HIGH COURT OF GUJARAT

MUKESH HIMATLAL SHETH
Versus
STATE OF GUJARAT

Date of Decision: 05 November 2005

Citation: 2005 LawSuit(Guj) 732

Hon'ble Judges: H N Devani

Eq. Citations: 2006 CrLJ 859, 2006 AIR(Guj) 69, 2006 1 GLR 393, 2006 1 GLH 28, 2006 1 GCD 305, 2006 40 AllIndCas 786

Case Type: Special Civil Application

Case No: 22095 of 2005

Subject: Criminal

Acts Referred:
Gujarat Prevention Of Anti-Social Activities Act, 1985 Sec 2(h), Sec 2(i), Sec 3

Final Decision: Petition allowed

Advocates: Mihir H Joshi, K D Gandhi, Nanavati Associates, Siraj R Gori

Cases Cited in (+): **17**
Cases Referred in (+): **21**

H. N. DEVANI, J.

[1] Mr. K. D. Gandhi, the learned Advocate for the petitioner seeks permission to amend the cause title of the petition. Permission is granted. Amendment to be carried out immediately.

[2] By this writ petition under Art. 226 of the Constitution of India the petitioner/detenu-Mukesh Himatlal Sheth, residing at Kantilal House, 14, Mama Parmanand Marg, Mumbai, challenges the order of detention dated 18th October, 2005 passed by the District Magistrate, Patan, ordering the detention of the petitioner under Sec. 3(1) read with Sec. 3(H) and 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (the Act) on the said authority" subjective satisfaction that such detention was necessary with a view to preventing the petitioner from acting in a

manner prejudicial to the maintenance of the "public order". (The learned Counsel appearing for the petitioner has drawn attention to the fact that there is an error in quoting the provisions of the Act in the order. The correct provisions are Secs. 2(h) and 2(i) and not Sec. 3(H) and 3(1) of the Act).

[3] It appears that a similar order of detention under Sec. 3 read with Sec. 2(h) of the Act had been made against the petitioner's brother Rajesh Himatlal Sheth which has been challenged by his brother before this Court by way of a writ petition being Special Civil Application No. 21775 of 2005 wherein notice had been issued on 25th October, 2005 which was made returnable on 28th October, 2005. On the returnable date, it appears that the Court after perusing the order of detention had observed that no coercive measures would be taken against the petitioner's brother since the matter is sub-judice.

[4] It is the case of the petitioner that with a view to overreach the process of the Court, police personnel from Gujarat Police had come along with Maharashtra police, to the residence of the petitioner and his brother on 30th October, 2005 at 3-00 p.m. to arrest both the petitioner and his brother. However, since the petitioner's brother was not available at his residence, the petitioner was taken away from his residence by the police personnel under the guise of recording his statement without serving a copy of the warrant or the order of detention. Whereas it is the case of the respondents, as stated in the return filed by the detaining authority, that the petitioner had refused to take the detention order and that the same was served upon the petitioner by pasting the same at the residence of the petitioner. It is also stated that for the purpose of executing the detention order the respondent authorities had taken the help of the Maharashtra authorities as the petitioner was staying at Bombay. Therefore, it is an admitted position that the detention order was executed at Bombay.

[5] It is also stated on behalf of the respondents that upon executing the detention order, the petitioner was taken to the Bharuch sub-jail and that the petitioner has accepted the detention order along with the grounds at Bharuch sub-jail on 31st October, 2005. The said statement has been refuted by the learned Counsel for the petitioner. It is submitted that only the grounds of detention have been served on the petitioner and that the order of detention has not been served on the petitioner. It is submitted that the respondents be directed to place a copy of the detention order on record. The respondents have disputed the say of the petitioner. However, with a view to complete the record, a copy of the detention order has been placed on record.

