



|| NAMO TITTHASSA ||

**GACCHADHIPATI (SPIRITUAL SOVEREIGN)  
JAINACHARYA SHRIMADVIJAY  
YUGBHUSHANSURI  
(PANDIT MAHARAJ SAHEB)**

15<sup>th</sup> September 2021

Ref.: 202109E-04

## Sakal Sangh Jog Nivedan

**Sub: Shatrunjay - Nilkanth Mahadev Temple Case**

### **Critical and Neutral Analysis (Part-2 of 3)**

#### **POINTS OF GRAVE CONCERN IN THE JUDGMENT<sup>1</sup>**

In the preceding section one could observe that Anandji Kalyanji Trust ("AKT") on their part have irresponsibly made many dubious submissions and admissions in their affidavit. Surprisingly the entire affidavit formed a part of the Judgment which resulted in an establishment of a permanent public record of all such mistakes. Fortunately, despite the adverse fallouts of such mistakes Judgment could record few favourable assertions and reconfirmation of certain rights which are listed below: -

- 1) There are multiple references in the Judgment acknowledging that the entire *Shatrunjay Hills* is a pious Tirth for Shwetamber Murtipujak Jains.
- 2) The religious rights of Jains over the entire Hills are acknowledged.

<sup>1</sup> Gujarat High Court, RWrit Petition (PIL) No. 180 of 2017, Judgment dated 19.08.2021.



- 3) AKT would be at liberty without any permission to rebuild and undertake necessary repairs and maintain structures inside the Gadh.
- 4) The judgment in para no. 51 very clearly and positively accepts the validity of Mughal firmans for our Tirths as historical facts.

Apart from these favourable assertions we are dutybound to also highlight even the negative outcomes of the Judgment that may have detrimental consequences.

1. In para no. 41 the Judgment records:

*"41....No other new construction by any person or Trust of any Temple or shrine can be permitted except with the express written consent of the Respondent No.5 - Trust and encroachments if any made illegally anywhere on the said pious Hill from Talheti to Top deserves to be removed by the Police force of the State, which Police power only is with the State with regard to the said Shetrunjay Hills under 1928 Agreement."*

The Court has indicated in this para that no new construction by any person or trust of any temple or shrine can be permitted without express consent of AKT and those encroachments, if any made illegally anywhere on the Shatrunjay Hills deserve to be removed by the police. However, for any illegal encroachments which are existing on the Hills, AKT cannot remove them on their own but have to pursue with the police for removal of such encroachments. It will not be out of place to note that there are historical documents that showed Jains used to keep their own sepoy on the hills to protect its sanctity. Such was the glorious history of Jains where in; they used to maintain their own police on the hills, but now the Jains are left at the mercy of the State for



removal of any illegal encroachments. On one hand this makes Jains handicap since it will be difficult for us to protect our own Tirth from illegal encroachments and on the other hand, AKT being reluctant in actively persuading the police and the state government for the removal of such illegal encroachments, today, there exists a lot of illegal encroachments especially in the rear of the Hills and in deep forest. For this Judgment to materialise, it is expected that AKT will at least follow up with the police authorities and administration constantly for the removal of the illegal encroachments. Otherwise, Jain Sangh will not get any concrete benefit out of this favourable part of the Judgment.

2. In para no. 44 the Judgment records:

*"44. The rider on the management of the Mahadev Temple is provided in Clause 10 of the Agreement of 1928 that the Jains will have a right to prescribe all reasonable Rules and Regulations for the conduct of visitors to the Gadh, the Temples and Tunks therein as well as the other shrines on the Hill (including the Mahadev Temple in question) but such Rules and Regulations as regards the non-Jain shrines shall not interfere with their due and proper worship thereat...."*

Apparently, the Judgment text at one place (para no. 51) asserts AKT'S right to prescribe overarching and supervening rules & regulations for the pilgrims on entire Hills. But on other place (para no. 44) citing the 1928 Agreement the Court put forth a rider over that right, which states that AKT'S right to prescribe rules & regulations as regards to the non-Jain shrines shall not interfere with their due and proper worship there at. This rider in the operational part of the order of this judgment pulls the soul out from the body



of overarching & supervening rights of AKT. Additionally, this part of the judgment may open the Pandora's box at any time which may eventually result in legal, political and religious conflicts in the future.

