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Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 51 Arguments: 24 September 2019

The Supreme Court continues to hear the set of appeals to the 2010 Allahabad High Court judgment that divided the title among the Nirmohi Akhara, the Sunni Waqf Board and Shri Ram Virajman. Yesterday, Sr. Adv. Rajeev Dhavan for the Sunni Waqf Board concluded his arguments on Shri Ram Virajman's suit. Today, he will begin his arguments on the layworshipper Gopal Singh Visharad's suit.

The Bench assembled at 10.38 AM.

Clarifications pertaining to yesterday's arguments

Sr. Adv. Dhavan opened today by noting an error he had made yesterday with regards to Sr. Adv. K. Parasaran's arguments on limitation. Due to a clerical error by his team, he had falsely attributed to Sr. Adv. Parasaran the argument that suit number 5 is within

limitation due to Section 10 of the Limitation Act, 1908.

Next, he clarified why he had framed the Constitution of India as a transformative yesterday. He said he wanted to show that the concept is a '*double edged*' sword. He noted that transforming society can mean different things to different citizens and that the Bench should exercise caution.

7.65 Belief alone cannot establish juristic personality

Finally, he returned to the Bench's Chidambaram Temple question from yesterday. The Bench had sought clarification on what happens when a deity is not physically manifested, such as at the Chidambaram Temple., Today Sr. Adv. Dhavan reiterated that belief alone cannot bestow something with juristic personality – it must be substantiated by something tangible. He handed over a list of relevant judgments to defend his claim.

7.66 Summary of claims in Gopal Visharad's suit

Today, Sr. Adv. Dhavan presented arguments on suit number 1, filed by the lay-worshipper Gopal Singh Visharad. Visharad has since died and has been replaced by his son Rajendra Singh. He said that the death of Visharad immediately extinguished his private rights and that they could not be automatically transferred to his son.

7.66.1 Reliefs sought

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First, he introduced Visharad's suit, saying that the plaintiffs prayed for the following reliefs: (i) the right to do *darshan* in Ram Janmabhoomi, (ii) a permanent and perpetual injunction preventing the removal of the idols placed in the inner dome.

7.66.2 Arguments made

Then, he summarized the arguments of the plaintiff, stressing that it was primarily filed against the State:

- Our suit is not in conflict with Shri Ram Virajman's suit (original suit number 5)
- The 1885 trial court judgment only applied *res judicata* to the Ram Chabutra. In 1885, the Mahant in charge of the Chabutra filed a suit seeking directions from the government to allow him to build a temple, which he was denied.
- Our right to worship was continuous
- The disputed land is the Ram Janmabhoomi

7.66.3 Visharad's methodology

Sr. Adv. Dhavan premised his arguments by highlighting for the Bench the methodology adopted by Visharad's counsels. Expanding on Hindu theology, he said that they ordinarily would have relied on '*sadachar*' (moral laws). He submitted that *sadachar* can override the *smriti* (Hindu texts attributed to an author, unlike *sruti*), but that they had avoided this to make their arguments consistent with the *shastras* (Hindu treatises on *dharma*). He insisted that regardless of their adoption of such a methodology, they cannot avoid the doctrines of custom and *factum valet* – used by the British to first interpret Hindu Law in the 19th century.

7.66.4 Discrepancies in pleadings

Next, Sr. Adv. Dhavan emphasised inconsistencies and contradictions in their pleadings. He focused on the location of the Ram Janmabhoomi. He submitted that they initially claimed rights over the Ram Chabutra located in the outer courtyard. He said that only later did this become a claim over the entire site. By contrast, he said the Sunni Waqf Board had remained consistent in what it was claiming rights over.

Sr. Adv. Dhavan concluded by contesting conclusions drawn from case law, the consistency of affidavits and the reliability of witness statements relied upon by the plaintiffs.

The Bench rose at 12.54 PM and reassembled at 2.15 PM.

7.67 Summary of arguments

Sr. Adv. Zafaryab Jilani began his arguments on behalf of the Sunni Waqf Board. He said that he would rely on the evidence to apprise the court of the following:

1. Neither the *Ramayana* nor the *Ramcharitamanas* verify the belief that the Ram Janmabhoomi is the birthplace of Lord Ram
2. Historical books, gazetteers and travel accounts fail to establish that the birthplace of Ram is at the disputed site.
3. No Hindu worship took place the middle dome (of the Babri Masjid) prior to 1950 and that the belief that it did, dates to after 1950.

The Bench observed that Sr. Adv. Jilani was relying on negative inferences to put forth his arguments and said that Sr. Adv. Dhavan had argued negative inferences could not be drawn from historical texts. For example, Sr. Adv. Dhavan had argued that simply

because the *Baburnama* does not mention the Babri Masjid, it does not follow that the Masjid did not exist. Sr. Adv. Jilani responded by simply stating he would base his arguments on both positive and negative inferences.

7.68 Location of Lord Ram's birthplace

He submitted that while the *Ramcharitamanas* mentions Ayodhya, it does not refer to it as Lord Ram's birthplace. The Bench inquired whether non-mention of Lord Ram's birthplace, prevents Hindus from believing that the place was Lord Ram's birthplace. Sr. Adv. Jilani put forth that Lord Ram's birthplace as actually located north of the disputed land.

7.68.1 Deity not born in inner courtyard

Sr. Adv. Jilani clarified that the Sunni Waqf Board does *not* dispute that Lord Ram was born in Ayodhya. However, he stressed that the deity was not born in the inner courtyard, where Babri Masjid is located. He noted an 1886 trial court order, finding that Lord Ram's birthplace is at the Ram Chabutra (outer courtyard). The Bench noted that the Chabutra is only 50-60 yards from Babri Masjid. Sr. Adv. Jilani said the belief that Lord Ram was born in the inner courtyard was new.

He proceeded to read out witness statements to show that the location of the Ram Janmabhoomi cannot be inferred from religious scriptures.

7.69 Babur built a mosque on barren land

Next, the Bench sought to clarify what Sr. Adv. Jilani's position was on the question of whether a temple pre-dated the Babri Masjid. It stated that there are three possibilities with regards to the construction of the mosque: (i) Babur demolished a temple to build a mosque; (ii) Babur built mosque on the ruins of a temple; (iii) Babur built a mosque on barren land (does not necessarily exclude the possibility of a temple pre-dating a mosque). Sr. Adv. Jilani submitted that he would base his arguments on the third alternative.

The Bench rose for a brief break at 4 PM, reconvening at 4.15 PM.

7.71 Insufficient evidence to show that Janmabhoomi is Lord Ram's birthplace

After the break, Sr. Adv. Jilani referred to various historical exhibits to show that there is a lack of evidence to show that the disputed site is the birthplace of Lord Ram.

7.71.1 Ain-i-Akbari

Expanding on the *Ain-i-Akbari*, he submitted that it provided an extensive account of the area, including events, demographics, locations. He suggested that it would have surely mentioned the birthplace of Lord Ram, were it located at the disputed site.

The Bench noted that the *Ain-i-Akbari* also does not mention the Babri Masjid. To which Sr. Adv Jilani responded that it was not an important mosque at the time, whereas the birthplace of Lord Ram should have been.

7.71.2 Other historical reports

He concluded for the day by referring to reports by the 18th century Jesuit missionary Tiefenthaler, an extract of the 1815 *East-India Gazetteer* by Walter Hamilton and a 19th century report by Irish civil servant Montgomery Martin which had no mention of the Ram Janmasthan.

Hearings concluded at 5.08 PM.

(Court reporting by Sanya Talwar)

Case Documents

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

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