

Issue in Brief

“The disputed land forms part of the village of Kot Rama Chandra or, as it is otherwise called, Ramkot at Ayodhya, in Pargana Haveli Avadh, of Tehsil Sadar in the District of Faizabad. An old structure of a mosque existed at the site until 6 December 1992. The site has religious significance for the devotees of Lord Ram, who believe that Lord Ram was born at the disputed site. For this reason, the Hindus refer to the disputed site as Ram Janmabhumi or Ram Janmasthan (i.e. birth-place of Lord Ram). The Hindus assert that there existed at the disputed site an ancient temple dedicated to Lord Ram, which was demolished upon the conquest of the Indian sub-continent by Mughal Emperor Babur. On the other hand, the Muslims contended that the mosque was built by or at the behest of Babur on vacant land. Though the significance of the site for the Hindus is not denied, it is the case of the Muslims that there exists no proprietary claim of the Hindus over the disputed property.”

Meet the Litigants - Hindus

- A suit was instituted in 1950 before the Civil Judge at Faizabad by a Hindu worshipper, Gopal Singh Visharad seeking a declaration that according to his religion and custom, he is entitled to offer prayers at the main Janmabhumi temple near the idols.
- The Nirmohi Akhara represents a religious sect amongst the Hindus, known as the Ramanandi Bairagis. The Nirmohis claim that they were, at all material times, in charge and management of the structure at the disputed site which according to them was a temple until 29 December 1949, on which date an attachment was ordered under Section 145 of the Code of Criminal Procedure 1898. In effect, they claim as shebait in service of the deity, managing its affairs and receiving offerings from devotees. Theirs is a Suit of 1959 for the management and charge of the temple'.
- A suit was instituted in 1989 by a next friend on behalf of the deity (Bhagwan Shri Ram Virajma) and the birth-place of Lord Ram (Asthan Shri Ram Janmabhumi). The suit is founded on the claim that the law recognises both the idol and the birth-place as juridical entities.

Meet the Litigants – Muslims

- The Uttar Pradesh Sunni Central Board of Waqf (Sunni Central Waqf Board) and other Muslim residents of Ayodhya instituted a suit in 1961 for a declaration of their title to the disputed site. According to them, the old structure was a mosque which was built on the instructions of Emperor Babur. The Muslims deny that the mosque was constructed on the site of a destroyed temple. According to them, prayers were uninterruptedly offered in the mosque until 23 December 1949 when a group of Hindus desecrated it by placing idols within the precincts of its three-domed structure with the intent to destroy, damage and defile the Islamic religious structure.

Allahabad High Court Verdict

- These suits, together with a separate suit by Hindu worshippers were transferred by the Allahabad High Court to itself for trial from the civil court at Faizabad. The High Court rendered a judgment in original proceedings arising out of the four suits and these appeals arise out of the decision of a Full Bench dated 30 September 2010. The High Court held that the suits filed by the Sunni Central Waqf Board and by Nirmohi Akhara were barred by limitation. Despite having held that those two suits were barred by time, the High Court held in a split 2:1 verdict that the Hindu and Muslim parties were joint holders of the disputed premises. Each of them was held entitled to one third of the disputed property. The Nirmohi Akhara was granted the remaining one third. A preliminary decree to that effect was passed in the suit brought by the idol and the birth-place of Lord Ram through the next friend.

The British Solution

- The disputed site has been a flash point of continued conflagration over decades. In 1856-57, riots broke out between Hindus and Muslims in the vicinity of the structure. The colonial government attempted to raise a buffer between the two communities to maintain law and order by setting up a grill-brick wall having a height of six or seven feet. This would divide the premises into two parts: the inner portion which would be used by the Muslim community and the outer portion or courtyard, which would be used by the Hindu community. The outer courtyard has several structures of religious significance for the Hindus, such as the Sita Rasoi and a platform called the Ramchabutra. In 1877, another door was opened on the northern side of the outer courtyard by the colonial government, which was given to the Hindus to control and manage. The bifurcation, as the record shows, did not resolve the conflict and there were numerous attempts by one or other of the parties to exclude the other.

First shots in Court

- In January 1885, Mahant Raghubar Das, claiming to be the Mahant of Ram Janmasthan instituted a suit before the Sub-Judge, Faizabad. The relief which he sought was permission to build a temple on the Ramchabutra situated in the outer courtyard, measuring seventeen feet by twenty-one feet. On 24 December 1885, the trial judge dismissed the suit, `noting that there was a possibility of riots breaking out between the two communities due to the proposed construction of a temple. The trial judge, however, observed that there could be no question or doubt regarding the possession and ownership of the Hindus over the Chabutra.

Appellate Fate

- On 18 March 1886, the District Judge dismissed the appeal against the judgment of the Trial Court, but struck off the observations relating to the ownership of Hindus of the Chabutra contained in the judgment of the Trial Court. On November 1886, the Judicial Commissioner of Oudh dismissed the second appeal, noting that the Mahant had failed to present evidence of title to establish ownership of the Chabutra.

