

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 52 Arguments: 25 September 2019

The Bench comprising the Chief Justice and Justice Bobde, Chandrachud, Nazeer and Bhushan are hearing the counsels for the Sunni Waqf Board respond to the other original suits in the Ayodhya title dispute. So far, Sr. Adv. Rajeev Dhavan has presented arguments on original suit numbers 1 (Gopal Singh Visharad), 3 (Nirmohi Akhara) and 5 (Shri Ram Virajman). Yesterday, the court began hearing Sr. Adv. Jilani, also appearing for the Sunni Waqf Board, argue that there is insufficient evidence to show that Lord Ram was born where the mosque now lies.

The Bench assembled at 10.57 AM.

Mentioning

Before arguments began, an advocate not representing any of the current parties submitted that events in the *Ramayana* cannot be considered historical facts. He was referring to Sr. Adv. Jilani's arguments from yesterday and said that they hurt the sentiments of Hindus.

The Bench said it was not entertaining interventions at present.

7.72 Historical documents do not establish Lord Ram's birthplace

Resuming his arguments from yesterday, Sr. Adv. Jilani submitted that historical documents on the record do not establish conclusively the birthplace of Lord Ram. Yesterday, he had finished going over religious scriptures and began taking the Bench through historical books, travel accounts and gazetteers. Today, he continued with the latter. To demonstrate his argument, he read out excerpts from Martin Montgomery's 1838 book (<https://archive.org/details/historyantiquit00martgoog>), Edward Thornton's 1854 gazetteer (https://archive.org/details/bub_gb_xpfB8bld7WcC/page/n3), A.E. Cunningham's 1865 archaeological report (https://archive.org/stream/archaeologicalsu01arch/archaeologicalsu01arch_djvu.txt) and District Officer P. Carnegie's 1870 historical account. He highlighted a reference to an alternative birthplace of Lord Ram and discussed how there had existed a lack of unanimous or 'joint worship' by Hindus.

He then addressed an imperial gazette (17 in compilation) that places the birthplace at the disputed site. He stressed that it placed the birthplace as being at the Ram Chabutra, which is in the outer courtyard - the mosque is located in the inner courtyard.

The Bench observed that the Chabutra is only 40-50 feet away from the inner courtyard. Sr. Adv. Jilani clarified that it was over 60 feet away. The Bench noted that the imperial gazette describes the Chabutra as a mere symbol and that most of the 'enclosure' is marked as the birthplace. Further, the Bench remarked that it may be that Hindus worshipped in the outer courtyard merely because they were denied access to the inner courtyard. Sr. Adv. Jilani refuted this, saying that there is no evidence that Hindus believed that the inner courtyard was Lord Ram's birthplace prior to 1858.

7.73 Summary of arguments

Sr. Adv. Jilani concluded by summarising his primary assertions, arguing that there is no conclusive evidence that:

1. Hindus had believed that the central dome (inner courtyard) was the birthplace of Lord Ram, between when Babri Masjid was constructed (1528) and when the State received custody of the site (1949)
2. any kind of pooja was being offered at the site prior to the mid-19th century
3. the central dome is the birthplace of Lord Ram

7.74 Archaeological Survey of India's findings

Next, the Bench heard Sr. Adv. Meenakshi Arora appearing for the Sunni Waqf Board. She stated that she will primarily present on the Archaeological Survey of India's (ASI) 2003 report, wherein it concluded that there was a large public structure underneath Babri Masjid that was likely a Hindu temple.

Prior to beginning her arguments on the ASI's report, she briefly added to Sr. Adv. Jilani's arguments from this morning and yesterday. First, she stressed that Shri Ram Virajman's suit had failed to prove it had the title. Next, she turned to Sr. Adv. Jilani's

concession from yesterday that Lord Ram's birthplace is at the Ram Chabutra in the outer courtyard. In particular, Sr. Adv. Jilani had said he would not challenge a Faizabad district judge's finding that the Chabutra is the deity's birthplace. Sr. Adv. Arora stressed that the district judge had also noted that the status quo should be maintained - meaning, the Sunni Waqf Board would keep possession of the inner courtyard.

