

1235 WRIT

Dispatch No. (BM/HSM/LPA/PA):  
(TO BE RETURNED TO THIS COURT/TO BE SERVED IN RESPONDENT NO  
(TO BE RETURNED TO THIS COURT DULY EXECUTED)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 6428 of 2004

Fixed on :  
District JUDGE  
Petitioner(s) :  
MR HR PRAJAPATI

SANDIPALJI DIGAMBER JAIN  
KARKHANA & 1  
VS  
STATE OF GUJARAT & 5

Opponent(s)

STATE OF GUJARAT

DIRECTOR OF AGENCIES

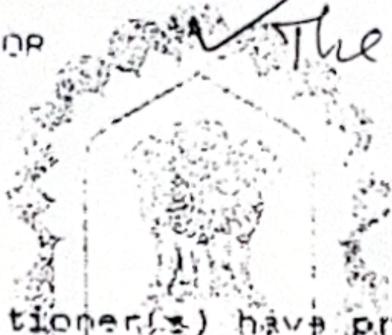
THRO' SECRETARY, YOUTH  
SERVICES & CULTURAL ACTIVITIES  
BLOCK NO. 5, NEW SACHIVALAYA  
GANDHINAGAR

GOVT. OF GUJARAT  
HR TOWN HALL, NEW SACHIVALAYA  
GANDHINAGAR

COLLECTOR

OFFICE OF THE COLLECTOR  
JUNAGADH

The D. S. P. Junagadh.



Whereas the abovenamed petitioner(s) have presented a petition to this High Court of Gujarat at Ahmedabad praying to grant interim relief as mentioned for in the accompanying copy of petition and etc.

And Whereas Upon hearing MR HR PRAJAPATI (Advocate for petitioner) and GOVERNMENT FLEADER for Respondent No. 1 and MR HRIDAY BUCH for Respondent No. 2 and MR ASHISH M DAGLI for Respondent No. 5 the Court passed the following order :-

Coram : Jayant Patel, J. (Dt. 17/02/2005)

I have heard..... for final hearing of the matter (Copy of order is enclosed herewith)

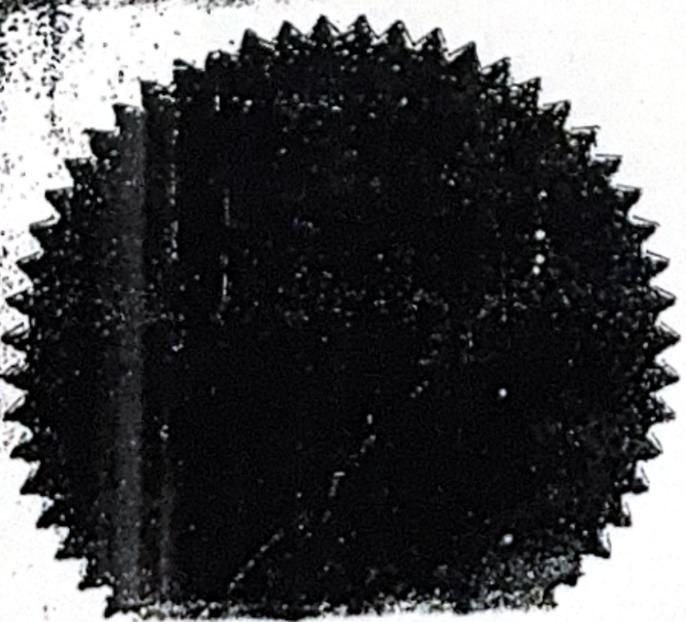
Orders accordingly for the compliance of directions given by the Hon'ble Court as stated in accompanying copy of the Court's order dtd. 17/02/2005.

Witness BHAWANI SINGH, Esquire Chief Justice

at Ahmedabad aforesaid this 17th day of Feb. 2005.

By the Court

Deputy Registrar 23/2/05  
True Copy



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6428 of 2004

BANDILALJI DIGAMBER JAIN      KARKHANA  
Versus  
STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6428 of 2004  
MR HR PRAJAPATI for Petitioner No. 1-2  
Mr. Kamal Trivedi, Addl. Adv. General  
with Ms. Sangeeta Vishen for Respondent No. 1-3.  
RULE NOT RECD BACK for Respondent No. 3-6  
MR HRIDAY BUCH for Respondent No. 4  
MR ASHISH M DAGLI for Respondent No. 5-6

CORAM : HON'BLE MR. JUSTICE JAYANT PATEL

Date of Order: 17/02/2005

ORAL ORDER

I have heard Mr. Manoj Goel with Mr. Prajapati, the learned counsel appearing for the petitioner, Mr. Kamal Trivedi, Ld. Addl. Adv. General with Ms. Sangeeta Vishen for the State authorities, Mr. Hriday Buch for respondent No. 4, Mr. Jashwant Shah with Mr. Dagli for respondent Nos 5 & 6 and Mr. B.B. Naik for applicant in CA No. 913/05 who is permitted to be joined as party respondent as per order passed in CA today.

