

Case Description (/court-case/ayodhya-title-dispute)

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 37 Arguments: 30 August 2019

All the primary Hindu parties in the Ayodhya title dispute (<https://www.scobserver.in/court-case/ayodhya-title-dispute>) have now presented oral arguments before the bench comprising Chief Justice Gogoi and Justices Bobde, Chandrachud, Bhushan and Nazeer. Yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-36-arguments>), Sr. Adv. PN Misra disputed the Sunni Waqf Board's claim that the mosque dates back to the 16th century, on behalf of the Akhil Bhartiya Sri Ramjanam Bhoomi Punarudhar Samiti (All India Sri Ram Birthland Restoration Committee).

Today, PN Misra argued that while the disputed structure could not be considered a mosque under Islamic law, it holds special significance to Hindus as the Ram Janmabhoomi (birthplace of Ram). Next, two opposing factions of the Hindu Mahasabha agreed to characterise the Sunni Waqf Board's claim as one of adverse

possession. Finally, the Shia Waqf Board claimed that the last Mutawalli (Waqf caretaker) to manage the mosque before it was placed under the receivership of the State, was Shia.

The court assembled at 10.49 AM. The following summary is not in exact chronological order.

3.14 The structure lacks the core features of a mosque

PN Misra cited various Hadith and the Qu'ran to argue that the structure lacks the core features of a mosque. He submitted that a mosque cannot have images of idols or other living beings. He referenced images found at the disputed structure and in particular drew the court's attention to images of dogs, which he submitted are considered impure. Another problem he drew the court's attention to is that of graves. He emphasised that Islam prohibits namaz from being offered in the direction of graves, but that the site is surrounded by graves. Perhaps most significantly, he submitted that a mosque cannot be used for the rituals of another religion. He argued that the site could never have been a mosque because there exists evidence of Hindu worship at the site.

3.15 Archaeological evidence shows the structure is not a mosque

PN Misra argued that the archaeological evidence shows that the structure is not a true mosque. He drew the court's attention to the 2003 Archaeological Survey of India report and its finding that there was a chulha and utensils at the site. He submitted that

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cooking cannot take place at a mosque. Second, he argued that the structure lacked space to store water for a wudu (used for ritual purification). The bench expressed scepticism towards his wudu speculation.

(See pages 1768-82 of the Allahabad High Court judgment (<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>) for additional features of mosques referenced by Misra).

3.16 Babri Masjid is not integral to Islam but the Ram Janmabhoomi is integral to Hinduism

Next, PN Misra proceeded to argue that not all mosques are integral to Islam. Relying on Islamic law, he argued that only three mosques are essential to Islam: Masjid al-Harām (Kaaba in Mecca), Masjid an-Nabawī (Medina), Masjid al-Aqsa (Jerusalem). He characterised other mosques as serving only the purpose of congregation. He argued that the Babri Masjid is not integral to Islam, but that the Ram Janmabhoomi is essential to Hinduism.

3.17 Islam allows for dispute resolution through use of scriptures

PN Misra sought to establish that Islam allows for disputes to be resolved using non-Islamic scriptures. He read out a Hadith about a dispute between Muslims and Jews, recounted by Ibn Omar (page 1768 of the Allahabad High Court judgment). Ibn Omar describes the dispute being resolved by reference to the Torah. PN Misra submitted that during the prophet's time, inter-religious disputes could be resolved by relying on the holy scripture of opposing religions.

3.18 Mosque cannot be constructed on disputed land

Further, he argued that a mosque could not be constructed on a disputed site. He cited Shajahan's farman, which states that a mosque built over another building is not a mosque. He submitted that mosque cannot be constructed on land acquired via adverse possession. PN Misra reminded the court that the site always has belonged to Ram according to the Hindu parties.

PN Misra disputed a series of the Sunni Waqf Board's claims with the aim of emphasising that the burden of proof for claiming the structure was a 16th century mosque rested with Rajeew Dhavan's client. Recall that PN Misra represents the defendant, while Dhavan the plaintiff in suit number 4.

3.19 Insufficient evidence to show presence of a mosque

Sr. Adv. P.N. Mishra focused on the issue of whether the structure was validly dedicated as a mosque. He sought to establish that there was insufficient evidence to show that the structure had been dedicated as a mosque. First he informed the bench of the requirements for a valid dedication, namely that the waqif (donor) must own the land and cannot be represented by an intermediary agent. PN Misra said that the Sunni Waqf Board will have to prove not only that the site was dedicated to God, but also that it was subsequently used exclusively as a mosque (continuous namaz twice a day).

