

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 40 Arguments: 4 September 2019

The Supreme Court is hearing a set of appeals to the 2010 Allahabad High Court Judgment that divided the disputed land equally among the Nirmohi Akhara (suit number 3), Sunni Waqf Board (suit number 4) and Ram Lala (suit number 5). So far the court has heard arguments for the Nirmohi Akhara and Ram Lala, who claim shebaitship rights and that the land is a deity, respectively. This week, Sr. Adv. Rajeev Dhavan opened arguments for the Sunni Waqf Board, challenging the evidence relied upon by the Hindu parties.

Today, Sr. Adv. Rajeev Dhavan disputed the Nirmohi Akhara's claims of possession over the inner and outer courtyard.

Morning Session

The bench should assembled at 10.39 AM.

Before arguments began, Sr. Adv. Rajeev Dhavan informed the bench that the son of the litigant Mohd. Hashim was 'attacked by a shooter' yesterday. Chief Justice Gogoi said that the bench would look into it.

7.7 Nirmohi Akhara's management rights do not translate into ownership

Sr. Adv. Rajeev Dhavan opened arguments by conceding that the Nirmohi Akhara has shebaitship rights. Justice Bhushan remarked that the Sunni Waqf Board in accepting the Akhara's management rights, is conceding that part of the land belongs to the Akhara.

Referring to the Akhara's pleadings in its 1959 suit, Sr. Adv. Dhavan argued that the Akhara's claim is limited to management and charge, and amounted to seeking an easementary right. In other words, he argued that the Akhara did not claim rights to the title, but rather only rights to access to the land in order to pray.

Sr. Adv. Dhavan submitted the Sunni Waqf Board allowed the Nirmohi Akhara to manage worship at the site and that it is not opposed to doing so in the future. However, he stressed that the property belongs to the Waqf.

7.8 Nirmohi Akhara's rights are limited to the outer courtyard

Justice DY Chandrachud pointed out that the Sunni Waqf Board in its original pleadings, seeks ownership of both the inner and outer courtyard. He said that if Sr. Adv. Dhavan accepts the Akhara's shebaitship rights, it is conceding the outer courtyard

to the Akhara.

He submitted that the Akhara's original suit was limited to the inner courtyard. The original suit was filed in response to the Faizabad magistrate placing the disputed land under the receivership of the State in 1949 under Section 146 of the CrPC. Sr. Adv. Dhavan emphasised that the magistrate's order was limited to the inner courtyard.

While submitting that the original suit was limited to the inner courtyard, Sr. Adv. Dhavan argued that the Akhara's temple management rights are restricted to the outer courtyard. He submitted that the idols were shifted from the chabutra (outer courtyard) to the central dome (inner courtyard) in 1949, referencing the findings of the Allahabad High Court judgment. He added that the original pleadings do not claim that Ram was born where the dome lies and referred to witness statements which identify Ram's birthplace as where the chabootra sat.

He read out excerpts of the Allahabad High Court judgment that held the Akhara was not entitled to any relief. He questioned how then the Akhara could be granted the outer courtyard.

7.9 Nirmohi Akhara's suit is barred by limitation

Sr. Adv. Dhavan argued that the Nirmohi Akhara's suit is barred by limitation. He argued that the Akhara did not suffer a continuous wrong through the site being placed under the receivership of the State and that therefore the limitation period was 6 years under Article 120 of the Limitation Act, 1908

(<https://www.casemine.com/act/in/5a979dd64a93263ca60b74e0>) (note: this Act has both 'sections' and 'articles'). The receivership order was issued in 1949 and the Akhara filed its suit in 1959.

7.11 Site is subject to Quranic law

The Bench inquired whether the site is subject to Quranic law (recall that Sr. Adv. PN Misra argued that the structure lacks the features of a mosque under Quranic law). Sr. Adv. Dhavan argued that it is, in so far as this is compliant with Indian law. He submitted that the relevant law is Mohammedan Law, which evolved under British rule. He relied on witness statements that state it is possible for a mosque to co-exist with a Hindu structure. Further, he submitted that after 1850 India is 'full of places with masjids and temples side by side'.

7.12 Nirmohi Akhara and Ram Lala

Sr. Adv. Rajeev Dhavan submitted that the Nirmohi Akhara originally did not recognise the site as a juridical entity, as put forth by Sr. Advs. K Parasaran and CS Vaidyanathan for Ram Lala. Sr. Adv. Dhavan submitted that the Akhara in its written statement said the word 'Janmasthan' is meaningless, but that later Sr. Adv. Jain in his oral arguments accepted that the Ram Janmasthan is a juridical entity.

Next Sr. Adv. Dhavan questioned the maintainability of Ram Lala's suit. Referring to Sr. Adv. SK Jain's arguments, he submitted that the person representing the deity (his 'next friend') must be a worshipper and that DN Agarwal was not a worshipper. Further, he argued that the suits of the Nirmohi Akhara and Ram Lala cannot co-exist, as they both seek to represent the deity.

Afternoon Session

The Bench Assembled at 2.15 PM.

7.13 Nirmohi Akhara referred to irrelevant documents

After lunch, Sr. Adv. Rajeev Dhavan submitted that Sr. Adv. SK Jain (Nirmohi Akhara) referred to documents which are missing from the Supreme Court record. He mechanically took the court through a list of documents and submitted that 21 documents on the High Court record are missing from the Supreme Court record. Sr. Adv. SK Jain said he would look into it, while CJI Gogoi stressed that the bench would not consider documents referred to, but not presented in court.

In addition, Sr. Adv. Rajeev Dhavan argued that other documents relied upon by the Nirmohi Akhara are 'irrelevant, inadmissible or incorrect'. He buttressed his claim by reading out excerpts of Justices Agarwal and Sharma's opinions from the Allahabad High Court judgment.

7.14 Nirmohi Akhara has management rights over the outer courtyard

Sr. Adv. Rajeev Dhavan submitted that the Nirmohi Akhara had management rights only over the Ram Chabootra in the outer courtyard. He read out excerpts of the findings from the Allahabad High Court judgment, which state that Hindu prayer took place at the Ram Chabootra. Further, he submitted that the Chabootra was considered the Ram Janmabhoomi.

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Next, he addressed the Akhara's 'landlocked argument', wherein Sr. Adv. SK Jain argued that the mosque was surrounded (landlocked) by the Hindu outer courtyard and hence was not a mosque. Sr. Adv. Dhavan submitted that the Allahabad High Court had dismissed this argument.

7.15 Role of historical texts

Sr. Adv. Dhavan reiterated his argument from yesterday that counsels could not draw negative inferences from historical texts. In particular, he argued that the fact that the *Baburnama* does not mention a mosque at Ayodhya, does not establish that there was no mosque at Ayodhya. He offered the analogy of Marco Polo not recording the Great Wall of China in his travelogues - 'it does not follow that the Great Wall does not exist'.

Next he relied on historical texts to argue that a mosque existed. He primarily referred to the analysis of 19th century British archaeologist P Carnegie, who argued that Babur constructed a mosque. Further, he relied on the report by Millets, who makes the same inference as Carnegie.

Finally, he referred to a British grant issued under the 1863 Religious Endowments Act, which recognised the building as a mosque.

The bench rose at 3.57 PM. Tomorrow, Rajeev Dhavan will take the court through 20th century documents.

Case Documents

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

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