Although, there are still some left-over rights for restricting visitors desecrating the hills, but unfortunately in the past, AKT has hardly used these rights even inside the Gadh, leave alone exercising them over the hills. It is sadly observed that upon entering the Gadh, the scenes of doliwala eating Abhakshya food, chewing tobacco or listening and watching obscene movies have become a regular feature.

3. Further in the para no. 44 the Judgment observes:

*"44....There is no conflict in the two faiths. Had it been so, Ingarshah Pir and Mahadev Temple would not have been constructed out of Funds of Jain Community in such old times and there is no dispute before us that worship rights at Mahadev Temple have never been interfered with by the Jain community in any manner."*

Further, the Judgment in this para explicitly records that "there is no conflict in two faiths". And that is the reason why in such old times Ingarsha Pir and Mahadev Temple could be constructed on Shatrunjay Hills out of the funds of Jain Community. This may create a fallacy in an adverse manner that Jainism and Hinduism, Jainism and Islam do not have any kind of ideological differences in their respective faiths. This would set a legal record which is eerily harmful for the entire Jain Sangh and this record can always be misquoted in



future to garner the funds of the Jain Sangh for the benefits of non-Jain shrines.

4. In para no. 49 the Judgment records the translated version of a notification issued by the Collector and District Magistrate which says:

"49....

**-:Notification:-**

*Shashvat Mahatirth Giriraj is a holy place of Palitana. Places of pilgrimage belonging to Jain, Hindu, Muslim and others are located at the said holy place...*

*(Harshad Patel)  
Collector and District Magistrate,  
Bhavnagar"*

The declaration by District Collector Bhavnagar as recorded and translated in the said reported Judgment in para no. 49 indicates that Giriraj is a holy place with places of pilgrimage belonging to Jains, Hindus and Muslims. In the absence of categorically stating that this holy place belongs to Jains and on the contrary citing existence of places of pilgrimage belonging to Hindus and Muslims over the hills and further without any express rebuttal on the part of AKT against this, could actually magnify the support for non-Jains in establishing their rights over the Shatrunjay Hills in the future.

5. In para no. 47 the Judgment records:

*"47....Therefore, merely because a separate Trust has been created for managing the said Mahadev Temple or persons like Respondent No.4 claims any right to manage the said Temple they cannot be vested with any such right in the face of the Documents of 1877 and 1928 referred to above which are binding on all."*



The Judgment goes on to state that the documents of 1877 & 1928 remains binding to all. Apart from the recognition of some religious rights, mainly by these documents, historically Jain Shashan had faced a huge setback, lost a lot of legal and sovereign rights. The 1928 Agreement which was signed as a settlement between Darbars & Jain Community that too after a protest and yatra bandh for two years, surprisingly terminated with the sad end where AKT had accepted a lot of unprecedented conditions and commitments which still have a negative impact on our Tirth and our rights over the Tirth. Despite this, AKT had propagated the agreement in such a way as if an amicable and a favourable settlement has been attained between the Darbars & Jain Community. To add salt to the wound, this event was even celebrated by AKT and it was portrayed in such a way that a great benefit was achieved for the Tirth. The entire Jain Community along with its Acharyas were kept in dark all along, about the true implications of such undesirable agreement which in fact resulted in the celebrations by the Jain Sangh then. Unfortunately, these adverse documents are further strengthened through court in this judgment making our future very bleak.

6. In para no. 43 the Judgment records:

"43....It is true that the said Mahadev Temple will be managed by Pujari to be appointed by the State in consultation with Jain community to ensure compliance with the tenets of Jain religion as stated in Clause 4, 9 and 10 of the Agreement of 1928 and such Pujari will also be paid salary by the Respondent No.5 – Trust as has been done for all these years since 1928."



Further in para no. 33 and 34 the Judgment records the communications by Dy. Collector, Palitana dated 22<sup>nd</sup> June 2016 and 6<sup>th</sup> March 2017 respectively which state:

"33....

Sub.: For appointment as Manager and Priest in Shri Nilkanth Mahadev Trust, Registration No.A/1176, on Shetrunjay Hill, Palitana....

.....It is to state that **your application has been filed** as there is **no provision through any circular of the Government granting powers to this office** to make the appointment of the Priest in Shri Nilkanth Mahadev Mandir.

Sd/- (Illegible)  
The Deputy Collector  
Palitana"

"34....

Sub.: For appointment as Manager and Priest in Shri Nilkanth Mahadev Trust, Registration No.A/1176, on Shetrunjay Hill, Palitana...

