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Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 28 Arguments: 16 August 2019

The court heard Sr. Adv. C.S. Vaidyanathan argue on behalf of Lord Ram. He took it through the archaeological evidence and argued that Babri Masjid was built on a temple in the 16th century. Further, he attempted to establish that there exists evidence of a temple dating back to as early as the Shunga dynasty (2nd century BCE).

Background

The court is hearing appeals to the 2010 Allahabad High Court judgment, which divided the disputed land title among the Nirmohi Akhara (suit no. 3), Sunni Waqf Board (suit no. 4) and Lord Ram (suit no. 5).

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The bench comprises Chief Justice Ranjan Gogoi (<https://www.scobserver.in/judges?id=ranjan-gogoi>) and Justices Sharad Bobde (<https://www.scobserver.in/judges?id=sharad-bobde>), D.Y. Chandrachud (<https://www.scobserver.in/judges?id=d-y-chandrachud>), Ashok Bhushan (<https://www.scobserver.in/judges?id=ashok-bhushan>) and Abdul Nazeer (<https://www.scobserver.in/judges?id=abdul-nazeer>).

The legal dispute arose on 22 December 1949, when Hindu idols were placed under the Babri Masjid dome. On 29 December, the Additional Civil Magistrate of Faizabad placed the site under the custodial responsibility of the State under the Code of Criminal Procedure, 1898 (http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75).

In 1959, the Nirmohi Akhara filed a title suit seeking possession of the disputed land. In 1961, the Sunni Waqf Board did the same. In 1989, both were named as defendants in the Allahabad High Court, when Deoki N Agarwal (<http://timesofindia.indiatimes.com/india/The-man-who-was-Ram-Lallas-next-friend/articleshow/6668887.cms>) filed a suit on behalf of Lord Ram.

Currently, the Supreme Court is hearing Sr. Advs. K. Parasaran and C.S. Vaidyanathan present arguments on behalf of Lord Ram. On 14 August (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-27-arguments>), Sr. Adv. C.S. Vaidyanathan argued that the Hindu belief is that the site is Ram Janmabhoomi, which pre-dates the construction of any mosques.

Today's arguments

The bench assembled at 11.01 AM.

2.18 Archaeological evidence shows that Babri Masjid was built on a temple

Sr. Adv. C.S. Vaidyanathan resumed by taking the bench through a map of the site. He explained that the path of *parikrama* shown on the map is a little different from what the oral evidence indicates.

Repeating himself, he referred to photographs of inscriptions, which are allegedly evidence of a temple pre-dating Babri Masjid. He highlighted a stone slab with the inscription 'Janmabhoomi'. He substantiated his position by referring to the Allahabad High Court's interpretation of the photographs.

2.18.1 Idols cannot be present in a mosque

He argued that the photographs show that the site was not a mosque, where prayers were offered. Justice Bobde stated that there is a distinction between whether a structure was built as a mosque and whether it is being used as a mosque. Vaidyanathan responded that images of human beings or God can never be inside a mosque and hence, the site could not be a mosque.

Justice Bobde asked Ar. Adv. CS Vaidyanathan which hadith he was referring to. Loosely referring to the Shariat, Sr. Adv. C.S. Vaidyanathan submitted that while *namaz* can be offered anywhere, a mosque requires certain conditions to be met. He said that it is against the tenets of Islam to have images of idols present in a mosque.

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Senior advocate Rajeev Dhavan, who represents the Sunni Waqf Board, interjected to say that it was offensive to say namaz can be offered anywhere. He submitted that Justice Sharma in his opinion (2010 Allahabad High Court judgment) had stated prayers can be offered anywhere and attributed it to Dhavan. Dhavan questioned whether this was a correct interpretation of Islam and denied making the statement.

CS Vaidyanathan continued, showing the court a photograph of the Garuda idol and stating that it shows that the site could not be a mosque. Justice Bobde inquired when the photo was taken. Justice Bhushan stated that it would be helpful to present photographs in the period prior to 1950 and explained that after 1950 the structure was evidently used as a temple. He recalled the mention of a collection of photographs in the Commissioner's report. Chief Justice Gogoi read out the mention of thirteen photographs taken by Basheer Ahmed.

2.18.2 Findings of Archaeological Survey of India

Sr. Adv. C.S. Vaidyanathan transitioned to read from the High Court order that directed the Archaeological Survey of India (ASI) to excavate the site. He attempted to establish that the ASI team worked under close supervision of all parties and lawyers. He detailed the composition of the excavation team.

2.18.3 Relevance of ASI report to the dispute

Next, he took the bench through sections of the report. First, he sought to establish that the site has seen successive structural activity on a public structure (s.a. a mandapa or temple) from the Shunga (approx. 200 - 100 BCE) to Gupta dynasties (approx. 350 CE to

550 CE). He described the existence of different formations at the site.

The bench went through relevant technical terms. Justice Bode inquired what stratigraphy is. Stratigraphy is the study of rock layers (strata) and layering (stratification). CS Vaidynathan explained that stratigraphy allowed the ASI to date different strata at the site using carbon dating.