2. I would have considered the matter for final disposal as per order dated 21.12.2004 passed by this court (M.R. Shah, J) in this petition, however, Ld. advocate for the petitioner submitted that the petitioner would like to place additional material to show that the place/site in question is for idol of Lord Neminath and the footprints of Lord Neminath are identified as that of Lord Dattatreya and the sight in question was used by the

disciples of Jain religion, more particularly, Digambari Jains, and therefore, I find that the matter can be considered for the purpose of interim relief since the notice as to interim relief was already made returnable by this court and the matter is awaiting for the purpose of passing interim order pending final disposal.

3. It has been submitted by the Ld. advocate for the petitioners that the construction is made by altering the position of the site and the permission is subsequently granted. It has been further submitted that there is replacement of the idol of Lord Dattatrey and once the construction is in contravention to the statutory provisions and as construction can only be made by the Archaeological officer or the Govt. itself which is enjoined with the duty to protect the monument/site, proper directions deserve to be issued for removal of illegal construction and/or in any case for the new idol of Lord Dattatrey.

4. Mr. Goel, learned counsel, further submitted that the followers of Jain religion, who wanted to offer prayers are not permitted to reach upto the idol of Lord Neminath and as per the statement made by him at Bar, physical assaults were also given by some persons. He, therefore, submitted that even if this court is not inclined to consider the matter for removal of new idol of Lord Dattatrey or the construction made by interim order, proper interim orders may be passed so that the

followers of Jain religion can offer prayers at the place in question in a comfortable and convenient manner with safety.

5. It was also submitted that a committee may also be constituted for finding out an amicable solution in such a manner that the disciples of Lord Dattatrey as well as of Lord Neminath, both, can offer prayers at their respective place or at the place of their choice which is forming part of the site/monument.

6. Mr. Kamal Trivedi, Ld. Addl. Adv. General, has submitted that as per State authorities the construction is as per permission granted with negligible change as per the report submitted. He further submitted that as per State Govt's report prior to impugned construction two pillars with bells were there shown as donated to Lord Dattatrey and near to footprint, the plate stating footprint of Lord Dattatrey was very much there. He also submitted that earlier idol of Lord Dattatrey was also there but now the said idol is only replaced. He submitted that the allegations are illfounded. He further submitted that the State even otherwise is also required to take all precautions which may be found proper by the court to ensure that anyone who is desirous to offer prayer at the site, may be having faith in Lord Dattatrey or Lord Neminath. It was also submitted that as per his information 5 State Reserve Police are deputed with a view to see that there is no law and order problem, but, still however he has submitted that if this court give proper directions to ensure the safety of

those who visit as tourists or for offering prayer, the State would abide by such directions. For the purpose of constitution of committee to find out amicable solution he has left the matter to the court.

7. M/s. Buch, Shah and Naik for private respondents have submitted that they are not admitting the right of the petitioners and they are opposing the petition in toto because as per their case place in question was only of Lord Dattatrey idol and footprints were also of Lord Dattatrey only. On behalf of private respondents, it has been submitted that they are also not interested to see that the followers of Jain religion are prevented from visiting the place, but it has been submitted that proper arrangements may be made in such a manner that everybody who is desirous to visit the site/place either as tourist or for offering prayer can comfortably and conveniently offer prayer in a safety atmosphere.

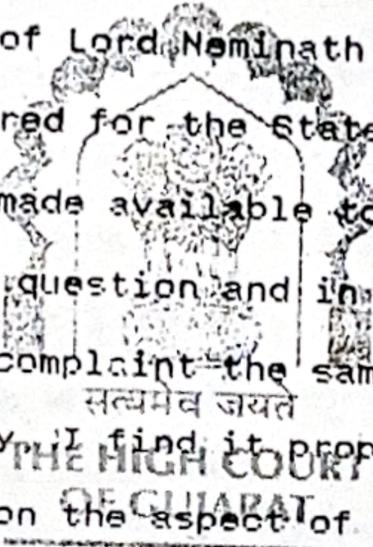


8. It prima facie appears that there is no dispute that the said site is required to be protected by the State as per the provisions of Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965. The site as it is in the notification is identified as "Guru Dattatrey Tunk". The assertion of the petitioners that the sculpture is of Lord Neminath and the footprints are also of Lord Neminath and not of Lord Dattatrey can be concluded only if a fact finding inquiry is undertaken which normally may not be undertaken by this court exercising powers under Article 226 of the Constitution.

Even if it is to be undertaken, then also it cannot be concluded at this stage unless and until proper and sufficient material is produced by both the sides to support their rival claims. As observed earlier, since the time is sought to place the material by the learned advocate for the petitioners I find it proper to leave the matter at that stage.

