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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

www.vadaprativada.in

Day 54 Arguments: 27 September 2019

The Supreme Court is hearing 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. Currently, the Bench comprising Chief Justice Gogoi and Justices Bobde, Chandrachud, Bhushan and Nazeer is hearing arguments for the Sunni Waqf Board.

Today, Sr. Advs. Meenakshi Arora appearing for the Sunni party finished challenging the Archaeological Survey of India's (ASI) 2003 report. (https://www.thehindu.com/news/national/other-states/The-ASI-Report-a-review/article16052925.ece) The ASI found evidence of a large public structure underneath Babri Masjid, which has been used by the parties in favor of Lord Ram to argue that a Hindu temple pre-dated the mosque.

www.vadaprativada.in

In addition, Sr. Adv. Shekhar Naphade for appellant Farooq Ahmed commenced his arguments. He argued that a 1885 suit that ruled against a Hindu Mahant, barred the 'Hindu parties' from now claiming ownership of the disputed land.

The Bench assembled at 10.35 AM.

7.77 Pillars cannot support the same structure

Sr. Adv. Meenakshi Arora began today by responding to Sr. Adv. C.S. Vaidyanathan, who is appearing for Shri Ram Virajman. Yesterday, he had sought to contextualise Sr. Adv. Arora's argument that pillars found at the site could not have supported a structure, as they stemmed from different periods. Note that structures assigned to different periods were found at different depths. In other words, Sr. Adv. Arora was pointing out that the pillars had different heights. In response, Sr. Adv. Vaidyanathan had submitted that the different floors (indicating different periods) in which the pillars were found, were only separated by a meter. Today, Sr. Adv. Arora corrected him, submitting that the ASI report states that the 3rd and 4th floor are 5 meters apart.

7.78 Structure is not necessarily 'Hindu'

After clarifying this point, Sr. Adv. Arora substantiated her argument from yesterday that the structure was not necessarily Hindu. Yesterday, she had argued that some of the sites features indicated it was an Islamic site, like the lime plastered walls. The Bench had asked her to substantiate her claims with evidence. Today, she handed over a compilation of relevant evidence on the record. She stated that the ASI had failed to

www.vadapprativada.in

take into account all the excavated material. She argued that the site had architectural features common to Hinduism, Buddhism and Jainism and questioned why the report assumed the structure was Hindu.

7.79 Archaeology is an inferential science

Sr. Adv. Arora asserted that the ASI report is only advisory in nature. She emphasised that archaeology is *not* an exact science, but rather an inferential science. Referring to Section 45 of the Indian Evidence Act, 1872 (https://indiacode.nic.in/bitstream/123456789/6819/1/indian_evidence_act_1872.pdf), she argued that while the ASI may be an expert body, their report can only be considered an opinion on facts, not a set of conclusive facts. She drew comparisons to handwriting experts and argued that the ASI's report must be considered weak evidence, which must be corroborated by other evidence. She asserted that, hence, the report cannot be interpreted to have conclusively determined that a Lord Ram temple existed at the site prior to Babri Masjid.

www.vadapratyada.in

Responding to Sr. Adv. Arora's Section 45 argument, Justice Nazeer questioned how she could simultaneously maintain that archaeology is not a true science and rely on Section 45 to argue that the ASI report is only opinion. Section 45 of the Indian Evidence Act, 1872 applies when the court has to form an opinion on a scientific question. Sr. Adv. Arora reiterated that archaeology is an inferential science, whose findings require corroboration.

Justice Chandrachud remarked that while archaeology may be an inferential science, archaeologists are trained experts. Sr. Adv. Arora agreed, but emphasised that archaeologists often reach divergent conclusions. She submitted that many

www.vadapratyada.in

archaeologists had disagreed with the conclusions reached by the ASI. Justice Nazeer stated that the report must be given greater weight than what Sr. Adv. Arora advocated for, as it was commissioned by the High Court under Order 26 Rule 10 of the Code of Civil Procedure (https://www.nls.ac.in/lib/bareacts/civil/cpc/cpco26.html). He stressed that the Sunni Waqf Board should have filed objections at the trial stage. Sr. Adv. Arora responded that several High Courts have held that the findings of a report can be challenged either by filing objections or by presenting opposing evidence.

