

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 55 Arguments: 30 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.

In today's hearing, Sr. Adv. Naphade, appearing for Farooq Ahmed (one of the appellants), concluded his arguments on the issue of res judicata, reiterating his submissions from the previous day that all the elements required for the application of the principle were fulfilled.

www.vadaprativada.in

The day also saw Adv. Md. Nizam Pasha, appearing for one of the appellants, address the court on the issues of whether the validity of Babur's actions could be tested against theological doctrines and laws as we understand today. He also addressed the court on whether the images found on the mosque were Islamic in nature.

Thereafter, Sr. Adv. K Parasaran began his rejoinder submissions by addressing the question of juristic personality.

The Bench assembled at 11:08 am.

8.2 Suit barred by res judicata

Sr. Adv. Naphade reiterated his argument from the previous day that the appellants' claim to the title was barred by the principle of res judicata. As he had submitted at the last hearing, Sr. Adv. Naphade stated that even if the judgment in the 1885 suit was limited to a portion of the land, the principle of res judicata bars the courts from adjudicating on the title of the entire disputed property. He further submitted that the 1885 judgment had provided limited rights of access to the Hindu parties and this did not extend to the inner courtyard. He added that the Judicial Commissioner too in his report had affirmed the findings of the judgment.

8.3 Mahant can be considered 'representative' of Hindus

At this point, the Bench enquired whether the Mahant (Plaintiff in the 1885 suit) could be considered a representative of the entire Hindu community (the Bench raised this question as res judicata would apply only if an already decided matter is being

recontested by the same parties). Responding to the query, Sr. Adv. Naphade argued that the court should adopt a 'reasonable construction' while deciding whether proper procedure was followed for the suit to be representative in nature.

With this, Sr. Adv. Naphade concluded his arguments.

Sovereign authority of Babur

Thereafter, Adv. Md Nizam Pasha (appearing in Civil Appeal 2215 of 2011 for Mr. Haji Mehboob) commenced his arguments.

9.1 Summary of arguments

He addressed the court on two claims:

1. A mosque could not have been built after destroying a Hindu temple and therefore there was no valid wakf,
2. The structure did not meet the essential requirements of a mosque.

9.2 Sovereign authority of Babur

On the first question, he submitted that theological doctrines and law, as they are understood today, are not to be taken into account in order to determine the sovereignty of Babur (under whose instructions the Babri Masjid was allegedly built). He cited various verses from the Quran to substantiate that Babur had carried out his conquest in violation of the basic principles of Islamic law (Dar-ul-Islam) and that he was not bound by the Caliphate. He submitted that Babur being a sovereign, had to

only adhere to the law laid down by himself. Thus, any determination of whether the mosque could have been validly built had to be tested against the laws laid down by Babur, submitted Adv. Pasha.

9.3 Images on a mosque are not prohibitory

On the second question, Adv. Pasha submitted that inscribing images on a mosque were only “*makhrub*” (undesirable) and not prohibitory. Therefore, having such images on the structure would not necessarily invalidate a mosque. He went on to state that the various verses cited by Sr.Adv. PN Misra were insufficient to demonstrate the invalidity of a mosque.

With this, Adv. Pasha concluded his arguments. Thereafter, Sr. Adv. K Parasaran, appearing for Shri Ram Virajman, began his rejoinder submissions.

2.33 Juristic personality to be interpreted in terms of evolving Hindu Law

Sr. Adv. Parasaran began his rejoinder arguments by stating that the concept of juristic personality must be interpreted in terms of Hindu Law, which is in a constant state of evolution. He submitted how the Hindu places of worship are diverse in nature and that there are myriad of ways for worshipping the supreme-being. Such worship, he said, may or may not involve idols, and the only real commonality that emanates from all places of Hindu worship is that of ‘divinity’.

2.34 Consecration is not necessary for juristic personality

He further submitted that consecration is not a necessity in order to designate the idol/swayambhu with the status of a juristic entity. He pointed out that Hindus do not worship material bodies but the eternal spirit of the deity and certain attributes of such spirit. He added that the material form (for instance, an idol) is used as a mere symbol and “manifestation” (swayambhu) is part of a deep rooted belief system in Hinduism (which is often even inculcated through mere chanting of mantras).

Sr. Adv. Parasaran concluded his arguments for the day by submitting that identifying Ram Janmasthan as the birth place of Lord Ram is *not* contingent on whether an idol was installed at the disputed site or not.

The Bench rose at 5:09 pm

www.vadaprativada.in

About Us (/about-us)

Events (/events)

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

www.vadaprativada.in

Also Visit

Supported By



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

2017-20 © Center for Law and Policy Research

www.vadaprativada.in

www.vadaprativada.in