

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

# Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

## Day 32 Arguments: 23 August 2019

Today is the tenth day of final hearing in the Ayodhya appeals. The 2010 Allahabad High Court judgment had divided the disputed title equally among three parties: the Nirmohi Akhara, Ram Lala and the Sunni Waqf Board.

Yesterday, Sr Adv. S.K. Jain representing the Nirmohi Akhara argued that the Nirmohi Akhara was only claiming shebaitship (management rights of the temple), possession and not title. The bench warned Sr. Adv. S.K. Jain not to contradict his own earlier written statement.

Today, Sr. Adv. S.K. Jain sought to clarify his claims and take the bench through relevant documentary and oral evidence.

## Morning Session

*The bench assembled at 10.35 AM.*

Sr. Adv. S.K. Jain requested the court for a week's additional time to present his arguments. Chief Justice Gogoi stated that the court had already granted sufficient time and directed Sr. Adv. S.K. Jain to restrict himself to presenting documentary and oral evidence. Chief Justice Gogoi stated that presenting such evidence would probably not take longer than a day and made it clear that the bench was 'looking forward to crisp, precise and pointed arguments'. Sr. Adv. S.K. Jain then requested permission to clarify his shebaitship argument.

### *1.15.4 Nirmohi Akhara's arguments contradict its written statement*

Chief Justice Gogoi asked Sr. Adv. S.K. Jain to first clarify how he could argue against his earlier written statement, referring to the title claim made by the Nirmohi Akhara. Sr. Adv. S.K. Jain offered to read the plaint in Ram Lala's suit as well as his written statement to clarify his position. Chief Justice Gogoi pointed out that Sr. Adv. S.K. Jain was spending a lot of time proposing what he would argue, but was not actually arguing.

Justice Chandrachud perused the Nirmohi Akhara's contradictory written statement. He cited how the Akhara claimed to 'own' the idols under the main dome and in the outer courtyard. Sr. Adv. S.K. Jain tried to argue that the statement was being made in the context of management and did not lay claim to ownership rights.

### *1.16 Ram Lala's suit is not maintainable*

Sr. Adv. S.K. Jain submitted that only the Nirmohi Akhara could maintain its suit, unlike the Ram Lala. He stressed that he could maintain his suit independent of the presence of the idols.

Justice Bobde asked whether the idol's suit was maintainable, referring to Sr. Adv. K. Parasaran and Sr. Adv. C.S. Vaidyanathan's arguments pertaining to Ram Lala's suit. Sr. Adv. S.K. Jain argued that the Ram Lalla idol was not installed in the Ram Janmabhoomi, but in a temple called the Ram Janmabhoomi. Justice Bobde appeared confused and asked for a distinction between the two places. Sr. Adv. S.K. Jain's argument appeared to be that the idol referenced in Ram Lala's is within the city of Ayodhya, but that the temple is different from the city. Justice Bobde did not appear convinced.

#### *1.16.1 Nirmohi Akhara does not oppose the deity, but the 'next friend' of the deity*

Justice Chandrachud questioned Sr. Adv. S.K. Jain's argument, stating that a shebait could not make adverse claims to the deity it purports to manage. He emphasised that the shebait could only act in the deity's interests. Justice Chandrachud asked Sr. Adv. S.K. Jain how he could be seeking the dismissal of the deity's suit, saying 'If suit 5 is dismissed, your claim cannot survive'.

Justice Bobde also asked Sr. Adv. S.K. Jain how he could take a position opposing the deity. Sr. Adv. S.K. Jain argued that he is not opposing the deity, but rather the plaintiff Sr. Adv. D.N. Agarwal, who acted as the 'next friend' of the deity.

### *1.16.2 Ram Lala has no valid claim over the outer lands*

Sr. Adv. S.K. Jain attempted to dispute Ram Lala's claim to the outer lands. He referenced historical documents that contained accounts of the acquisition and demolition of outer lands.

Justices Bobde and Bhushan informed Sr. Adv. S.K. Jain that this was not relevant to the present case, as the Allahabad High Court had not passed any decree with respect to such lands. Sr. Adv. S.K. Jain submitted that it was relevant to the present case because, according to the Nirmohi Akhara, Rama Lala was making claims over the outside area as well. He submitted that only the Nirmohi Akhara's name appeared in the historical documents and gazettes and therefore, only the Nirmohi Akhara could argue for the Hindus.

In response to the bench's scepticism on relevance of this outer lands issue, Sr. Adv. S.K. Jain submitted that in the Allahabad High Court, the original plaintiff had made claims on the outer lands and Justice Sharma's opinion had granted the same. However, the majority opinion did not decide the issue. Justice Bhushan responded by saying that the majority opinion would constitute the judgment. Justice Chandrachud added that neither Sr. Adv. K. Parasaran nor Sr. Adv. C.S. Vaidyanathan had revisited the issue in the Supreme Court and therefore the issue of disputing this claim did not arise.