Rajeev Dhavan clarified for the court that only organic matter can be carbon dated. He submitted that steel, iron and bricks could not be carbon dated. He inquired whether the idols had been carbon dated. CS Vaidyanathan said no, only the surrounding materials had been carbon dated.

CS Vaidyanathan stressed that the ASI report establishes the presence of a religious structure in as early as the 3rd or 2nd century BCE. He began discussing different artifacts and structures from the Shunga and Kushan periods. He took the bench through the Gupta and Rajput era strata as well.

At this point, Justice Bobde asked Sr. Adv. CS Vaidyanathan to clarify the relevance of the report to the current dispute. He stated that the report appears to apply to many areas in the region and is not specific to Ayodhya. Vaidyanathan stated that the report demonstrates that a public structure, such as a *mandapa* or temple, was likely in place since the 2nd century BCE. Justice Bobde was not satisfied and again asked Sr. Adv. C.S. Vaidyanathan to clarify how this fact relates to the dispute.

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Justice Chandrachud directed Sr. Adv. C.S. Vaidyanathan to page 59 of the report, which describes a circular depression apparently made by cutting a large brick pavement. Vaidyanathan suggested that it was a place of importance, as it faced the central structure where the Lord Ram idol is kept. He posited that it was used to drain out water after the abhisheka of a deity.

At this point, the bench rose for lunch at 12.58 PM.

2.18.4 Land was not vacant when Babur built the mosque

Arguments resumed at 2.18 PM. Sr. Adv. C.S. Vaidyanathan began by responding to Justice Bobde's query from prior to lunch: why are the ASI findings dating back to the Gupta empire and earlier relevant to the dispute? He submitted that it is likely the public structure was a temple.

Sr. Adv. C.S. Vaidyanathan speculated even further, suggesting that the site was likely always a Lord Ram temple. He said it was always believed to be the Ram Janmabhoomi.

He used this as an opportunity to dispute the claim of the Sunni Waqf Board that the land was vacant when Babur ordered the construction of a temple. He stressed that the archaeological evidence suggests otherwise.

2.18.5 Comparative analysis between the site and other temples in the region

Justice Chandrachud stated that Sr. Adv. C.S. Vaidyanathan must go beyond contending their argument and substantiate his own claim that a temple existed at the site. Further, he stated that civilizations have always settled near rivers and that the same area may have been occupied and vacated in different periods.

Justice Bobde asked whether there is evidence that any of the Gupta and earlier structures were religious in nature. He stressed that the mere fact that a structure existed was not relevant to the dispute.

Sr. Adv. C.S. Vaidyanathan highlighted the 'massive hall' with the evidence of pillared columns. He submitted that places of this scale were very likely to be religious in nature from that era.

Sr. Adv. Rajeev Dhavan clarified that the subsequent structures are not floors of the same building.

Justice Chandrachud asked Vaidyanathan to take the court through paragraph 109, that draws some comparative analysis between this site and comparable temples in other parts of region from the same eras.

CS Vaidyanathan read out extracts about the dimensions and physical features of the site. He also explained that no habitational structures, such as houses, drains or wells were found. This indicates that the site was not used for residential purposes.

He submitted that there is evidence of human activity at the site dating back to the 13th century. He clarified that such evidence includes mutilated or broken artefacts.

He submitted that evidence of continuous human presence begins in the 10th century.

2.18.6 Pre-16th century architecture is that of a temple

He returned to the argument that the pre-16th century archaeological evidence is indicative of a temple. He described the 17 rows of pillar bases from north to south, wherein 5 pillars comprise each row.

He argued that a mosque would never contain any pillars nor artifacts. He submitted that the 8 experts relied on by the Sunni Waqf Board suggested that an Islamic religious structure was beneath the disputed site. He argued the ASI report does not support this claim.

Sr. Adv. C.S. Vaidyanathan began to read the Allahabad High Court's interpretation of the ASI report. He focused on the pillar bases.

2.18.7 May have been a shrine to Lord Shiva

Returning to the circular depression, he submitted that the other archaeological thesis is that it may have been a shrine to Lord Shiva. Justice Chandrachud asked how a *pranala* (the discharge outlet) could be equated with the possible existence of a *shiva linga*. Sr. Adv. C.S. Vaidyanathan submitted that archaeologists must interpret in context. Justice Bhushan described the thesis as guess work.

Sr. Adv. C.S. Vaidyanathan described the terracotta figurines found at the site. Justice Chandrachud said they do not indicate that the site is of any religious significance.

Arguments concluded for the day. Chief Justice Gogoi asked Sr. Adv. C.S. Vaidyanathan what he had would present after the ASI report. Sr. Adv. C.S. Vaidyanathan responded that the oral evidence and his conclusion were left. He said he could finish in around three to four hours.

The matter is listed for Monday, 19 August.

Case Documents

- Justice Khan's Opinion, 2010 Allahabad High Court Judgment (https://scobserver-production.s3.amazonaws.com/uploads/case_document/document_upload/55/Allahabad_High_Court_Judgment.pdf)

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