

# Secure *Shivling* area in Gyanvapi mosque: SC

The top court “excluded” any of these reliefs “allowed” by the trial judge in his May 16 order. Instead, the Bench confined its order to only directing the protection of the specific area in which the *Shivling* has reportedly been found, without affecting the right of Muslims to offer prayers in the mosque.

Senior advocate Huzefa Ahamadi, for the Anjuman Intezamia Masjid, the mosque’s caretakers, asked how *namaz* could be performed without cleansing oneself at the *wazu khana*.

Solicitor General Tushar Mehta, for Uttar Pradesh, suggested that “*wazu* could be done without disturbing the part” under protection. He apprehended a law and order problem if someone entered the protected area.

The court, however, did not agree with Mr. Ahamadi’s plea for a complete stay of the proceedings before the trial judge.

The senior lawyer submitted that the string of orders passed by the trial court, right from when the Hindu women filed a suit for declaration of their right to worship at shrines believed to be present in the mosque complex, were “patently without jurisdiction and *non est*”.

## ‘Against 1991 Act’

Mr. Ahamadi argued that the trial judge’s order violated Sections 3 and 4 of the Places of Worship Act, 1991 which mandated that “you cannot tinker with any place of worship which has been existing and where worship has been performed as on August 15, 1947”.

The senior lawyer invoked the court’s own ruling in the Ayodhya judgment that a mere claim of “historical wrong” cannot be the basis for changing the nature of a place of worship. He argued that the Allahabad High Court had in the past dismissed a similar petition seeking an Archaeological Survey of India sur-

vey at the mosque premises, supposedly to find the remains of a pre-existing temple.

“The protection of places of worship was a Constitutional guarantee... All the orders, including appointment of the Commission [to inspect the mosque premises], should come to a standstill. *Status quo*, as existed before the suit was filed, should be maintained,” Mr. Ahamadi said.

He said the orders of the trial judge, including the one on May 16, were passed *ex parte*, that is, without hearing the other side. The trial judge had passed these orders instead of first deciding his client’s challenge under Order 7 Rule 11 of the Civil Procedure Code, seeking the rejection of the women’s suit for lack of cause of action. The women, he claimed, had to show in their suit the legal injury they had suffered from the existence of the mosque.

“Again, the Commission was still conducting its inspection on May 16 when the application was suddenly filed in the trial court about the finding of the *Shivling*... The trial court, within an hour of the women’s application and without even waiting for the Commission report, ordered the premises to be sealed. The order does not show an element of fairness,” Mr. Ahamadi said.

The senior lawyer reminisced how the Allahabad High Court, on April 21, had dismissed their petition to stay the trial judge’s orders, saying they were “innocuous” by nature. “Look what the orders have led to... The High Court has been proved substantially wrong,” Mr. Ahamadi said.

The court issued notice to the plaintiffs (the Hindu women who filed the suit). Their lawyer, advocate Hari Shankar Jain, could not appear in the top court as he had taken ill. The Bench scheduled the next hearing for May 19.