

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 61 Arguments: 16 October 2019

Final arguments concluded in the appeals to the 2010 Allahabad High Court judgment, which divided the Ayodhya title among the Nirmohi Akhara, the Sunni Waqf Board and Shri Ram Virajman. Today, the Bench comprising Chief Justice Gogoi and Justices Bobde, Chandrachud, Bhushan and Nazeer finished hearing the Sunni Waqf Board's appeal.

Yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-60-arguments>), the Bench had heard Sr. Advs. Parasaran and Vaidyanathan's replies on behalf of the respondent Shri Ram Virajman. They argued that the Sunni Waqf Board has failed to establish it has the title and further that its original 1961 suit was barred by limitation. Today, Sr. Adv. Vaidyanathan concluded, after which the Bench heard replies for the Nirmohi Akhara and various other parties. Finally, Sr. Adv. Dhavan presented his rejoinder for the Sunni Waqf Board.

*The following is *not* a perfectly chronological report. The Bench assembled at 10.38 AM. The Bench rose at 1.03 PM and re-assembled at 2.11 PM. The Bench rose at 3.58 PM.*

Sr. Adv. Vaidyanathan finishes his response for Shri Ram Virajman

This morning, Sr. Adv. Vaidyanathan concluded his response to the Sunni Waqf Board's suit, on behalf of Shri Ram Virajman. He disputed the Sr. Adv. Dhavan's arguments for title: (i) a grant issued and dedication performed by Emperor Babur in the 17th century; (ii) adverse possession against the deity; (iii) Waqf by use - continuous extended religious use of the site establishes it as waqf.

2.57 Disputing Sunni Waqf Board's title claim

2.57.1 Babur illegally constructed a mosque

On the first argument, Sr. Adv. Vaidyanathan claimed that the Sunni Waqf Board had failed to prove the land was vacant when Babur constructed a mosque on it. In effect, he was arguing that Babur illegally constructed a mosque and that it remained in possession of the deity.

2.57.2 Board did not prove prior owner was ousted (adverse possession)

On the second issue, Sr. Adv. Vaidyanathan asserted that the Board could not claim adverse possession against the deity, as it had itself never renounced its title claim. In addition, he argued that the Board did *not* prove an ouster of the prior owner - i.e.

continuous, uninterrupted, exclusive possession with intent to oust.

2.57.3 Sunni Waqf Board did not have sole possession

Finally, on the third issue, he argued that the Sunni Waqf Board lacked exclusive possession of the site. He argued that, by the Board's own admission, Hindus prayed at the site. He submitted this constituted joint possession. He added that Hindu worship was not limited to just the outer courtyard, but also the inner dome of Babri Masjid, even after the construction of a barrier-railing in 1855. He even asserted that there was no evidence of namaz being offered at the mosque between 1857 and 1934.

Reply by Nirmohi Akhara

1.32 Sunni Waqf Board failed to prove possession

Sr. Adv. S.K. Jain for the Nirmohi Akhara argued that the Sunni Waqf Board failed to prove it had possession of the site. First, he said that the burden of proof to show Babur constructed a mosque rested with the Board and that it had failed to do so. Then, he went through the evidence relied upon by the Board. He stressed the lack of oral evidence and questioned the reliability of expense sheets showing Muslim usage. He concluded by saying that Hindus had continuously possessed the site since 1534 under the management of the Nirmohi Akhara.

1.33 Sunni Waqf Board's suit is barred by limitation

Second, he argued that the Sunni Waqf Board's suit was barred by limitation. He disputed that the Board could claim its suit fell under Article 142 of the Limitation Act, 1908 (<https://www.casemine.com/act/in/5a979dd64a93263ca60b74e0>) because it

never had possession of the site. Instead, he argued that Article 120 of the Act applied to the suit. In effect, he was saying that the limitation period for the suit was only 6 years, not 12 years.

Bench briefly hears other parties

The Bench briefly heard the counsels for layworshipper Gopal Singh Visharad, the Chela of Mahant Abhiram Das, the Hindu Mahasabha, Sri Ram Janmabhoomi Punarudhar Samiti and Shia Waqf Board.

First, it heard **Sr. Adv. Ranjit Kumar for G.S. Visharad** for roughly 5 minutes.