...As per the letter referred at Sr.(2) above of the Collector office, Bhavnagar, the administration of the temples does not include Mahadev Mandir situated on Shetrunjay hills....

Sd/- (Illegible)  
The Deputy Collector  
Palitana"

And in para no. 18 of the affidavit filed by AKT as appears in its scanned reproduction at page no. 39 of the judgment:

"18...The Mahadeo temple is also managed and maintained by AKT through its employee as per the Hindu custom and rituals, **In any view of the matter no one was taking care of temple at least since 1965, the year of application for registration of Trust and the same is looked after and manged by AKT.**"

One of the issues asserted in the Judgment is an appointment of the pujari of the Mahadev Temple. This issue is not addressed in 1928 agreement. In affidavit at para 18, AKT recorded that the Mahadev



Temple is managed and maintained by AKT through its employees as per Hindu customs and rituals and at least since 1965 no one was taking care of the Mahadev temple. Therefore, it appears that the legal position regarding appointment of the pujari was vague in 1965. In 2016-17, Deputy collector in his letters while communicating on this issue has clearly stated that there are no provisions through any circular of the government granting powers to his office (for the rights to appoint a pujari). Yet, AKT in its oral arguments submitted that the right to appoint a pujari is with the state government. With such submissions, it is obvious that the judgment would settle factual position against AKT, where in now AKT has not only lost de-facto right to appoint a pujari but also lost the right to veto his appointment (subject to AKT filing an Appeal or Review Petition to get these facts rectified in the said Judgment). Now state government is only required to consult the AKT. In the event of conflict between the state government and AKT, the way forward to resolve the conflict is ambiguous.

7. In para no. 23 the Judgment records:

"23...**Bharata Chakravarin**, the father of Pundarik and half brother of Bahubali also came to Shetrunjay many times. He is also credited with building Temples in honour of father **Rishabha or Lord Adinath**. The Palitana Jain Temples were built over a period of 900 years starting from 11th Century and one Kumarpal built the earliest of the Jain Temples on Shetrunjay Hills."





Here the judgment records an unfavourable & misleading fact which concludes that none of the current Temples on the Hills are older than 11<sup>th</sup> century and may create a false impression that there were no Temples on Shatrunjay Hills from the era of Bharat Chakravarti temples until the beginning of 11<sup>th</sup> century. Such statements may also disregard the popular fact that during the regime of Samprati Maharaja Jain temples were very much in existence. Not only this our scriptures and traditions also clearly indicate that Jain Temples glorified the hills of Shatranjay hills from the times of Tirthankara Rishab dev.

8. In para no. 50 the Judgment states:

"50...As a matter of fact in view of the extremely divine and pious character of this Hill maintained by Jain community since times immemorial."

Here the judgment records the entire Shatrunjay Hills as pious Tirth for Shwetamber Murtipujak Jains. However, it is unfortunate that in spite of plethora of scriptural references establishing Shatrunjay Tirth as

- an object of adoration & object of worship for Jains; and
- a topmost significant place of worship for Jains; and also,
- an integral and essential part of Jain religion,

AKT could not propose it in an appropriate way to obtain such recognition. Had this been done, significant positive impact could have been achieved in all forthcoming legal cases and / or political conflicts, in view of the constitutional importance of such recognition. It is



important to note that AKT was offered such scriptural and legal guidance several times, but the same was not heeded.

AKT's silence on all of the above issues of concern within the judgment and its conscious acceptance of the aforesaid points may invite an undesired situation which could prove catastrophic for the Chaturvidh Jain Sangh in respect of our most revered and pious Maha Tirth – Shree Shatrunjay Giriraj.

AKT's dubious submissions which are clearly responsible in getting this judgment have created a fragile position of the Jain Sangh. However, the roots of this position lie in the history which goes back to about 400 years. Keeping in mind, the core of historical documents submitted by AKT; which is also a part of judgment, the next part shall throw light on structural deformation of Jaina Order.

Dharmalaabh

*Acharya Yugbhushansuri*

**(Ga. Acharya Yugbhushansuri)**

**Note: I, Gacchadhipati of Mohjit Samuday Chaturvidh Sangh, on behalf of our Sangh, by virtue of my declaration dated 17<sup>th</sup> December 2020, do make aware to Sangh that the 1877 Resolution and 1928 Agreement which were instrumental in damaging the rights of Jain community, formed the base for this Neelkanth Mahadev Temple case Judgment. Therefore, we have held this Judgment under consideration for indefinite period and advise that entire Sangh should seriously think over it.**