

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 38 Arguments: 2 September 2019

The Supreme Court is hearing a set of appeals to the 2010 Allahabad High Court judgment, which divided the land title equally among the Nirmohi Akhara, the Sunni Waqf Board and Ram Lala. The origins of the legal dispute trace back to 29 December 1949, when the Additional City Magistrate of Faizabad placed the site under the receivership of the state, under Section 146 of the Code of Criminal Procedure, 1898 (http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75). In response, the Nirmohi Akhara (suit number 3) and Sunni Waqf Board (suit number 4) filed suits in 1959 and 1961 respectively. In 1989, Ram Lala became a litigant when senior advocate Deoki N Agarwal (<https://timesofindia.indiatimes.com/india/The-man-who-was-Ram-Lallas-next-friend/articleshow/6668887.cms>) filed a suit (number 5) in the Allahabad High Court, acting as the deity's 'next friend'. The Akhara and Board's (and other relevant suits) were transferred to the High Court and clubbed to this matter.

On 30 August (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-37-arguments>), the court heard the Shia Waqf Board claim exclusive possession of the mosque. Sr. Adv. M.C. Dhingra submitted that the last *Mutawalli* was Shia and argued that the Sunni Waqf Board's actions amounted to 'attempted adverse possession'.

Morning Session

The bench assembled at 10.38 AM

Hindu Mahasabha

4.6 Invaders cannot be granted rights over territory

The court briefly heard the Hindu Mahasabha argue that an invader like Babur could not be granted any rights over conquered territory.

Senior Advocate Rajeev Dhavan's Arguments

Sr. Adv. Rajeev Dhavan representing the Sunni Waqf Board started his arguments. He outlined which advocates will argue after him: Zafaryab Jilani, Meenakshi Arora, Pasha.

7.1 Preliminary framing arguments

He began by establishing certain preliminary framing arguments, which he would later repeatedly rely upon to dispute the other parties' claims. These pertained to principles of state assimilation, regime change and corollary changes in law, methodology of interpretation, the nature of historical evidence.

7.1.1 Cannot rely on Vedic law

He submitted that India's modern legal system began in 1858 and argued that vedic law cannot be relied upon. 'What is the law that Your Lordships has inherited? The law we follow is not Vedic law. Your Lordships' legal system starts in 1858', he submitted.

Providing a genealogy of contemporary Indian law, he referred to Hindu law as Anglo-Hindu law. He submitted that interpretations of Hindu law are dependent on British law.

7.1.2 Hindu parties' evidence is unreliable

He disputed the nature of evidence being relied upon by the Hindu parties, Ram Lala in particular. He submitted that the parikrama (circumambulation) performed at Ram Jamnabhoomi cannot be treated as evidence. Recall that CS Vaidyanathan relied on the area of the parikrama to demarcate the area which belonged to Ram Lala. Rajeev Dhavan made a similar claim about the swayambhu (manifestation of idols).

7.1.3 Doctrine of justice, equity and good conscience

He drew the court's attention to the doctrine of justice, equity and good conscience. He submitted that the courts in the 19th century relied on this doctrine when a dispute arose for which there was no legislation. He pointed out that the doctrine was inherited from the British. He submitted that Mohamedan and Hindu law fall under British legislative action, which in turn became Indian law.

He submitted that the pages Misra relied upon from the Allahabad High Court judgment summarise oral arguments and do not include the High Court held.

7.1.4 Cannot use historical texts to frame negative inferences

He defined the limits of historical accounts in so far as they can be used to deduce material facts. He argued that historical texts cannot be relied upon to make negative inferences. In other words, if something is not mentioned in a historical text, like the presence of mosque, one cannot reliably infer that it did not exist.

7.1.5 Ram Lala's suit is not maintainable

He questioned the maintainability of Ram Lala's suit, emphasising that no Hindu party rebutted the Nirmohi Akhara's stand.

He challenged the deity's right to sue as a juristic person, highlighting various cases. He argued that Ram Lala's was not maintainable as the deity lacked *locus standi*. He argued that only the shebait has the right to sue for the deity.

He concluded the morning session by stating that the secular fabric of the Constitution is under threat, if the rights of Muslims are ignored.

The bench rose for lunch at 12.59 PM

Afternoon Session

The bench assembled at 2.16 PM.

7.2 Faith and religious scriptures are irrelevant

In the afternoon, Rajeev Dhavan argued that faith and religious scripture are not relevant when adjudicating a rights-based dispute. He referred to the Constituent Assembly debates, where the drafting committee chose not to include the phrase 'in the name of God' in the Preamble of the Constitution.

He argued that the court should not entertain that arguments by the other parties whereby they advance that 'Hindu laws are being violated under the Constitution'. He submitted that this was a public dispute governed by public law.

On the question of whether the site is 'res nullius' (no one's property), he submitted that the site lay vacant when a mosque was constructed on it. Hence, he argued it was free to be occupied.

He submitted that there was no donee of the property in which Swayambhu vested. He interpreted the Swayambhu to be a manifestation of the Lord (e.g. idol) and not a place.

The Bench rose at 3.57 PM.

The court listed the contempt application filed by Rajeev Dhavan for tomorrow, after Sr. Adv. Kapil Sibal mentioned it urgently. Rajeev Dhavan has faced harassment for appearing on behalf of the Sunni Waqf Board.

Case Documents

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

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