7.81 Contradiction between ASI findings and conclusions

Next, Sr. Adv. Arora argued that the report's conclusions do not correlate with the findings in the report. The report is divided into findings and inferential conclusions. Sr. Adv. Arora stressed that the conclusion that a large public temple which dated to the 12th century, was not substantiated by the rest of the report. Further, she asserted that the report does not answer the query of the High Court, due to which it was commissioned. The High Court had inquired whether a Lord Ram temple existed underneath Babri Masjid. The report only concluded that some temple of north Indian origin may have existed.

She concluded by asserting that the High Court had drawn incorrect inferences from the report. In particular, she submitted that while the report offered no finding on whether Babur had demolished a Lord Ram temple in the 16th century, the High Court had held that that a temple was likely demolished, siding with the plaintiffs in Shri Virajman's suit. She asserted that the High Court lacked the expertise to draw such conclusions.

www.vadaprativada.in

After hearing Sr. Adv. Meenakshi Arora, the Bench heard Sr. Adv. Shekhar Naphade appearing for the appellant Farooq Ahmed (Civil Appeal 5498/2011).

8.1 Suit barred by res judicata

Sr. Adv. Naphade argued that the Ayodhya title dispute had already been resolved by a 1885 suit. In 1885, a Hindu Mahant approached the Faizabad district court seeking a declaration that would have allowed him to construct a temple at the Ram Chabutra in the outer courtyard. The district court ruled against him. Applying the principle of *res judicata, (https://www.collinsdictionary.com/dictionary/english/res-judicata#targetText=res%20judicata%20in%20British,Copyright%20%C2%A9%20HarperCollins%20Publishers)* Sr. Adv. Naphade argued that the judgment in the 1885 suit barred the Hindu parties from claiming rights over the disputed property. He referred to Section 11 of the Code of Civil Procedure, 1908 (https://www.vakilno1.com/bareacts/laws/civil-procedure-code-1908.html) (CPC) which states that courts cannot hear a suit on an issue that has already been '*directly and substantially*' adjudicated on in a previous suit.

www.vadapprativada.in

8.1.1 Res judicata applies even when the original suit is for a part of the property

Justice Bobde remarked that the 1885 suit appeared to pertain only to the Chabutra and not the whole area. While the Ram Chabutra sits in the outer courtyard, Babri Masjid sits in the inner courtyard. Sr. Adv. Naphade argued that the Supreme Court had in previous judgments established that *res judicata* applies even when the original suit only applies to a part of the property, while the subsequent suit applies to the whole property.

www.vadapprativada.in

8.1.2 Disputing Allahabad High Court's findings on res judicata

Sr. Adv. Naphade proceeded to dispute the Allahabad High Court's findings on the *res judicata* issue. The High Court had held that *res judicata* did not apply, as the 1885 suit did not adjudicate on the title dispute, but rather '*refused to decide the controversy*' in favour of maintaining the '*status quo*'. Recall that Section 11 requires the original court to have '*directly*' adjudicated on the relevant issues. Further, the High Court found that the original suit was not representative in nature. In other words, the 1885 suit was only filed on behalf of the Mahant, not Hindus writ large, and hence Section 11 of the CPC did *not* apply because the current dispute involves new parties. Sr. Adv. Naphade disputed this, submitting that the Mahant's plaint stated that it was filed on '*behalf of the Hindus*'.

Justices Bobde and Chandrachud observed that the 1885 suit could not be considered a representative suit, if it failed to follow the appropriate procedural requirements defined in the CPC. In particular, they observed that public notice should have been issued in the 1885 suit. Sr. Adv. Naphade argued that it was safe to assume that the public at the time was aware of the legal dispute due to the prevalent law and order situation. He argued that the Bench should adopt a purposive interpretation (i.e. consider the reasons behind the framing of the relevant CPC statutes) and hold that public notice was in-effect issued.

Sr. Adv. Naphade will conclude on Monday, 30 September.

The Court rose at 12.47 PM.

www.vadapprativadu.in

(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)

About Us (/about-us)

Events (/events)

Contact Us (mailto:jai.brunner@clpr.org.in)

www.vadaprativada.in

Also Visit

CENTRE FOR LAW & POLICY RESEARCH (http://clpr.org.in/)

CONSTITUENT ASSEMBLY DEBATES (http://cadindia.clpr.org.in/)

Supported By

FRIEDRICH NAUMANN FOUNDATION For Freedom. South Asia

(https://southasia.fnst.org/)

2017-20 © Center for Law and Policy Research

www.vadaprativada.in