The reason Sr. Adv. S.K. Jain raised the outer lands issue was to argue that Ram Lala's suit was not maintainable. He submitted that Ram Lala's next friend had failed to implead parties with respect to the outer lands issue. He stated that in order for the suit

to be maintainable, it required a rejoinder by parties who were not even impleaded in the lower court proceedings.

#### *1.16.3 Idols were present under the central dome before December 1949*

Justice Chandrachud asked Sr. Adv. S.K. Jain whether he was committed to the argument that the idols were present before the night of 22 December 1949, in reference to the Allahabad High Court judgment that held that the idols were placed under the central dome on that night. Sr. Adv. S.K. Jain affirmed that the idols had been present under the central dome for a very long time, prior 22 December 1949.

#### *1.17 Evidence of shebaitship*

Justice Chandrachud pressed Sr. Adv. S.K. Jain to substantiate his shebaitship claim using documentary and oral evidence. Just as he did yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-31-arguments>), Sr. Adv. S.K. Jain submitted that Umesh C. Pandey was the only Hindu party to dispute the Akhara's claim.

Justice Chandrachud then directed Sr. Adv. S.K. Jain to show evidence in support of shebaitship as this was the 'heart of [the Nirmohi Akhara's] case'. Sr. Adv. S.K. Jain submitted that he would present oral evidence first before documentary evidence. He submitted that no other party had disputed the oral evidence he would present.

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Sr. Adv. S.K. Jain read out witness statements attesting to the Nirmohi Akhara managing various temples at Ayodhya. The statements claim that the Nirmohi Akhara was in possession of both the inner and outer courtyards.

Justice Chandrachud raised the issue of the Ram *Chabutra*, a structure at the site. According to the Akhara's written statement, it was worshipping at the *Chabutra*. Sr. Adv. S.K. Jain clarified that this was a reference to the 'temple', the 'Ram *Chabutra* temple'. Justice Chandrachud pointed out that the written statement factually distinguished between the temple and the *Chabutra*. Sr. Adv. S.K. Jain stated that oral statements are subject to ambiguities.

Justice Nazeer remarked on the nature of the oral evidence being presented, stating that an oral testimony submitted in an affidavit does not carry the same weight as oral evidence given in a witness box. Sr. Adv. S.K. Jain pleaded with the bench to empathise with the fact that the Akhara is very poor, and to 'please understand [its] position'.

Sr. Adv. S.K. Jain then cited some documents that claimed that Nirmohi Akhara *mahants* were in possession of the temple.

Justice Bobde enquired as to whether Nihant Singh Fakir had any connection to the Nirmohi Akhara. Nihant Singh Fakir had placed an idol of Guru Gobind Singh in the mosque in the 1850s. Sr. Adv. S.K. Jain submitted that he did not know whether Nihant Fakir was a member of the Akhara, but that the idol that Fakir had installed was not

connected to the Akhara. He added that Fakir had stolen a 'nishan flag' from the Akhara and reiterated that even prior to the incident, the Akhara was in possession of the site.

As Sr. Adv. S.K. Jain presented evidence, it became clear that his primary proof was negative in nature, namely that no Hindus have contested the Nirmohi Akhara's shebait claim, thereby proving the same. Justice Bobde did not appear satisfied with this line of argument. In response, SK Jain submitted that all defendants were allowed to cross-examine the Nirmohi Akhara when it filed a suit against the former Uttar Pradesh Chief Minister Kalyan Singh's government acquiring the land. Justice Nazeer asked why parties such as the Superintendent of Police (a defendant in the Akhara's suit against government land acquisition) would have any reason to cross-examine the Nirmohi Akhara.

*The bench rose for lunch at 12.58 PM.*

### **Afternoon Session**

*Arguments for the Nirmohi Akhara resumed at 2.16 PM.*

#### *1.18 Key differences between Nirmohi Akhara and Ram Lala's suits*

Sr. Adv. S.K. Jain listed some key differences between the Nirmohi Akhara's suit and Ram Lala's suit filed by Sr. Adv. D.N. Agarwal. Firstly, he stated that the Ram Lala suit claimed that Babur constructed a mosque on the ruins of a temple, whereas the Nirmohi Akhara claimed that it has been a temple throughout. Secondly, the Ram Lala

suit claimed that idols were only placed under the mosque's central dome in December 1949, whereas the Nirmohi Akhara claimed that idols had always been present under the central dome.

Sr. Adv. S.K. Jain stated that the plaintiffs in Ram Lala's suit were 'outsiders' and that the Nirmohi Akhara enjoyed 'the support of all the locals'. He cited witness statements given by 90-year old Faizabad residents.

Sr. Adv. S.K. Jain claimed that the plaintiffs in Ram Lala's suit wanted to oust the Nirmohi Akhara. He submitted that only the Nirmohi Akhara knew the traditions of the temple and how to uphold them. He argued that if the court did not grant shebaitship, traditions of worship at the temple would permanently change.

Sr. Adv. S.K. Jain read out statements of worshippers who had visited or worshipped at Ayodhya. He was on the sixth statement of twenty witness statements.

*The bench rose at 2.48 PM. Arguments will resume on Monday* (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-33-arguments>).

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