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Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 27 Arguments: 14 August 2019

Today, the court heard Sr. Adv. C.S. Vaideyanathan argue on behalf of Lord Ram in suit number 5. He relied on historical accounts to argue that the belief that the disputed site is the birthplace of Ram (Ram Janmabhoomi) precedes the construction of a mosque and has subsisted through time.

Background

The court is hearing appeals to the 2010 Allahabad High Court judgment, which divided the disputed land title between the Nirmohi Akhara (suit no. 3), Sunni Waqf Board (suit no. 4) and Lord Ram (suit no. 5).

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The bench comprises Chief Justice Ranjan Gogoi (<https://www.scobserver.in/judges?id=ranjan-gogoi>) and Justices Sharad Bobde (<https://www.scobserver.in/judges?id=sharad-bobde>), D.Y. Chandrachud (<https://www.scobserver.in/judges?id=d-y-chandrachud>), Ashok Bhushan (<https://www.scobserver.in/judges?id=ashok-bhushan>) and Abdul Nazeer (<https://www.scobserver.in/judges?id=abdul-nazeer>).

The legal dispute arose on 22 December 1949, when Hindu idols were placed under the Babri Masjid dome. On 29 December, the Additional Civil Magistrate of Faizabad placed the site under the custodial responsibility of the State under the Code of Criminal Procedure, 1898 (http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75).

In 1959, the Nirmohi Akhara filed a title suit seeking possession of the disputed land. In 1961, the Sunni Waqf Board did the same. In 1989, both were named as defendants in the Allahabad High Court, when Deoki N Agarwal (<http://timesofindia.indiatimes.com/india/The-man-who-was-Ram-Lallas-next-friend/articleshow/6668887.cms>) filed a suit on behalf of Lord Ram.

Currently, the Supreme Court is hearing Sr. Advs. K. Parasaran and C.S. Vaidyanathan present arguments on behalf of Lord Ram. They contend that both suits number 3 and 4 are barred by limitation. Yesterday (<http://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-26-live>), CS Vaidyanathan argued that the site is not even subject to possession claims, as it is divine and hence a juridical entity itself.

Today's Hearing

2.17 Historical accounts demonstrate Hindu faith in the divinity of the site

Sr. Adv. C.S. Vaidyanathan began by arguing that the Ram Janmasthan site has been worshipped since time immemorial. He submitted historical accounts that suggest Hindus' continuous belief in the divinity of the site.

First, he read extracts from the Puranas that state the religious dividends and benefits accruing from worship at Ram Janmasthan. Upon prompting by Justice Bhushan, he dated the Puranas to 'time immemorial'. He also submitted that the Puranas discuss offering prayers at the River Sarayu, next to Ram Janmabhoomi.

Next, he read from among the earliest Western accounts of Ayodhya by the English merchant William Finch. William Finch, an employee of the East India Company, traveled across India from 1583 to 1619. According to his travelogue, he visited Ayodhya sometime between 1608-1611. He did not mention a mosque. CS Vaidyanathan contended that if a mosque had been constructed in 1520, William Finch would surely have written about it in his travels.

Sr. Adv. CS Vaidyanathan then read from the travel account of Joseph Tiefenthaler, an 18th century Jesuit missionary, whose writings were translated by Johann Bernoulli. Tiefenthaler had noted that Awadh, also known as Ayodhya, is a city of very olden times with a Swarga Dvara (celestial temple), through which Ram took all the inhabitants of the city with him to heaven. Tiefenthaler noted that consequently, the city became empty. It was later repopulated and a temple was constructed at the site of Lord ram's birthplace. However, the Mughal Emperor Aurangzeb (lived 1618-1707) demolished the temple and built a mosque to 'remove every memory of Hindu superstition'. CS Vaidyanathan emphasised that Tiefenthaler makes references to architectural details of the site and the Sita Rasoi.

Justice Chandrachud stated that Tiefenthaler recorded two alternative accounts of demolition - one by Babur and one by Aurangzeb. He then inquired about the claim that inscriptions in the mosque state that it was constructed during Babur's time.

Sr. Adv. C.S. Vaidyanathan reiterated that Finch's early 17th century account does not mention a mosque or a demolition. He emphasised that Tiefenthaler noted the two different versions of the demolition of temple he had overheard. However, both versions state that the mosque was built after destroying a temple. Further, Vaidyanathan alleged that the authenticity of the inscriptions is questionable.

Justice Bobde inquired whether historical evidence demonstrated Babur's arrival in Ayodhya and the construction of a mosque. Further, he inquired about when the mosque was first referred to as Babri Masjid.

Senior advocate Rajeev Dhavan, who represents the Sunni Waqf Board, submitted that crucial pages in the *Baburnama*, a key historical account are missing. He urged the court to distinguish this from the absence of evidence to prove that Babur destroyed the temple and constructed a mosque. .

CS Vaidyanathan then took the court through the 1838 report of British surveyor Montgomery Martin. Martin's account contains the first reference of a mosque built by Akbar, the third Mughal emperor.

