

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 53 Arguments: 26 September 2019

Today, the Supreme Court continued to hear the appeals to the 2010 Allahabad High Court judgment (<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>) that divided the Ayodhya title among the Nirmohi Akhara, the Sunni Waqf Board and Shri Ram Virajman. Other major parties include the lay-worshipper Gopal Singh Visharad, the Sri Ram Janmabhoomi Punarudhar Samiti (Lord Ram Birthplace Revitalisation Committee), the Hindu Mahasabha and the Shia Waqf Board. All of these parties have finished presenting their primary arguments, except for the Sunni Waqf Board.

Yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-52-arguments>), Sr. Adv. Zafaryab Jilani appearing for the Sunni party argued that there existed no conclusive historical evidence that Lord Ram was born exactly where Babri

Masjid sat. In addition, Sr. Adv. Meenakshi Arora who is also appearing for the Sunni side, disputed the findings of the 2003 Archaeological Survey of India (ASI) report. The ASI's report concluded that a large public structure pre-dated Babri Masjid, which the Hindu parties have used to argue that the site originally belonged to Hindus.

Today, the Bench continued to hear Sr. Adv. Meenakshi Arora dispute the reliability of the Archaeological Survey of India's (ASI) findings.

The Bench convened at 11 AM today.

Schedule

The day began with Chief Justice Gogoi reminding the counsels to finish their oral arguments by 18 October. After receiving feedback from the counsels, he recommended the following schedule:

- By 27 September: Sr. Adv. Meenakshi Arora and Rajeev Dhavan to conclude arguments on pro-temple suits.
- 30 September - 1 October: Counsels for pro-temple parties to present rejoinders
- 2 - 4 October: Sr. Adv. Dhavan to present arguments on Sunni Waqf Board's suit.
- 7 - 11 October: Dussehra vacation
- 14-18 October: unassigned. The court is likely to hear the counsels for the Nirmohi Akhara and Shri Ram Virajman respond to each other.

7.75 Limits of the court's appellate jurisdiction and the ASI report

Sr. Adv. Dhavan opened arguments today, emphasising that the Sunni Waqf Board was not questioning the authenticity of the ASI's report. He was responding to the Bench's observations from yesterday (<http://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-52-arguments>), wherein it had remarked that it could not go into the expert findings of the report, as this was beyond the scope of its appellate jurisdiction. Sr. Adv. Dhavan clarified that while the authenticity of the report could *not* be questioned, summaries of it could be questioned. For example, he highlighted how the ASI's summary states that the pillars were found. In actual fact, only pillar bases were found.

Justice Chandrachud clarified for Sr. Advs. Dhavan and Arora what types of arguments the court would be willing to entertain:

1. Disputing whether the ASI's report went beyond its court commissioned mandate
2. Presenting contradictions in the report
3. Contesting the authenticity of summaries of the report.

He stressed that the Bench could not go into the authenticity of the report itself, as relevant evidence should have been used to do so at an earlier stage in proceedings, before the matter reached the Supreme Court. Despite the Sunni Waqf Board's failure to do so, the Bench agreed that the Board had not forfeited the right to question the report on the above three issues.

7.76 ASI's report contains discrepancies and biased expert opinions

Sr. Adv. Meenakshi Arora resumed her arguments from yesterday. She argued that the ASI's report contained discrepancies and its experts suffered from bias. Before she could begin, Sr. Adv. C.S. Vaidyanathan for Shri Ram Virajman submitted that the High

Court had found that the Sunni Waqf Board had concurred with the findings of the report. In particular, the Board had agreed that there was some structure at the disputed site, pre-dating Babri Masjid. He argued that the only issue was whether the structure was Islamic or not, and that the Board could not now contend no structure existed.

7.76.1 No ancient structure existed at the site

Sr. Adv. Arora proceeded to question the conclusion that an ancient structure existed at the site. She submitted that the ASI had assigned different ages to the pillars found at the site. She questioned how a singular structure could have rested on the pillars. She added that the pillars did not share the same height or alignment.