The bench asked whether one can create a mosque from State property? PN Misra attempted to establish that a ruler can only use a small percentage of state property to create a mosque. He cited instances of rulers creating waqfs from personal property.

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Next, PN Misra briefly disputed the veracity of the 1861 revenue records being relied upon by the Sunni Waqf Board as evidence of their possession of the site. PN Misra submitted that an 1867 book indicates that the records were tampered with.

3.21 Infrequent namaz at the site

PN Misra concluded by questioning the frequency of namaz offered at the site. First, he submitted that there exists no evidence of namaz consistently taking place prior to 1855. Then he focused on the period from 1934 to 1949. PN Misra submitted that only Friday namaz was possible, as the Faizabad magistrate had locked the property after the 1934 riots. He cross-referenced his claim against the report by the Waqf Commissioner. PN Misra submitted that the last Friday namaz was offered on 16 December 1949, before the idols 'appeared' at the site.

Hindu Mahasabha

The bench proceeded to hear two factions of the Hindu Mahasabha. When it asked who is in charge of the Hindu Mahasabha, advocate Hari Shankar Jain submitted that both factions claim to head the organisation. The court has admitted appeals by both factions.

4.3 Sunni Waqf Board's possession claim is unsustainable

First, advocate Hari Shankar Jain for the first faction disputed the Sunni Waqf Board's possession claim. He submitted that there exists no evidence of a mosque prior to 1855. Then, he argued that Babur as an invader could not be granted constitutional rights. He cited the Baburnama to describe Babur as a prosecutor of Hindus. He

submitted that proof of a pre-medieval Hindu temple exists and that recognising a mosque would violate Hindus' fundamental right to freedom of religion under Article 25.

The court broke for lunch at 1 PM. It re-assembled at 2.15 PM.

4.4 The site can only be governed by Hindu law

After lunch, HS Jain sought to convince the court that the site could only be governed by Hindu law. He submitted that the nature of a Hindu temple is inalterable, even if it is destroyed and a mosque is built on top of it. Further, he submitted that the Waqf property was not valid under the 1923 Wakf Act, as it had never been registered.

HS Jain concluded by putting two judgments on the record to establish that Lord Ram is a constitutional entity (AIR 1962 SC 442, AIR 1998(7) SCC 392). When he sought to elaborate, the bench said that no party was disputing that Ram was born at Ayodhya. HS Jain appeared to want to establish the precise location of Ram's birth, stating that it was a question of logic as well as of faith.

The bench declined to hear two other of HS Jain's arguments. The first had to do with the concept of sovereignty, as defined in *Indira Gandhi v. Raj Narain*. Before he could elaborate, the court asked him to move on. The second, which the Allahabad High Court also did not consider, had to do with Babur allegedly demolishing a temple (see exhibits 54 and 55 in suit number 5). HS Jain sought to frame Babur's actions as a civil wrong.

4.5 Adverse possession cannot be claimed against a deity

Next, the bench briefly heard the counsel for the second faction of the Hindu Mahasabha. The counsel submitted that adverse possession claims cannot be made against a deity. He requested the bench to take on the record his written submission.

Shia Waqf Board

6.1 Shia Waqf Board was in exclusive possession

MC Dhingra argued that the Shia Waqf Board held exclusive possession of the disputed mosque until it was placed under the receivership of the State in 1949. He submitted that the last Mutawalli (manger of Waqf property) of the mosque was Shia. He emphasised that it is a Mutawalli, not worshippers, who can possess a mosque. Further, he argued that Allah does not possess the site as Allah is not a juristic person.

6.2 Sunni Waqf Board's claim of adverse possession

MC Dhingra framed the Sunni Waqf Board's claim as an adverse possession claim. In other words, he submitted that the Sunni party forcefully possessed the site, while the Shia Waqf Board was in rightful possession of it. He traced the adverse possession to when the Shia Mutawalli employed a Sunni imam for the month of Ramadan, to perform a special namaz which Shia imams cannot.

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Further, MC Dhingra submitted that the Sunni Waqf Board first formally claimed the site in response to a 26 February 1944 government notification, which required appointed district commissioners to prepare a list of waqf property. The 1944 notification was issued under the Enactment of Muslim Wakf Act, 1936. He clarified that he was not opposing the notification, only the Sunni Waqf Board's claim.

The bench listed the matter for Monday. MC Dhingra stated he had two more points to make regarding the trisection of the title by the Allahabad High Court in 2010.

The bench rose at 3.22 PM.

Case Documents

- 2010 Allahabad High Court Judgment
(<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>)

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