

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 48 Arguments: 19 September 2019

Oral arguments continue today in the Ayodhya title dispute. The Supreme Court is hearing thirteen appeals to the 2010 Allahabad High Court judgment (<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>) that divided the title among the Nirmohi Akhara, the Sunni Waqf Board and Shri Ram Virajman (represented by 'next friend' Sr. Adv. D.N. Agarwal). Currently, the Bench comprising of Chief Justice Gogoi (<https://www.scobserver.in/judges?id=ranjan-gogoi>) and Justices Bobde (<https://www.scobserver.in/judges?id=sharad-bobde>), Chandrachud (<https://www.scobserver.in/judges?id=d-y-chandrachud>), Bhushan (<https://www.scobserver.in/judges?id=ashok-bhushan>) and Nazeer (<https://www.scobserver.in/judges?id=abdul-nazeer>) are hearing Sr. Adv. Rajeev Dhavan appearing for the Sunni Waqf Board.

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Yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-47-arguments>), the Bench passed an order allowing the parties to re-engage in mediation simultaneously with court hearings. It also requested the counsels to conclude oral arguments by 18 October 2019. Sr. Adv. Rajeev Dhavan is presently arguing and taking the court through Shri Ram Virajman's exhibits. In yesterday's hearing, he disputed many exhibits' reliability, and used some to bolster his main claim that the inner courtyard belonged exclusively to the Sunni Waqf Board.

Today, Sr. Adv. Dhavan will continue to take the Bench through Sri Ram Virajman's exhibits.

The bench assembled at 10.36 AM.

Contempt petition

The Bench briefly took up the contempt matter. Last month, Sr. Adv. Dhavan had filed a criminal contempt petition against Prof. N Shanmugam. Sr. Adv. Dhavan accused Prof. Shanmugam of threatening him for representing the Sunni Waqf Board. Today, Sr. Adv. Kapil Sibal who represents Sr. Adv. Dhavan stated that they 'do not seek punishment' and merely wish to send a strong message 'to the country'. In light of Sr. Adv. Kapil Sibal's submission and the fact that Prof. N Shanmugam had provided a formal apology, the Supreme Court declared it would close the matter. It observed that no party should engage in this type of conduct in the future.

7.52 Disputing witness statements from Ram Lala's suit

Sr. Adv. Rajeev Dhavan resumed his arguments from yesterday. Yesterday, he disputed various witness statements relied upon by the counsels for Shri Ram Virajman. He had categorised the witness statements into four categories: (i) witnesses on facts; (ii)

witnesses for Vishnu Hari inscriptions; (iii) expert witnesses; and (iv) archaeologists. Yesterday, he addressed the first category.

7.52.1 Testimony relating to Vishnu Hari inscriptions

He began today by disputing the reliability of testimony relating to the Vishnu Hari (VH) inscriptions. The VH inscriptions are allegedly medieval Sanskrit inscriptions that describe the construction of a mosque at the disputed site by a subordinate of King Govindachandra from the Gahadavala dynasty. Shri Ram Virajman used these inscriptions to argue that a temple pre-dated the Babri Masjid. Sr. Adv. Dhavan disputed (https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/224/suit_5_witnessstatements11.jpeg) the reliability of the witnesses (OPW 8, 10 and 15) who translated the inscription. He submitted that they lacked relevant expertise and/or were biased.

The plaintiffs in Shri Ram Virajman's suit relied on Jagadguru Ramandancharya as a religious expert, whose testimony Sr. Adv. Rajeev Dhavan read out to the court. Sr. Adv. Dhavan stated that the witness statement supported the Sunni Waqf Board's claim that Hindu prayer was limited to the outer courtyard.

Sr. Adv. Meenakshi Arora will take the Bench through the witness statements of archaeologists at a later date.

7.53 Hindu prayer was limited to the outer courtyard

Yesterday, the Bench had sought clarifications regarding where Hindu prayer was offered. In particular, it requested Sr. Adv. Dhavan to address whether a railing installed by the British in 1855 had excluded Hindus from offering prayer at the central dome (inner courtyard) where the mosque is located. The Bench inquired whether there was

evidence that Hindus believed, in the 19th century, that the location of Ram's birthplace and Babri Masjid are the same. Evidence of this could include accounts of Hindus offering prayer at the railing in the direction of the mosque's central dome, which was a mere 50-100 yards away.

7.53.1 No unified belief that prayer should be offered at the central dome

Responding to the Bench, Sr. Adv. Dhavan had disputed this line of argumentation, stating it amounted to conjecture. Today, he further dispelled this argument by referring to relevant witness statements. He read out excerpts of statements and argued that there never existed a '*unified belief*' that prayers should be offered at the central dome. Further, he said that there existed no evidence to suggest such a unified belief.

The Bench remarked that Sr. Adv. Dhavan should read out full witness statements on record, not mere excerpts. Sr. Adv. Dhavan insisted that the witness statements do not prove unified belief. Further, he added that all the witnesses relied upon by the counsels for Shri Ram Virajman deposed after 2000, 11 years after Shri Ram Virajman filed their suit.

Returning to his argument that the railing argument amounted to conjecture, he submitted that suspicion cannot amount to evidence. He stressed that it was the moral duty of a judge to decide a case on evidence and legal proof, not conjecture.

7.53.2 Ram Chabootra could have pre-dated the railing

Finally, he argued that the Ram Chabootra could have pre-dated the installment of the railing. He countered the claim that the Chabootra arose after Hindus were displaced from the inner courtyard in 1855, when the British installed the railing. He referred to

the accounts of 18th century Jesuit missionary Joseph Tiefenthaler ([https://en.wikisource.org/wiki/Catholic_Encyclopedia_\(1913\)/Joseph_Tieffentaller](https://en.wikisource.org/wiki/Catholic_Encyclopedia_(1913)/Joseph_Tieffentaller)) (on the record). Reading out excerpts of Tiefenthaler's accounts, Sr. Adv. Dhavan established that the missionary describes a possible precursor to the Chabootra. Tieftenhaler describes a small *bedi* (cradle), in the approximate location of the Chabootra.

7.54 Shri Ram Virajman's suit is not maintainable

Sr. Adv. Dhavan summarised his arguments on the lack of maintainability of Shri Ram Virajman's suit. First, he questioned the *locus standi* of Sr. Adv. D.N. Agarwal, who filed the suit in 1989 as the '*next friend*' of the deity. Sr. Adv. Dhavan argued that the Bench ought to consider Sr. Adv. Agarwal's status as a worshipper. He submitted that Sr. Adv. Agarwal was only appointed to the Ram Janam Bhoomi Nyas in 1985. He suggested that the Bench would be loosening the conditions for representing a deity as its '*next friend*', if it held that DN Agarwal's suit is maintainable.

7.55 No evidence of temple being mismanaged

Sr. Adv. Dhavan addressed the plaintiffs' claim that the temple at Ayodhya was being mismanaged (by the Nirmohi Akhara). Sr. Adv. Dhavan explained that this mismanagement claim formed the basis of the plaintiffs' plans to construct a new temple under the management of the Nyas. Sr. Adv. Dhavan submitted there was no evidence that the temple was being mismanaged.

With this, arguments concluded for the day. The Bench will continue to hear arguments for the Sunni Waqf Board tomorrow.

The Bench rose at 12.48 PM.

(Court reporting by Sanya Talwar)

Case Documents

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

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