

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 36 Arguments: 29 August 2019

The Supreme Court is hearing a set of appeals to the 2010 Allahabad High Court judgment

(<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>) that divided the disputed land title equally among the Nirmohi Akhara (suit number 3), the Sunni Waqf Board (suit number 4) and Ram Lala (suit number 5 filed by DN Agarwal).

Yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-35-arguments>), the court heard senior advocate PN Misra for the Akhil Bhartiya Sri Ramjanam Bhoomi Punarudhar Samiti (All India Sri Ram Birthland Restoration Committee, defendant 20 in suit number 4). PN Misra disputed the Sunni Waqf Board's claim that Babur constructed a mosque in the 16th century. Today, he relied on Islamic scripture to argue that the building has features that prevent it from being a mosque.

The bench assembled around 10.45 AM. The following is not an exact chronological summary of proceedings.

PN Misra opened today by responding to Rajeev Dhavan's claim from yesterday that Misra was relying on books that were not on the Allahabad High Court's record. PN Misra read from the relevant High Court order to show that Dhavan had been mistaken. The order refers to the defendants application under Order VIII Rule 1 of the Code of Civil Procedure, 1908.

3.12 No evidence that Babur constructed a mosque

PN Misra argued that Babur did not construct a mosque at the disputed site in the 16th century. He referred to Justice SU Khan's opinion (<http://elegalix.allahabadhighcourt.in/elegalix/ayodhyafiles/honsukj.pdf>) in the 2010 High Court judgment, where Justice SU Khan concurs with Justice Sharma and states that there is no evidence that Babur constructed the mosque.

Further, he once again disputed the inscriptions relied upon by the Sunni Waqf Board. He submitted that there are two inscriptions in particular that have been heavily relied upon - one at the entrance and the other at the pulpit inside the mosque. He submitted that they were both badly damaged during the 1934 riots. He suggested that they were not reliable evidence.

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Reading out excerpts from the judgment, he suggested that the mosque was built during the time of Aurangzeb.

3.13 The structure cannot be classified as a mosque

Relying on historical texts, Islamic scriptures and archaeological evidence, PN Misra argued that the structure could not be classified as a mosque.

3.13.1 Mosque cannot be constructed on disputed land

PN Misra's primary argument was that a mosque cannot be constructed on disputed land. He submitted that Babur was not the owner of the site where the building was located. Relying upon the testimony of Mohammad Idris, an expert on Islamic law, PN Misra submitted that a mosque cannot be constructed on the land belonging to another person. In addition, he cited a firman issued by Shah Jahan where Chief Qazi held mosque could not be built upon a land owned by a jeweller named Sati Das Javeri. Finally, he drew the courts attention to books authored by Privy Council judge Syed Amir Ali, an expert on Mohammedan Law. He read out from Ali's 'Spirit of Islam' to reiterate that a mosque cannot be built on disputed land.

PN Misra argued that even if Babur had constructed a mosque, it would not substantiate the Sunni Waqf Board's possession claim. He argued that as Babur was an invader, he did not own the land upon which he constructed the mosque. Hence, Babur would not have been able to create a waqf. Therefore, after Babur's death the mosque would have gone to his heirs and not come under the control of the Waqf board.

3.13.2 Site lacks water storage necessary for 'wudu'

He briefly referred to archaeological evidence to argue that the site lacked water storage to allow for a *wudu* (necesssary for ritual purification prior to namaz).

Rajeev Dhavan accused PN Misra of 'ad libbing'. The bench directed Misra to refer to page numbers from the High Court judgment (containing relevant exhibits) when relying on factual evidence.

3.13.3 Existence of Idolatry

PN Misra argued that the site is not a mosque because it has images of living beings. Relying on archaeological evidence, PN Misra submitted that the gates have two leaping tigers and a peacock. Reading out the testimony of an expert on Islamic law, he submitted that no Muslim would depict living beings either inside or outside a mosque. He contended that in addition to tigers and peacock, there was a picture of a Varaha Bhagwan (boar/pig) on the boundary wall. 'The question of depicting a pig doesn't arise at all', Misra read out.

Citing the testimony of expert witness Mohammad Idris, PN Misra submitted that if a mosque has representative images of animals or people, the Imam is duty bound to remove the same before offering namaz. He added that if namaz is offered without removing such images, the namaz is considered *makruh* ('irregular').

The bench rose for lunch around 1 PM.

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3.13.4 Reference to Islamic scriptures

After lunch, PN Misra reiterated his arguments from the morning, but with direct reference to the Qur'an and select Hadith. He sought to establish that the structure is not recognised as a mosque by Islam.

PN Misra submitted that he would limit himself to the six Hadith which are almost universally accepted by all Sunni Muslim (the al-Kutub al-Sittah). He said that he would assume the following principle: any promise made by the prophet during his lifetime, is binding upon all Muslims. He said that one such promise was to guarantee non-believers freedom of religion, subject to their paying jizya (tax on permanent non-Muslim subjects).

3.13.5 Babur did not own the land

PN Misra substantiated his argument that Babur did not own the disputed land and hence could not have constructed a mosque. Justice Chandrachud opined that Babur was an absolute monarch and could go against Islamic law. PN Misra clarified that with regards to mosques, Babur would be governed by Islamic law. PN Misra submitted that when Babur defeated Ibrahim Lodhi at the battle of Panipat, he only gained the right of sovereignty that Lodhi possessed, as per Islamic law

3.13.6 Waqf cannot be created through an agent

Next, PN Misra submitted that Islamic law does not allow for a Waqf to be created through an agent (ergo, Mir Baqi could not have created a Waqf on behalf of Babur).

Justice Bobde asked whether an emperor can create a Waqf out of State property or whether this is limited to personal property. PN Misra submitted that the Mughal historian, Tarik e Firishta (1560-1620), recorded the following: a conqueror can create a Waqf out of his remuneration (one tenth or one fifteenth) from conquered land.

3.13.7 No evidence of regular namaz

PN Misra concluded the day by submitting that prior to 1934 there existed no evidence of regular namaz being offered at the disputed mosque. He added that Islamic law dictates that a structure is only a mosque if namaz is offered twice after the azaan (call to prayer) is read.

The hearing concluded with Justice Chandarchud explaining a paragraph from the High Court judgment on the mixed use of religious spaces. He stated that Islam is exclusionary in the sense that a mosque cannot be used for non-prescribed forms of worship. He said that this was unlike Hindu temples, which allow mixed use. He explained that God in the Gita says that 'even if you are worshipping another God, you are worshipping me'. He emphasised that offering namaz in a temple would not detract from the temple's nature.

The court rose at roughly 4 PM. PN Misra will conclude tomorrow morning (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-37-arguments>), when he will dispute the veracity of land records relied upon by the Sunni Waqf Board.

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(Court reporting by Vikram Hegde)

Case Documents

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

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