CS Vaidyanathan submitted that he was using Martin's account and other historical accounts not to establish any facts, but to prove that the site always held religious significance to Hindus. He differentiated between the European approach and Indian approach to history, by contending that the European approach focused on the dates and names of events, while the Indian approach focused on how people lived and what they believed.

Justice Chandrachud inquired if the evidence presented before the court was to establish historical facts or demonstrate the faith and belief of Hindus over centuries. CS Vaidyanathan clarified that purpose of presenting such evidence was only to demonstrate the faith of Hindus.

CS Vaidyanathan briefly read extracts from the 19th century British diplomat Edward Thornton's writings, published in a British gazetteer. Thornton described Ayodhya as a place of religious significance to Hindus.

Chief Justice Gogoi stated that some of the documentary evidence presented by CS Vaidyanathan was disputed. CS Vaidyanathan submitted that Thornton's writings were published by British authorities in the gazetteer. Justice Chandrachud pointed out that the fact of Thornton's writings published in the British gazette did not conclusively establish the claims in the writings.

CS Vaidyanathan continued to present evidence. He read from the 1858 Encyclopaedia of India, which describes 3 mosques built on the sites of three Hindu shrines. He highlighted Alexander Cunningham's writings on Ayodhya and briefly touched on the

early travelogues of Chinese scholars Fa Hein and Hiuen Tsang, which mention Ayodhya as a holy place and the site of the demolished Hindu temple.

Further, CS Vaidyanathan submitted 19th century accounts of the site, which describe its land as sacred for Hindus. The accounts include the 1877 Gazetteer, 1860 report of Settlements of Land Revenue in Faizabad published by Miller, in 1902 and the District Gazetteer for the United Provinces of Agra & Oudh.

CS Vaidyanathan provided evidence that contain historical and detailed descriptions of the Janmasthan and the various places holding importance with respect to Lord Ram. He submitted that Ram Janmasthan is a revered place where an ancient temple was desecrated and a mosque was built.

At 12.53 PM the bench rose for lunch.

The bench re-assembled at 2.12 PM. CS Vaidyanathan continued to take the court through evidence. He read extracts from a 1996 report published by the Indian Institute of Science on the early history of Ayodhya. He also tried to establish the religious significance of Ayodhya, and the archaeological evidence of a pre-16th century Hindu temple at the disputed site.

He read out extracts that describe the destruction of temples and holy shrines at Janmasthan. He reminded the bench that the Allahabad High Court judgment also made reference to this study and that archaeological evidence from the 10th and 11th centuries stated the existence of a temple at the Janmasthan.

2.17.1 Site was relevant to Buddhists but the faith of Hindu worshippers persisted

Justice Chandrachud inquired that the site also seemed to be of significant religious importance to Buddhism. CS Vaidyanathan accepted that the site held significance to Buddhism. However, he insisted that the relevant question is whether the faith of Hindu worshippers persisted. He argued that the beliefs of Hindu worshippers about the divinity of the site persisted despite the influence of other religions such as Jainism, Buddhism and Islam.

2.17.2 Original temple was demolished and a mosque was constructed

Relying on the 1990 and 1991 photographs of the mosque site taken by Archaeological Survey of India, he said that the original temple had been demolished and a mosque was later built on the disputed land around 300 years ago.

He quoted extracts from the 1945 suit filed by the Shia Central Board of Waqf against the Sunni Central Board of Waqf, to argue that even the Muslims had admitted that a mosque had been constructed during the reign of Emperor Babur at the birthplace of Lord Ram.

Justice Bobde inquired what happened to the suit and how the Sunni Board of Waqf responded to the suit whereas Chief Justice Gogoi sought to understand the prayer in this suit.

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Sr. Adv. Rajeev Dhavan, on behalf of Sunni Waqf Central Board, submitted that the case was decided in 1946. He stated that in the dispute between the Sunnis and Shias on the ownership of the site, the Sunnis had won possession over the case.

The counsel for the Shia Central Board of Waqf submitted that the mosque was constructed by Mir Baki, a Shia, on emperor Babur's order. He contended that the mosque was therefore a Shia mosque that no other party could hold claim over.

Sr. Adv. C.S. Vaidyanathan summarised his arguments that there was no dispute over the existence of the mosque. However, the mosque was built by demolishing the temple structure. Further, he submitted that his arguments had placed reliance on historical evidence to show that the divinity of the temple still exists. He contended that the Shari'a law does not consider a structure as a valid mosque if it is built on the ruins of a temple. He reiterated that the findings establish that the mosque was built on the same site as the temple - either by demolishing the temple or building the mosque on the temple's ruins.

With this, the bench rose for the day at 3.55 PM. The next hearing (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-28-arguments>) is on 16 August, Friday.

Case Documents

- Justice Khan's Opinion, 2010 Allahabad High Court Judgment (https://scobserver-production.s3.amazonaws.com/uploads/case_document/document_upload/55/Allahabad_High_Court_Judgment.pdf)

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