9. However, even if the matter is considered on the basis that the followers of Jain religion are desirous to offer the prayers or visit the sculpture which is identified by them as that of Lord Neminath and the footprints are identified as that of Lord Neminath, though, as per the private respondents it is of Lord Dattatrey, I find that they would be entitled to visit and offer prayer. So will be the case for those who are disciples or followers of Lord Dattatrey. In our secular country individual belonging to any religion if he is desirous to visit as tourist or as disciple of a temple or mosque or any place of worship can not be prevented in normal circumstances and if any citizen is desirous to visit such place either as a disciple or as a tourist it will be the duty of the State to ensure that such visit is permitted in a safe and convenient atmosphere. As there are allegations on behalf of the petitioners that certain disciples/followers of Jain religion were assaulted I find that the State should regulate the visit of everybody who is desirous to visit the place of either Lord Dattatrey or the sculpture which is identified as of Lord Neminath and the aforesaid footprints. Such regulations can be made by issuing some entry pass while

crossing a particular spot/point and such passes may be redeposited while going out of the said spot/point with a view to ensure that the person visited the place has come back in the safe condition and if any complaint is made same can immediately be attended to. Ultimately, it will be for the State/Dist. Magistrate finalise the aspects regarding terms and conditions for regulating the ingress and outgress from a particular check point, but, as such, in any case would be required with a view to see that the visitors can either visit or offer prayers in comfortable and convenient manner, may be as a disciple of Lord Dattatrey or as disciple of Lord Neminath or as tourist. It would also be required for the State to ensure that sufficient protection is made available to the tourists who visit the place in question and in case of any law and order problem or any complaint the same is properly attended to. Ultimately, I find it proper to leave the matter at that stage and on the aspect of the strength of police force it will be for the District Magistrate to finalise considering the facts and circumstances and the situation available on the site.



THE HIGH COURT  
OF GUJARAT

10. So far as the removal of new idol and construction already made is concerned, I find that the claim in the petition is on the basis that the State has not properly protected the site/monument, but the said claim is coupled with the aspect that it is the case of the petitioners that the place in question is having the idol of Lord Neminath and the footprints are that of Lord Neminath. Unless both the questions are finally concluded, if by interim order, the idol of Lord

Dattatrey is removed or the construction is removed and in the event the petitioners fail in the petition, the irreversible situation may arise. Even otherwise also, if such an order is passed by way of interim measure, it may result into allowing the petition at this stage in the absence of conclusion recorded by this court in respect of the status of the site/monument. Therefore, I find that by interim order the removal of idol of Lord Dattatrey or construction would not be proper. However, as the matter is pertaining to the maintenance of faith of the followers of two religions, namely, Hindu as well as Jain, the position should be maintained which results into maintenance of continuation of faith of both the religions. Therefore, I find that for such purpose, it would in the larger interest, if the High Power Committee is constituted to which the representation may be made by all those who are concerned and if the report is placed before this court, same would also help this court to finally adjudicate upon the issues which may arise in the petition, in the event the issue is not amicably settled.

11. In view of the above, I find that the following interim directions deserve to be issued:

- (i) The respondent No.3, Dist. Collector who is also the District Magistrate shall decide the check post/point between 4 and 5 peak for regulating the ingress and outgress through that check post/point in the light of observations made hereinabove and such exercise shall be completed within four weeks from today. He shall also

ensure that sufficient police force is deployed at the said check post/point in the light of observations made hereinabove.

(ii) It is further directed that in the event any complaint is filed by any visitor, may be the disciple of Lord Neminath or Lord Dattatreya or any tourist, same shall be immediately reported at the earliest within a period of 12 hours to the Dist. Superintendent of Police and the necessary action in accordance with law shall be taken.

(iii) The respondent No. 1 State Govt shall constitute a committee comprising of (a) the officers not below the rank of Deputy Secretary, Youth Services and Cultural Activities, (b) one representative from the office of Director of Archaeology, not below the rank of Superintending Archaeologist, (c) District Collector and such constitution of the committee shall be made within a period of four weeks from today.

(iv) After the committee is so constituted, it would be open to all the concerned including the petitioners and the private respondents to make their representations/suggestions and counter suggestions. The committee shall make an attempt arrive at an amicable solution on the issue and in case ultimately the matter is not amicably settled between the petitioners and the private respondents, it may also suggest the amicable mode to maintain the site/monument which may be in the

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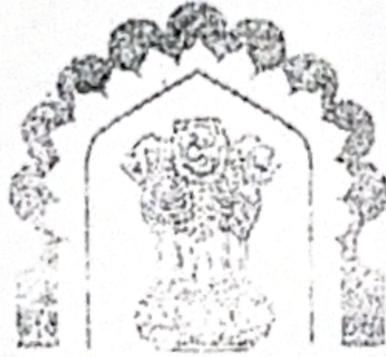
Order dated 17/02/2005

larger interest of all concerned. The report of the same shall be submitted to this court within a period of six months from the date of constitution of such committee.

12. After the report is placed before this court, it would be open to either side to move this court for final hearing of the matter.

17.2.2005

Sd/-  
(JAYANT PATEL, J.)



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THE HIGH COURT  
OF GUJARAT