Two of the plaintiffs in the Sunni Waqf Board's suit (4 and 10) were defendants in Visharad's 1950 suit.

5.5 Sunni Waqf Board did not prove Babur constructed a legitimate mosque

Sr. Adv. Kumar said that a primary issue was whether the disputed structure could be labeled a mosque. He submitted that the High Court awarded the Board 1/3rd of the property on the basis of faith, not the legality and/or morality of Babur's actions. Therefore, he argued that the High Court found that the Board had failed to prove Babur constructed a legitimate mosque.

Next, **Sr. Adv. Jaideep Gupta briefly argued on behalf of Dharam Das**, the Chela of Mahant Abhiram Das (Nirvani Akhara). He submitted that both Akharas shared joint shebaitship of the site. He asserted that the evidence shows that Mahant Abhiram Das was the pujari (priest) of the deity and further that the State receiver accepted this. He

submitted that the receiver allowed the Mahant to hold various processions at the site. Finally, he argued that shebaita enjoy precedence over worshippers, as established in *Vishwanath v. Thakur Vallabh*. The Bench remarked that the Mahant lacked a substantive suit, but that it would nevertheless take his submissions on the record.

Sr. Adv. Vikas Singh presented arguments for a faction of the Hindu Mahasabha.

He began by referring to a book titled Ayodhya Revisited by Kunal Kishore. Sr. Adv. Dhavan strongly objected to the book being placed on the record.

4.7 Hindus always offered prayers at the site

Next, Sr. Adv. Singh argued that despite the construction of Babri Masjid, Hindu continued to uninterruptedly offer prayers at the site, referring to various documents, such as maps. Once again, Sr. Adv. Dhavan objected to the documents been placed on the record.

4.8 Sunni Waqf Board was abolished

Finally, Sr. Adv. Singh introduced a novel argument, asserting that the Sunni Waqf Board had been in-effect abolished by the Government of India Act, 1858. The Act marked the shift of power from the East India Company to the Crown. The Company's Board of Control had recognised the Sunni Waqf Board. However, after the Board of Control's abolishment, the Sunni Waqf Board never sought recognition from the Crown.

Subsequently, **Sr. Adv. M.C. Dhingra for the Shia Waqf Board** presented submissions (he in fact argued after the Nirmohi Akhara, but for the sake of clustering, his submissions have been placed here).

6.3 Sunni Waqf Board lacks locus standi

He disputed that the mosque is under Sunni administration. He disputed the validity of a 1944 notification relied upon by the Sunni Waqf Board. Referring to a 1966 judgment, he argued that the Sunni Waqf Board lacked *locus standi*.

After lunch, the Bench briefly heard **Sr. Adv. P.N. Mishra for the Sri Ram Janmabhoomi Punarudhar Samiti** (Ram Birthplace Revitalisation Committee).

3.23 No evidence to show Muslim ownership

He argued that there was a lack of evidence to show Muslim ownership. Referring to Justice Agarwal's High Court findings, he argued that the Sunni Waqf Board was unable to claim title by either grant or by user (continuous possession). Then, he took the Bench through various documents on the record to assert that there exists evidence that Hindus possessed the site (documents referred to: Finch, Tiefenthaler, Manucci, 1828 & 58 gazetteers).

3.24 Sunni Waqf Board's suit is barred by limitation

The Bench requested Sr. Adv. Mishra to present his arguments on limitation. He sought to show that the limitation for the Sunni Waqf Board's suit began earlier than had been asserted by Sr. Adv. Dhavan. He argued that it was well-established law that the cause of action (start of limitation period) is from the time rights are infringed. He disputed that Muslim may have offered their last Friday namaz (before the Ram idols appeared) on 22 December 1949, as that starting on 16 December, the site was occupied by 100s of Sadhus.

Rejoinder by Sunni Waqf Board

The below is not a complete summary of his arguments. See his written submission.

(https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/467/Dhavan_-_Final_rejoinder.pdf)

Sr. Adv. Rajeev Dhavan presented his rejoinder for the Sunni Waqf Board issue by issue.