[6] This petition was moved for urgent circulation during the vacation and was heard on 1st November, 2005. During the course of hearing, the learned Senior Advocate, Mr. K. S. Nanavati appearing on behalf of the petitioner had vehemently pressed for grant

of interim relief. However, applying the principles laid down by the Supreme Court in the case of State of Bihar v. Rambalak Singh, AIR 1966 SC 1441, wherein it has been held as follows :

> "(10). Having thus rejected the main argument urged by the learned Advocate General, we must hasten to emphasize the fact that though we have no hesitation in affirming the jurisdiction of the High Court in granting interim relief by way of bail to a detenu who has been detained under Rule 30 of the Rules, there are certain inexorable considerations which are relevant to proceedings of this character and which inevitably circumscribe the exercise of the jurisdiction of the High Court to pass interim orders granting bail to the detenu. There is no doubt that the facts on which the subjective satisfaction of the detaining authority is based, are not justiciable, and so, it is not open to the High Court to enquire whether the impugned order of detention is justified on facts or not. The jurisdiction of the High Court to grant relief to the detenu in such proceedings is very narrow and very limited. That being so, if the High Court takes the view that prima facie, the allegations made in the writ petitions disclose a serious defect in the order of detention which would justify the release of the detenu, the wiser and the most sensible and reasonable course to adopt would invariably be to expedite the hearing of the writ petition and deal with the merits without any delay. Take the case where mala fides are alleged in respect of an order of detention. It is difficult, if not impossible, for the Court to come to any conclusion, even prima facie, about the mala fides alleged, unless a return is filed by the State. Just as it is not unlikely that the High Courts may come across cases where orders of detention are passed mala fide, it is also not unlikely that allegations of mala fides are made light-heartedly or without justification; and so, a judicial approach necessarily postulates that no conclusion can be reached, even prima facie, as to mala fides unless the State is given a chance to file its return and state its case in respect of the said allegations; and this emphasizes the fact that even in regard to a challenge to the validity of an order of detention on the ground that it is passed mala fide, it would not be safe, sound or reasonable to make an interim order on the prima facie provisional conclusion that there may be some substance in the allegations of mala fides. What is true about mala fides is equally true about other infirmities on which an order of detention may be challenged by the detenu. That is why, the limitation of jurisdiction of the Court to grant relief to the detenus who have been detained under Rule 30 of the Rules inevitably introduces a corresponding limitation on the power of the Court to grant interim relief."

It was deemed appropriate to give the respondents an opportunity to file their return and to expedite the hearing of the writ petition. The aforesaid course of

action was resisted by the learned Assistant Government Pleader and it was submitted that the matter be taken up in its turn in the regular course. However, considering the peculiar facts of the case, as well as the fact that in the case of a similar order of detention made against Shri Rajesh Himatlal Sheth, the brother of the petitioner, this Court had at the pre-execution stage thought it fit to intervene and direct the respondents not to take any coercive action, the request made by the learned Assistant Government Pleader was turned down. Accordingly, Rule was issued which was made returnable on 4th November, 2005 with the express understanding that the matter would be taken up for final hearing on that day. Mr. Nanavati had also submitted that the petitioner was suffering from serious health problems, and requested that the petitioner be shifted to the Sterling Hospital, at Ahmedabad, at his own cost. The learned Assistant Government Pleader, after taking instructions, acceded to the said request, but submitted that the doctor treating the petitioner be directed to submit a report regarding the health of the petitioner on the returnable date. It was directed accordingly.

In compliance with the aforesaid directions, a certificate dated 4th November, 2005, has been submitted by the Dy. Medical Administrator of the Sterling Hospital, which has been taken on record.

[7] On the returnable date, i.e., 4th November, 2005, an affidavit-in-reply dated 3rd November 2005, made by Shri J. D. Bhad, the District Magistrate, Patan who is the detaining authority was tendered. The pleadings being complete, the matter was taken up for hearing and final disposal.