7.74.1 Summarised grounds of dispute

Sr. Adv. Arora said she would dispute the findings on the following grounds:

1. Archaeology is an inferential science and, as such, the court should place little weight on the opinions of archaeologists
2. The ASI's report is fraught with inaccuracies, 'apparent on the face of the record'

7.74.2 ASI's findings conflict with Tojo-Vikas International

Next, she prefaced her arguments on the ASI's report by discussing the context in which it was commissioned. The Allahabad High Court had ordered the excavations because the plaintiffs in original suit numbers 1 (G.S. Visharad) and 2 (Shri Ram Virajman) claimed that Babri Masjid was built on a temple and that Babur demolished the temple, respectively.

The Bench rose at 12.45 PM. The Bench reassembled at 2.05 PM.

Sr. Adv. Arora submitted that the ASI's findings are conflicting with those of Tojo-Vikas International. The ASI had outsourced the ground penetrating survey (GPS) to Tojo-Vikas. She argued that, as such, the Tojo-Vikas survey should not have been relied upon

by the High Court.

7.74.3 No evidence of demolition of earlier structure

Following, she argued that there existed no findings indicating that a structure was demolished. Recall that Shri Ram Virajman (plaintiff in original suit number 5) had argued that Babur had demolished a Hindu temple to construct the mosque, in order to substantiate its claim that it had ownership over the title. Sr. Adv. Arora argued that it was reasonable to expect evidence of a demolition and substantiated this by referring to archaeological surveys of the Somnath temple. She submitted that these surveys found evidence of demolition, such as burn marks.

7.74.4 No prior dedication to Lord Ram

Sr. Adv. Arora asserted that the ASI's report offered no findings on whether a dedication to Lord Ram had taken place, prior to the construction of Babri Masjid. The Bench observed that it was unlikely there would be evidence of a dedication, given that it would have taken place in the 12th century. Sr. Adv. Arora pressed on, claiming that the Shri Ram Virajman had failed to prove that there was a temple at the disputed site, and further, that *swayambhu* (divine self-manifestation) had taken place.

7.74.5 ASI report is not admissible

Next, she submitted that the High Court failed to consider the Sunni Waqf Board's objections to the admissibility of the ASI's report. She stated that the report was not admissible on technical grounds, noting that it was never attributed to an author(s) nor signed. She added that the depositions of the archaeologists were not taken on the record.

The Bench observed that these technical irregularities should have been looked into by the trial court, in accordance with Order 26 Rule 10 of the Code of Civil Procedure (<https://www.wipo.int/edocs/lexdocs/laws/en/in/in056en.pdf>). It noted that as the report was filed as a commissioners report, the argument that it was *not* admissible under Section 10 of the Indian Evidence Act, 1872 (https://indiacode.nic.in/bitstream/123456789/6819/1/indian_evidence_act_1872.pdf) did not apply. The Bench stressed that the Sunni Waqf Board should've objected to this at an earlier stage.

The Bench rose for a break at 4 PM

7.74.6 ASI report has irregularities in dates

In the evening, Sr. Adv. Arora focused on irregularities in the dates ascribed to different structures at the site by the ASI. She submitted that the ASI had analysed the stratification (<https://www.britannica.com/science/stratigraphy-geology>) (sediment layers) to determine how old different parts of the site were. She argued that the ASI's findings were erroneous, as they had failed to consider the effects of bad weather during the excavation.

The Bench stated that it could not review expert analysis. Again, it reiterated that the Sunni Waqf Board should've raised these objections at the trial court stage.

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Sr. Adv. Arora will continue her arguments tomorrow.

The Bench rose for the day at 4.58 PM

(Court reporting by Sanya Talwar)

Case Documents

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

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