

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 22 Arguments: 6 August 2019

Today, the court resumed day-to-day hearings in Ayodhya. The bench comprising (https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/147/2019.02.20-Notice.jpg) of Chief Justice R Gogoi and Justice S Bobde, DY Chandrachud, A Bhushan and Abdul Nazeer, is hearing a set of appeals to the 2010 Allahabad judgment (http://elegalix.allahabadhighcourt.in/elegalix/ayodhyafiles/honsukj.pdf), which divided the Ayodhya title equally between the Sunni Wakf Board, the Nirmohi Akhara and Lord Ram.

Sr. Adv. SK Jain presented arguments on behalf of the Nirmohi Akhara. His primary claim is that the Nirmohi Akhara has wrongfully been deprived of possession and management of the Ram Janmasthan (Ram birthplace temple). He relied primarily on

two arguments. Firstly, he argued that the site ceased to be a mosque when day-to-day *namaz* halted in 1934 (and Friday *namaz* in 1949). Secondly, he argued that temple worshippers could not claim possession over a temple.

Background

Since March 2019, the parties have been unsuccessfully attempting to reach a settlement through mediation proceedings. The court had ordered (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-title-dispute-constitution-bench-orders-mediation>) the parties to attempt mediation, while their counsels reviewed official translations of court documents. Some parties objected to mediation, submitting that it would be fruitless. Nevertheless, the court ordered them to attempt it and appointed a mediation panel composed of retired Supreme Court Justice FM Kalifulla (Chairman), spiritual leader Sri Sri Ravi Shankar and Sr. Adv. Sriram Panchu.

Initially, mediation proceedings were set to end in early May 2019, but the court extended (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-18-arguments>) the mediation period until 15 August upon the request of some of the parties. However, in mid-July, one of the parties (Gopal Singh Visharad) filed an application (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-19-arguments-11-july-2019>) to resume day-to-day hearings, citing that no progress was being made in mediation. After reviewing the mediation panel's report, the court ordered an end to mediation proceedings on 2 August (https://scobserver-production.s3.amazonaws.com/uploads/case_document/document_upload/837/Ayodhya_2_august.pdf).

The bench assembled at 10.30 AM.

Before hearings began, the counsel for RSS ideologue KN Govindacharya urged the court to provide audio recordings of proceedings or at least offer official transcripts. Chief Justice Gogoi declined to consider the plea.

Chief Justice Gogoi announced that the bench would begin by hearing the appeals in suit number 3, filed by the Nirmohi Akhara. The Nirmohi Akhara owns and manages many temples across Uttar Pradesh and other states. It is a religious establishment of a public character and a registered society. It is a Panchayati math of the Ramand sect practising its own specific religious customs. At the Babri Masjid, it manages various Hindu religious structures in the outer courtyard, such as the *Chabutra*. In 1949, it filed a suit seeking possession of the disputed Ayodhya site.

During the hearing, Justice D.Y. Chandrachud asked whether Nirmohi Akhara's suit sought for a mandatory injunction or a declaration, being different types of relief. Sr. Adv. SK Jain responded that it was seeking a mandatory injunction, but stressed that in effect, it becomes a declaration for wrongful possession.

In the present appeal, the Nirmohi Akhara is represented by Sr. Adv. SK Jain.

1.1 Historical Possession of Disputed Land

Sr. Adv. S.K. Jain's first argument was that the Nirmohi Akhara historically possessed the dispute land and that it is the rightful manager of the temple.

He read out sections of the Allahabad High Court judgment (<https://www.amazon.in/Ayodhya-Matter-Ram-Janam-Bhoomi/dp/B0764GX1L7>) to establish the history of the Nirmohi Akhara's possession of the inner and outer courtyards at Ayodhya. However, he clarified that the present suit was only for the possession of the inner courtyard and not the outer courtyard.

1.1.1 Possession of the Outer Courtyard

Sr. Adv. S.K. Jain brought the court's attention to a map delineating the boundaries of Babri Masjid. Referring to this map, he submitted that the Nirmohi Akhara has been in possession of the outer courtyard since 1886. He noted that the 1961 suit filed by the Sunni Waqf Board disputed the Akhara's possession claim of the outer courtyard.

1.1.2 Possession of the Inner Courtyard

Sr. Adv. S.K. Jain made submissions next on the inner courtyard, corresponding to Sections E, F, G, H, I, J, K on the map. He submitted that the Nirmohi Akhara had been in possession of the temple (inner courtyard) since 1934, at the least. He emphasised possession of the *Bhandara, Chabutra and Sita Rasoi*.

1.2 Genealogy of the Site: Ram's Birthplace

Sr. Adv. S.K. Jain traced the genealogy of the site to 'before the living memory of man'. He submitted that Lord Ram was born at the site of the temple, which the Allahabad High Court has recognized as a legitimate 'Hindu belief'. He added that religious idols of Ram, Laxman and Hanuman were also at the site.

1.3 Sunni Waqf Board's Suit is Barred by Limitation

Sr. Adv. S.K. Jain focused his attention on suit 4 filed by the Sunni Waqf Board. He contended that it was barred by limitation, as the suit was filed too long after the original cause of action, when *namaz* ceased due to the appearance of Hindu idols.