[8] Heard, Mr. Mihir H. Joshi, learned Senior Advocate with Mr. Keyur Gandhi, learned Advocate on behalf of the petitioner and Mr. Siraj Gori, learned Assistant Government Pleader on behalf of the respondents.

[9] The learned Senior Counsel referred to the averments made in Paragraph 8 of the petition wherein the family background of the petitioner has been described, to point out that the petitioner belongs to a respectable family and has never been involved in any offence so far.

It was submitted that the impugned order of detention is ultra vires the Act as the same has been passed for the purported breach of condition of N.A. permission, which is totally without authority of law and de hors the Act. It was submitted that Sec. 3(1) read with Secs. 2(h) and (i) of the Act do not authorize preventive detention of a citizen for breach of conditions of N.A. permission. It was submitted that the petitioner had been detained under Sec. 3(1) read with Secs. 2(h) and 2(i) of the Act on the ground that the petitioner is a property grabber carrying on

unauthorized constructions, and as such, is required to be prevented from carrying on such activities which are prejudicial to the maintenance of public order. It was contended that the petitioner could not in any manner be said to be a property grabber as defined under the Act inasmuch as the petitioner had not illegally or otherwise taken over the possession of Government land or any other person's land.

It was submitted that Sec. 3 of the Act provides for detention of any person with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. That, under sub-sec. (4) of Sec. 3 of the Act, a person is deemed to be acting in a manner prejudicial to the maintenance of public order when such person is engaged in or is making preparation for engaging in the activities narrated in the sub-sec, which includes activities as property grabber. It was further submitted that the definition of "property grabber" as defined under Sec. 2(h) of the Act contemplates a person who has no title to the property and has been involved in the activities mentioned therein in respect of land to which he has no title or is not the owner. It was further submitted that the words "who constructs unauthorized structures thereon for sale or hire" in Sec. 2(h) also refers to these activities in respect of land to which the person alleged to be "property grabber" is not the owner and has no title.

The learned Counsel submitted that it is an admitted fact that in the revenue records the names of the petitioner and his family members are shown in respect of the lands in relation to which breach is alleged and that all the construction is within the said lands. It was submitted that the basis of the order of detention is the allegation that the petitioner has sold part of the common plot, which admittedly formed a part of the lands owned by the petitioner. It was contended that merely because a parcel of land is demarcated as a common plot in the lay-out plan, the owner does not lose his title over the said land. It was submitted that that the petitioner who had constructed upon his own property can in no manner be labelled as a property grabber. It was further submitted that even as per the Government resolution relied upon by the respondent authorities the owner is not divested of his ownership in the common plot, he merely ceases to have the power to exercise any rights over the said property. It was further submitted that this was not a case in which the common plot was done away with and the entire property was constructed upon leaving no scope for a common plot. It was pointed out that provision was made for a common plot of similar size elsewhere and that regularization had been sought for. It was further submitted that the detention order pertained to two Survey numbers namely Survey numbers 69 and 70. It was stated that the land admeasuring 322 sq. mts. forming part of common plot of

Survey number 69 as per the original lay-out plan which totally admeasures of 2160 sq. mts had been sold, where as the common plot of Survey number 70 was open vacant land. It was contended that the rights of the petitioner in respect of the land of the common plot may be truncated, but he does not cease to be the owner thereof. That the petitioner had not taken over any one else's land; that, none of the activities alleged against the petitioner in the order of detention can even be labelled as offences. It was vehemently urged that the main ground for making the order of detention was the sale of 322 sq. mts of land forming part of the common plot as per the N.A. permission lay-out plan, which could by no stretch of imagination be said to be an activity of property grabbing or an activity which has any nexus to the maintenance of public order, so as to warrant such drastic action like subjecting the petitioner to detention under the provisions of the Act.

