

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 47 Arguments: 18 September 2019

The bench comprising Chief Justice Gogoi and Justice Bobde, Chandrachud, Bhushan and Nazeer continued to hear the Ayodhya title dispute today. The primary parties are the Nirmohi Akhara, the Sunni Waqf Board and Shri Ram Virajman.

Sr. Adv. Rajeev Dhavan appearing for the Sunni Waqf Board is disputing the value of exhibits relied upon by the counsels for Shri Ram Virajman. Today, apart from contesting exhibits, he sought to convince the Bench of the evidentiary value of 1991 report by four prominent historians, which rejects that the disputed land is Ram's birthplace.

The Bench assembled at 10.37 AM.

Mediation allowed

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Chief Justice Gogoi directed the parties to conclude oral arguments by 18 October 2019. He stated that hearings would take place on Saturdays, if necessary. Sr. Adv. Dhavan stated that he would require about two weeks to conclude his oral arguments, after which the primary Hindu parties would present their rejoinders. He requested for a few hours to respond to their rejoinders, if necessary.

The Bench passed an order (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-sc-order-mediation-2>) allowing the parties to engage in mediation with the help of the earlier court appointed mediation panel. Chief Justice Gogoi added that mediation proceedings should take place under strict confidentiality, as ordered previously (https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/337/Babri_Order.pdf).

Sr. Adv. CS Vaidyanathan appearing for Shri Ram Virajman stated that the deity would not like to re-engage in mediation.

Third parties

Reflecting on the petition by Dr. Subramanian Swamy, Sr. Adv. Dhavan requested the Bench not to hear it alongside the current appeals. The Bench had previously observed that it would not hear third-party petitions alongside the main appeals arising from the original suits. Sr. Adv. Dhavan requested the Bench to set an alternate time to hear Dr. Swamy's petition.

7.47 Bench to consider four historians as expert witnesses

Continuing his arguments from yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-46-arguments>), Sr. Adv. Dhavan contested the Allahabad High Court's dismissal of a 1991 report (<https://frontline.thehindu.com/static/html/fl2721/stories/20101022272113200.htm>) by

four historians: R.S. Sharma, M. Athar Ali, D.N. Jha and Suraj Bhan. Their report rejected claims that the disputed land is Lord Ram's birthplace. The Allahabad High Court did not consider them experts under the Indian Evidence Act, 1872 and hence did not treat their report as evidence. In addition, it repeatedly noted in its judgment that the one of the four experts, D.N. Jha, had not signed the report.

Sr. Adv. Dhavan argued that the Bench should consider the four historians as expert witnesses, referring to case law and the textbook *Sarkar's Commentary on the Law of Evidence* (<https://www.amazon.in/Sarkars-Commentary-Law-Evidence-Bangladesh/dp/8189619039>). He stressed the multi-disciplinary nature of the report. The Allahabad High Court judgment records that one of the historians, Suraj Bhan, is also an archaeologist. The Bench inquired who had commissioned the 1991 report. Sr. Adv. Dhavan explained that they had volunteered it, but sought to assure the Bench that they are neutral, unbiased experts.

Sr. Adv. Dhavan also brought to the court's attention the testimony of historian Suvira Jaiswal, who had deposed before the High Court. She had testified that there was no archaeological evidence demonstrating that the site was Ram's birthplace. The Allahabad High Court did not consider her an expert witness, as she had limited knowledge of the region.

Justice Chandrachud observed that at best, the Bench could consider their report, and other relevant testimony and opinions (not evidence). He stated that the four historians did not have access to the underlying relevant research, as the Archaeological Survey of India had not shared their findings with the historians. He said that the Bench would place more weight on the Archaeological Survey of India's 2003 report.

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7.48 Shri Ram Virajman's evidence does not show Lord Ram's exact birthplace

Next, Sr. Adv. Dhavan sought to dispute the value of various exhibits relied upon by Shri Ram Virajman. He emphasised how admitted exhibits failed to refer to the exact birthplace of Lord Ram. He noted that the Allahabad High Court had found that the Hindu scripture *Skanda Purana* does not establish the precise birthplace location.

He argued that Shri Ram Virajman had overrelied on gazetteers and travel accounts (https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/223/suit5_gazetteers_1.jpeg) to establish Lord Ram's birthplace and that the Babri Masjid had been constructed on top of a demolished temple. He proceeded to dispute the conclusions drawn from travelogues, such as those of John Jourdain (*The Journal of John Jourdain 1608* (<https://www.flipkart.com/journal-john-jourdain-1608-1617-describing-his-experiences-arabia-india-malay-archipelago/p/itmetgxhrhxg4mpm>))).

The Bench rose at 12.50 PM.

Sr. Adv. Rajeev Dhavan continued to dispute travel accounts in the afternoon session. He argued that negative inferences could not be drawn from these accounts and stated that simply because an account does not mention a mosque, it does not follow that a mosque does not exist.

Next, he drew his attention to gazetteers, arguing that they are not thoroughly reliable. First, he took the bench through case law relied upon by the plaintiffs in Shri Ram Virajman's suit to establish that gazetteers require significant corroboration. He argued that even though Section 81 of the Indian Evidence Act, 1872 establishes that gazettes can be relied upon as evidence, they nevertheless require thorough corroboration.

7.49 Disputing witness statements from Shri Ram Virajman's suit

Sr. Adv. Rajeev Dhavan refuted several witness statements relied upon by the plaintiffs in Shri Ram Virajman's suit. For clarity, he divided the witness statements into four categories: (i) witnesses on facts; (ii) witnesses for Vishnu Hari inscriptions; (iii) expert witnesses; (iv) archaeologists.

Today, he made submissions on 'witnesses on facts' and submitted that their testimonies are often self-contradictory in terms of factual propositions. Further, he emphasised that many of these witnesses repeatedly stated that their beliefs were based on hearsay. He sought to establish that the statements of the 'witnesses on facts' are unreliable.

7.51 No Hindu prayer in the inner courtyard in spite of British-made railing

On several occasions over the past two weeks, Sr. Adv. Dhavan has maintained that Hindu prayer was limited to the outer courtyard, at the Ram Chabootra, before 1949. Today, the Bench tested this by asking Sr. Adv. Dhavan about Hindu prayer offered at a railing installed in 1855. The British installed this railing in order to maintain peace, after which the Ram Chabootra became the focal point of Hindu worship. The Bench asked if it was possible that prior to 1855, Hindus offered prayer in the central dome (inner courtyard).

Sr. Adv. Dhavan stated that there was no reasonable probability to assume that prayer took place in the inner courtyard and the same amounted to conjecture. He informed the Bench of the context in which the British installed the railing. He described the high degree of animosity between Hindus and Muslims at the time, and submitted that a mindset of conquest ('we'll take what is theirs') prevailed. He stated that no evidence demonstrated that Hindu prayer was being offered at the railings, facing towards the central dome. He added that he would show relevant evidence tomorrow to further substantiate his position.

Tomorrow, Sr. Adv. Dhavan will focus on witness statements relating to the Vishnu Hari inscriptions.

The Bench rose at 3.44 PM

Case Documents

- 8 Mar 2019 Mediation Order (https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/337/Babri_Order.pdf)
- 18 Sep 2019 Mediation Order (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-sc-order-mediation-2>)
- 2010 Allahabad High Court Judgment (<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>)

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