7.96 Other parties have no locus standi

He began by disputing Sr. Adv. Jaideep Gupta and Vikas Singh's arguments from earlier in the day. Responding to Sr. Adv. Gupta, he argued that there was no evidence establishing that Mahant Abhiram Das (Nirvani Akhara) was the shebait of the site. Then turning to Sr. Adv. Singh, he questioned the *locus* of the various factions of the Hindu Mahasabha. He submitted that four different sets had been advanced on behalf of the Hindu Mahasabha.

7.97 Sunni Waqf Board not abolished

He turned to Sr. Adv. Singh's argument that the Sunni Waqf Board was in-effect abolished in 1858 by the enactment of the Government of India (GoI) Act. Sr. Adv. Singh had advanced that the Sunni Waqf Board ceased to exist when the body which had institutionalised it was abolished - the Board of Control. Sr. Adv. Dhavan submitted that Section 61 of the GoI Act only applied to appointed commissions, not boards (i.e. Board of Control), and that thereby the Sunni Waqf Board remained unaffected by the GoI Act.

7.98 No requirement for representation by a legal heir

Sr. Adv. Dhavan disputed Sr. Adv. Ranjit Kumar's argument that the primary plaintiff in the Sunni Waqf Board's suit should have been substituted by a legal heir after his death. Sr. Adv. Dhavan argued that this was not necessary as the personal rights of every Sunni was affected by the dispute.

7.99 Defending reliability of disputed documents

He defended the reliability of various documents, whose veracity had been questioned. First, he addressed Sr. Adv. Jain's assertion that expense sheets that show Muslim usage are unreliable. Sr. Adv. Dhavan conceded that the sheets may suffer from accounting errors, but submitted that they nevertheless demonstrate usage. Second, he defended a translation of an 1865 grant, which he used to claim title for the Sunni Waqf Board. Sr. Adv. Vaidyanathan had said the translation was different from the one relied on during the High Court proceedings, however Sr. Adv. Dhavan submitted that Justice Agarwal relied upon it.

Justice Chandrachud remarked that the 1865 grant being referred to was for upkeep and maintenance, and did not grant the Sunni Waqf Board the title. Sr. Adv. Dhavan responded that implicit in the grant was state recognition of a mosque and waqf.

7.101 Babur was not an invader at the time

Sr. Adv. Dhavan disputed Sr. Adv. Parasaran's '*historical wrong argument*'. Sr. Adv. Parasaran had argued that the Court ought not to recognise Mughal law, as they were 'invaders'. He had urged the court to '*right a historical wrong*'. Today, Sr. Adv. Dhavan

submitted that no unified India existed in the 17th century and that Babur was merely a conqueror, not an invader. Further, he emphasised the secular nature of India's Constitution.

7.102 Sunni Waqf Board suit not barred by limitation

Turning to limitation, Sr. Adv. Dhavan clarified that Articles 142 and 144 of the Limitation Act, 1908 would apply unequivocally to the entire area, over which the Sunni Waqf Board is claiming possession. In effect, the same twelve year limitation period applies to the Sunni Waqf Board's claim. Justice Chandrachud remarked that Sr. Adv. Dhavan was 'treading on thin ice', when he asserted that implicit in the Sunni Waqf Board's claim over the inner courtyard is a claim over the outer courtyard.

7.103 1885 suit denied Hindus title

Sr. Adv. Dhavan disputed Sr. Adv. K. Parasaran's interpretation of the judgment in the 1885 suit. The judgment denied a Hindu Mahant's request to construct a temple at the Ram Chabutra in the outer courtyard. Sr. Adv. Parasaran had argued that the 1885 court offered no ruling on title and, in fact, recognised that the site was originally Hindu. By contrast, Sr. Adv. Dhavan submitted that the 1885 court had categorically ruled that Hindus did *not* have the title.

7.104 Muslims entitled to reconstruct Babri Masjid

He concluded by re-asserting that Muslims had continuously offered prayers in Babri Masjid. He added that their right to pray was denied when the mosque was defiled. He asserted that they are entitled to reconstruct the mosque, given that its demolition in 1992 was illegal.

With this, Chief Justice Ranjan Gogoi reserved judgment and directed parties to file their written submissions within three days.

(Court reporting by Sanya Talwar)

Case Documents

- Sr. Adv. Dhavan's Rejoinder Submissions (https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/467/Dhavan_-_Final_rejoinder.pdf)
- 2010 Allahabad High Court Judgment (<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>)

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