The learned Counsel submitted that the term property grabber should take colour from the associated words mentioned in the sub-section, namely bootlegger, dangerous person, drug offender and immoral traffic offender, and accordingly, the word property grabber would be synonymous with a person grabbing land using highhandedness or criminal intimidation like a slum lord, etc. The learned Counsel referred to the decision of the Supreme Court in the case of Navalshankar Ishwarlal Dave v. State of Gujarat, 1993 Supp (3) SCC 754, with special reference to Paragraph 4 thereof, wherein the Court has referred to para 4 of the statements and objects of the Act, to point out that the definition of "property grabber" read with Sec. 3(1) of the Act contemplates taking illegal possession of public or private lands by musclemen of some means, often got from bootlegging, and constructing or permitting construction thereon of unauthorized structure or selling, leasing or giving on lease or licence such land or unauthorized structure after collecting heavy price, rents, compensation and the like, and in so collecting the charge from the occupiers, the musclemen resort to criminal intimidation. Due to such activities the entire community living in slums is under the grip of perpetual fear of such land grabber. That it is such activities that adversely affect the public order.

The next contention raised on behalf of the petitioner was that in the present case the construction was over in 1993, the revised plotting had come to the notice of the City Survey Superintendent in April, 1998, the sale-deeds upon which reliance has been placed for making the impugned order have been executed in the year 2000, whereas the detention order has been made on 18th October, 2005, hence there is no proximate or causal connection between the incidents forming the basis of the order of detention. Accordingly, it was urged that such remote incidents do not justify the making of the detention order. It was submitted that the detaining authority had not furnished any explanation as to why there was such a long delay

in passing the order of the detention. Reliance was placed upon the decisions of the Apex Court in the case of Jagan Nath Biswas v. State of W. B., AIR 1975 SC 1516, Kamlakar Prasad Chaturvedi v. State of M. P., 1983 (4) SCC 443, Lakshman Khatik v. State of W. B., AIR 1974 SC 1264 and Abdul Munnaf v. State of W. B., AIR 1974 SC 2066 for the proposition that there has to be some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at; and that if in a given case there was a time-lag between the prejudicial activity of a detenu and the detention order made because of that activity is ex-facie long, the detaining authority should explain the delay in making the detention order with a view to show that there was proximity between the prejudicial activity and the detention order.

The next contention raised by the learned Senior Counsel was that the impugned order suffers from non-application of mind as well as from non-consideration of relevant facts. Referring to the document at page 31 of the compilation supplied with the detention order, it was submitted that identical breaches on the very same plot have been regularized, which fact was germane to the present case, therefore, the same should have been kept in mind by the detaining authority before making the detention order. The learned Counsel also referred to the document annexed at page 80 to the petition whereby the very officer who as the detaining authority had passed the detention order had approved the revised lay-out plan on an application made by a purchaser of lands forming part of Revenue Survey No. 69 to point out that the alleged breach was not of such a nature as could not be regularized. It was contended that if such breach could be regularized, it could in no manner call for such drastic action like detention under the provisions of the P.A.S.A. Act. It was submitted that the detaining authority had not applied his mind to the aforesaid facts; hence the order of detention is vitiated on account of non-application of mind.

The learned Counsel also referred to the sale-deed executed by the petitioner in favour of one Patel Pankajbhai Ramjibhai, annexed as Annexure R-III to the affidavit-in-reply wherein part of the land forming common plot had been sold to the purchaser; as well as to the document at page 335 of the compilation, to point out that on an application by the purchaser, the municipality had granted permission to construct on the said lands under Sec. 155 of the Gujarat Municipalities Act. It was submitted that the plots initially stood in the name of the petitioner, and subsequently, the names of the purchasers had been entered and that the authorities had approved their plans.