Important Flash Points

- In 1934, there was yet another conflagration between the two communities. The domed structure of the mosque was damaged during the incident and was subsequently repaired at the cost of the colonial government.
- On the night intervening 22 and 23 December 1949, when the mosque was desecrated by a group of about fifty or sixty people who broke open its locks and placed idols of Lord Ram under the central dome.
- On 6 December 1992, A large crowd destroyed the mosque, boundary wall, and Ramchabutra. A makeshift structure of a temple was constructed at the place under the erstwhile central dome. The idols were placed there.

Important Points in Addenda

- It can, therefore, be held that the faith and belief of Hindus regarding location of birthplace of Lord Ram is from scriptures and sacred religious books including Valmiki Ramayana and Skanda Purana, which faith and beliefs, cannot be held to be groundless. Thus, it is found that in the period prior to 1528 A.D., there was sufficient religious texts, which led the Hindus to believe the present site of Ram Janma Bhumi as the birthplace of Lord Ram.
- It is thus concluded on the conclusion that faith and belief of Hindus since prior to construction of Mosque and subsequent thereto has always been that Janmaasthan of Lord Ram is the place where Babri Mosque has been constructed which faith and belief is proved by documentary and oral evidence discussed above

Fate of the Suits

- Nirmohi Akhara – Barred by limitation
- Sunni Waqf Board and others within limitation
- Other Hindu Parties – Within limitation.

Directions towards the Temple

- The Central Government shall formulate a scheme pursuant to the powers vested in it . The scheme shall envisage the setting up of a trust with a Board of Trustees or any other appropriate body under Section 6. The scheme to be framed by the Central Government shall make necessary provisions in regard to the functioning of the trust or body including on matters relating to the management of the trust, the powers of the trustees including the construction of a temple and all necessary, incidental and supplemental matters;
- Possession of the inner and outer courtyards shall be handed over to the Board of Trustees of the Trust or to the body so constituted.
- Possession of the disputed property shall continue to vest in the statutory receiver under the Central Government, untill in exercise of its jurisdiction under Section 6 of the Ayodhya Act of 1993, a notification is issued vesting the property in the trust or other body.

Direction towards the Mosque

- A suitable plot of land admeasuring 5 acres shall be handed over to the Sunni Central Waqf Board.

- This Land shall be allotted out by

(a) The Central Government out of the land acquired under the Ayodhya Act 1993; or

(b) The State Government at a suitable prominent place in Ayodhya

The Sunni Central Waqf Board would be at liberty, on the allotment of the land to take all necessary steps for the construction of a mosque on the land so allotted together with other associated facilities

Article 142 – Constitution of India

- The directions giving 5 acres of alternate land to the Waqf board is under Article 142 of the Constitution of India.
- Nirmohi Akhara's suit though barred by limitation , under Article 142, they are to be given managerial roles due to their historic presence at the site.

- The allotment of land to the Muslims is necessary because though on a balance of probabilities, the evidence in respect of the possessory claim of the Hindus to the composite whole of the disputed property stands on a better footing than the evidence adduced by the Muslims, the Muslims were dispossessed upon the desecration of the mosque on 22/23 December 1949 which was ultimately destroyed on 6 December 1992. There was no abandonment of the mosque by the Muslims. This Court in the exercise of its powers under Article 142 of the Constitution must ensure that a wrong committed must be remedied. Justice would not prevail if the Court were to overlook the entitlement of the Muslims who have been deprived of the structure of the mosque through means which should not have been employed in a secular nation committed to the rule of law. The Constitution postulates the equality of all faiths. Tolerance and mutual co-existence nourish the secular commitment of our nation and its people.

- We have already concluded that the three-way bifurcation by the High Court was legally unsustainable. Even as a matter of maintaining public peace and tranquillity, the solution which commended itself to the High Court is not feasible. The disputed site admeasures all of 1500 square yards. Dividing the land will not subserve the interest of either of the parties or secure a lasting sense of peace and tranquillity.
- The dispute is over immovable property. The court does not decide title on the basis of faith or belief but on the basis of evidence. The law provides us with parameters as clear but as profound as ownership and possession. In deciding title to the disputed property, the court applies settled principles of evidence to adjudicate upon which party has established a claim to the immovable property. On the balance of probabilities, there is clear evidence to indicate that the worship by the Hindus in the outer courtyard continued unimpeded in spite of the setting up of a grill-brick wall in 1857. Their possession of the outer courtyard stands established together with the incidents attaching to their control over it.

Meet the great equalizer - Art. 142

- Discretionary power that can be wielded in appropriate circumstances.
- Directions issued by the Supreme Court under Art. 142 of the Constitution form the law of the land in absence of any substantive law governing the field until the legislature passes such a law.
- The two important parameters for consideration under Art. 142 of the constitution is “larger interest of administration of justice” and “preventing manifest injustice.”
- The advantage that is derived from a constitutional provision couched in such a wide compass is that it prevents “clogging or obstruction of stream of justice”.
- Power cannot be exercised contrary to the statute.
- When moulding relief under Art. 142, the court can relax the application of law to the parties or exempt the, altogether from the rigours of the law in view of the particular facts and circumstances of the case.