyar, 1921 SCC OnLine PC 58; Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi, 1904 SCC OnLine PC 22; Chittar Mal v. Panchu Lal, 1925 SCC OnLine All 353; M. Siddiq v. Suresh Das, (2020) 1 SCC 1, ¶¶430, 440, 448, 532.

¹²⁸ *Id.*

¹²⁹ M. Siddiq v. Suresh Das, (2020) 1 SCC 1, ¶509.

¹³⁰ See generally Shruti Mahajan, *Right to Challenge Encroachments of Hindu Property by Another Faith Barred: Plea Filed in Supreme Court Challenging S. 4 Places of Worship Act*, BAR AND BENCH, June 14, 2020, available at <https://www.barandbench.com/news/litigation/plea-in-sc-says-section-4-places-of-worship-act-violates-secularism> (Last visited on May 16, 2022) (for a brief on the petition); See also *Muslim Body Moves SC opposing Hindu Organisations Plea Against Place of Worship Act 1991*, INDIA TODAY, June 14, 2020, available at <https://www.india-today.in/india/story/muslim-body-moves-sc-opposing-hindu-organisation-s-plea-against-place->

dispute regarding the religious character of a place of worship, and the possibility of the factual and legal circumstances of the Gyanvapi and Kashi Vishvanath disputes aligning with the Babri dispute, suggests that if §4 was struck down or the disputes were brought under §5 as exceptions,¹³¹ then the Babri Dispute would be a direct precedent that would be relied upon to decide future verdicts. Furthermore, as per the analysis in Yusuf Ajjij,¹³² it was understood that a mere loss of place of worship would not amount to a conversion of the same, again possibly providing an alternate avenue to bring similar disputes under the reliance of the Babri dispute.

The aforementioned arguments indicate reasonable doubt as to the outcome arrived at, due to the Court's contradiction when considering the debated events undertaken prior to 1856 as evidence after having made all such evidence irrelevant for the purposes of this dispute. This creates ambiguities regarding the need for reliance on historical evidence in present and future mandir-masjid disputes spanning across legal regimes. Further, the Court adopted questionable reasoning to arrive at the conclusion that the Hindu community was in occupation and possession of the outer courtyard. Given that property law disputes are decided on the basis of preponderance of probabilities, the ambiguities regarding the weights assigned to each of the questionable reasoning have implications on their ability to influence the balance of probabilities in favour of one party in other similar mandir-masjid disputes. This reasonable doubt further persists when addressing the lack of exploration of the property law implications of the dispossession of the Muslims in 1949 and the possibility of creation of legal avenues for circumventing the bar on jurisdiction under the POWA.

Finally, the capacity of the next friend to represent the idol, when no *Shebait* exists, is questionable and generates ambiguities regarding the role of the next friend in instituting a suit for other mandir-masjid disputes, including the Gyanvapi and Krishna-Janmabhoomi disputes. Thus, these inconsistencies disclose the sophistry with which this judgement has been formulated and have significant implications on the present and future mandir-masjid disputes in India, making the fate of this and several other similar 'zameen zameen ki ladai(s)' unclear.

of-worship-act-1991-1688992-2020-06-14 (Last visited on May 16, 2022) (petition filed by 'Jamiat Ulema- I-Hind' on June 14, 2020, requesting the Supreme Court to not entertain the above-mentioned petition).

¹³¹ The Places of Worship (Special Provisions) Act, 1991, §§4-5.

¹³² Yusuf Ajjij Shaikh v. Special Land Acquisition Officer No. 2, 1994 SCC OnLine Bom 246.