7.76.2 ASI did not precisely date the structure

Next, Sr. Adv. Arora submitted that the ASI had struggled to precisely date the structure. She cast doubt over whether there was a 12th century building at the site. The Bench asked when the alleged builder, Vikramaditya (Chandragupta II), had ruled. She said that he ruled during the Gupta period, during the 4th and 5th centuries. She added that the ASI had not conducted any carbon dating.

7.76.3 Site cannot be assumed to be 'Hindu'

Taking the bench through various features of the structure, Sr. Adv. Arora argued that the ASI officers suffered from bias and harbored the assumption that the site was Hindu. For example, she submitted that there was no reason to assume that a circular depression was due to a Lord Ram idol. She argued that there was an equal possibility that the structure was Islamic.

The Bench rose at 12.50 PM for lunch and reconvened at 2.15 PM.

7.76.4 Pillars do not show that there was an ancient structure

After lunch, Sr. Adv. Vaidyanathan interrupted Sr. Adv. Arora to submit that it was possible for pillars from different time periods to be part of the same structure. He stressed that they varied in height by less than a metre.

Sr. Adv. Arora resumed and argued that the pillars lacked structural coherence. She submitted that the ASI had found that they were composed of 'brick bat'. She asked, how then could it have supported a roof. Referring to the statements and cross-examinations of witnesses, she emphasised significant variations in pillar alignments, shapes and sizes.

7.76.5 High Court selectively considered evidence

Next, she argued that the High Court had selectively considered evidence. On the ASI's report, she argued that the High Court had failed to consider discrepancies in the report, like the fact that the ASI had not dated some of the pillars. Next, referring to the Sunni Waqf Board's pleadings, she said that the High Court had placed undue weight on the Board's submission that there could have been a structure at the site. She said the Board's submission did not amount to an admission that a Hindu structure predated the mosque.

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Justice Chandrachud asked why an adverse inference shouldn't be made against the Sunni Waqf Board, for choosing not to cross-examine during trial the author(s) of the ASI report. Sr. Adv. Arora responded that it did not have the opportunity to do so, emphasising that it had filed its suit in 1961 and that the report was produced in 2003.

7.76.6 Structure has Islamic features

She reiterated that that the structure could be Islamic in nature. Reading out witness statements, she submitted that certain architectural elements had Islamic features. For example, she said that the walls used lime plaster. The Bench asked whether only Islamic buildings of the time used lime plaster, to which she responded that she would compile relevant evidence on the record.

The court rose at 4 PM for a break and resumed at 4.15 PM.

Pointing out further alleged discrepancies in the ASI's report, Sr. Adv. Arora argued that the finding that there was a circular shrine, subsidiary to the main temple is flawed. She submitted that the ASI itself had concluded that the circular shrine pre-dates the main structure. She questioned how the subsidiary structure could have outdated the main structure.

7.76.7 Pre-conceived notion that artifacts were Hindu

She substantiated her argument that the ASI officers suffered from a pre-conceived notion that the site was Hindu. Taking the court through various artifacts documented by the ASI, she argued that it had reached faulty conclusions. For

example, she questioned how a mutilated figure recovered from the debris (i.e. not during excavations) could be assumed to be a divine Hindu artifact. Similarly, she argued that various other artifacts found in the debris had features that could be attributed to any religion. She argued that some artifacts were likely Islamic, such as certain glazed pottery tiles. She submitted that the ASI had chosen *not* to date them and argued that omissions, such as these, skewed the conclusions of the report.

7.76.8 ASI did not analyse animal bones

She concluded the day by pointing out further alleged discrepancies in the ASI's report. She referred to certain artifacts which had been assigned multiple dates by different ASI officers. In addition, she drew the Bench's attention to animal bones found at the site, which had not been dated. She argued that this was significant because animal slaughter is not associated with Lord Ram worship. Referring to a witness statement, she submitted that ASI reports usually have a chapter on animal bones.

7.76.9 No dating methods used

She noted that the ASI had conducted no carbon dating or thermo-luminescence to verify the periods ascribed to any of the excavated material, despite assuring the High Court that it would. Either of these dating methods would have allowed the ASI to ascertain with more certainty which periods the structures and artifacts found at the site belonged to.

The Bench rose at 5.07 PM.

(Court reporting by Avinash Amarnath (<https://in.linkedin.com/in/avinash-amarnath-04294217>))

Case Documents

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

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