He submitted that the Allahabad High Court held that the last evidence of *namaz* was in December 1949, whereas the suit was filed in 1961. He pointed out that the limitation period is six years under Article 120 of the Limitation Act, 1908 (<https://www.casemine.com/act/in/5a979dd64a93263ca60b74e0>), which is a residual provision for all suits not otherwise covered by the Act.

Sr. Adv. S.K. Jain added that even if Article 142 (similar to Article 120, but for immovable property) applied, it still prescribed a 12-year limitation period that would bar the Sunni Waqf Board's suit. This is interesting, because the Sunni Waqf Board's suit was instituted on 18 December 1962, i.e. within the 12 year limitation period.

1.4 The site ceased to be a mosque

Sr. Adv. S.K. Jain argued that the site ceased to be a mosque when the offering of five prayers in a day ceased in 1934. He submitted that Friday *namaz* continued until 1949, but was insufficient to claim the existence of a mosque. He cited judgments that suggested that a place is no longer a mosque if daily *namaz* had ceased.

1.5 Figures and Images at the site

Sr. Adv. S.K. Jain touched on the issue of figures and images being present in a mosque. He submitted that while there cannot be any figures or images in a mosque, it was for the person offering prayers to decide whether they wished to continue offering prayers in a place where idols are present. He cited the Allahabad High Court judgment for support.

Chief Justice Gogoi intervened, stating that the Allahabad High Court found no evidence to show that a Hindu idol has been present at the site since time immemorial. He requested Sr. Adv. S.K. Jain to provide evidence proving otherwise.

1.6 Nirmohi Akhara's suit is not barred by limitation

Sr. Adv. S.K. Jain advanced arguments on the maintainability of the Nirmohi Akhara's suit. He argued that the statute of limitations would not apply. The Allahabad High Court had ruled that the suit exceeded the statute of limitations under Article 120 of the 1908 Act, as it was not filed within the mandatory period of 6 years.

Sr. Adv. S.K. Jain stated that deciding the issue 'ultimately comes down to' Article 47 of the 1908 Act. He added that even if the remedy was extinguished, the right to the title would remain.

At 12:54, the court broke for lunch

1.7 Issues before the Allahabad High Court

Sr. Adv. S.K. Jain resumed arguments on behalf of the Nirmohi Akhara in the afternoon session. He took the bench through some issues before the Allahabad High Court 2010 judgment.

On the question of Nirmohi Akhara's suit having exceeded the statute of limitations, he cited Justice Khan's opinion from the 2010 Allahabad High Court judgment, which clearly stated that suits 3 (Nirmohi Akhara), 4 (Sunni Waqf Board) and 5 (Ram Lala) are not barred by limitation.

Sr. Adv. SK Jain then submitted that the Allahabad High Court did not decide on the issue of whether the suit is not maintainable for failing to join certain necessary defendants.

Chief Justice Gogoi asked about relief sought for in suit 5, filed on behalf of Ram Lalla Virajman, the idol, and the Shri Ram Janmsthan. Sr. Adv. S.K. Jain submitted that the relief granted was a one-third title division, being the dome and the *Sita Rasoi*. SK Jain focused on Justice Sharma's opinion in the Allahabad High Court judgment, wherein Ram Lala was held to be a legal entity, capable of holding land.

Sr. Adv. S.K. Jain addressed whether the suit was maintainable as a plaint, which was issue 14 before the Allahabad High Court. He submitted that Justice Sharma had said yes, but Justice Agarwal said no.

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Sr. Adv. SK Jain also flagged issue 17, which asked 'Is the Nirmohi Akhara a Panchayati Matha of Ramananda sect of Bairagis and is, as such, a religious denomination following its faith according to its own custom?' He submitted that the Allahabad High Court had decided the issue in favour of the Nirmohi Akhara.

1.8. Nirmohi Akhara's suit is not barred by limitation

Sr. Adv. S.K. Jain re-asserted that the Akhara's suit was not barred by limitation. He drew the court's attention to Article 47 of the Limitation Act, 1908, which states that a limitation period begins on the date of the final order. SK Jain argued that there was no final order in the case before the Faizabad magistrate, who had placed the title under State receivership in December 1949. He submitted that therefore, a cause of action never accrued, meaning the limitation period never kicked in. He added that even if Article 120 applies, Article 47 continues to apply as well and hence the limitation period never began.

Justice D.Y. Chandrachud stated that under Article 142 of the 1908 Act, one has to prove either dispossession or discontinuation of possession. Sr. Adv. S.K. Jain submitted that the Nirmohi Akhara was in possession until it gave it up possession to the Government Receiver under court orders. Justice Chandrachud responded by stating that dispossession implies 'involuntariness', to which Sr. Adv. S.K. Jain stated that the property was taken away from the Nirmohi Akhara after the 1950 order.

Chief Justice Gogoi reiterated his question as to whether this amounted to dispossession. With this, the bench rose for the day.

The hearing is to resume tomorrow. (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-23-arguments-live>)

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