Referring to the sale-deeds (Annexure R-III) it was pointed out that by virtue of the very sale-deeds the purchasers were put to notice that they will have no right over

the common plot, hence, there was no question of cheating the purchasers. The learned Counsel submitted that all the sale-deeds were registered sale-deeds; all the records of the City Survey Superintendent continue as on today; all the non-agricultural permissions etc. are operative today. It was urged that the detaining authority cannot go behind the documents and take action which is not in consonance with the record. It was submitted that the fact that various plots had been regularized ought to have been considered before making the impugned detention order. Reliance was placed upon the decision of the Apex Court in the case of Ashadevi v. K. Shivraj, AIR 1979 SC 447 for the proposition that when material and vital facts which are likely to influence the mind of the authority are not considered, the subjective satisfaction of the authority is vitiated which renders the order of the detention invalid.

The next ground for assailing the impugned detention order was that irrelevant grounds had been taken into consideration. It was submitted that the order of detention is based on vague, extraneous, non-existent and irrelevant grounds and passed without application of mind to the true facts and circumstances. It was contended that loss to the Government, under-valuation of land and construction on margin land were irrelevant considerations for making the impugned order as the same had no nexus with the maintenance of public order and that the grounds for making the detention order are completely interwoven and cannot be separated and upheld. Reliance was placed upon the decision of the Apex Court in the case of Jatindra Nath v. State of W. B., AIR 1975 SC 1215 for the proposition that even if one ground, out of two or more is found to vitiate the subjective satisfaction of the detaining authority, the order of detention falls.

The learned Counsel next contended that all the alleged irregularities relate to one plot of land namely common plot of revenue Survey No. 69, which is a solitary incident and that the nature of the said incident was not such as to justify detention as the said activity in no manner disturbed the even tempo of public life. It was submitted that even a solitary incident could be made the basis of any order of detention, however, the incident should be such as would disrupt the even tempo of public life. Reliance was placed upon the decision of the Apex Court in the case of Darpan Kumar Sharma v. State of T. N., 2003 (2) SCC 313 and the decision of this Court in the case of Surajsinh L. Rajput v. State of Gujarat, 2004 (1) GLH 454 for the proposition that the reach and potentiality of the single incident should be so great as to disturb the even tempo or normal life of the community in the locality so as to disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality.

The learned Counsel submitted that the subjective satisfaction of the detaining authority while passing the detention order, stood completely vitiated. It was urged that except for the ground that the petitioner owns various parcels of land in Patan, and is likely to indulge in activities contrary to land laws, there is no other ground for making the detention order. It was contended that there is no material before the detaining authority to justify such apprehension. It was urged that the very ground stated in the detention order is contrary to the provisions of the Act, in that the definition of property grabber envisages taking possession of Government land or some other person's land, whereas the apprehension voiced in the detention order is in respect of lands owned by the petitioner himself, to which the provisions of the Act do not apply, hence, the very basis for passing the detention order stands vitiated. Reliance was placed upon the decisions of the Apex Court in the case of Anand Prakash v. State of U. P., 1990 (1) SCC 291 as well as the decisions of this Court in the case of Dalpatbhai Bhikhabhai Patel v. District Magistrate, Surat, 1983 (2) GLR 849 and Ganeshbhai Gangabhai Harijan v. District Magistrate, B. K., 1983 (2) GLR 1016 to contend that except for the bald statement that the detenu was likely to indulge in activities contrary to land laws, there is no credible information or material or cogent reasons apparent on the record to warrant an inference that the petitioner would indulge in the alleged activities or that the ordinary laws of the land were not efficacious enough for preventing such objectionable activities. The decision of the Apex Court in the case of T. Devaki v. Government of T. N., 1990 (2) SCC 456 was cited for the proposition that it is the substance and not form of language in the detention order that has to be seen. Verbatim use of statutory language that the detenu acted in a manner prejudicial to the maintenance of public order is not enough.

The learned Counsel emphatically contended that the provisions of Sec. 4 read with Sec. 7 of the Act envisage the execution of the order of detention within the State though outside the purview of the detaining authority whereas in the present case admittedly, as per the say of the detaining authority itself, the order of detention has been executed at Bombay i.e., outside the State of Gujarat and that it was not even the case of the respondents that the petitioner was absconding. Accordingly, it was submitted that the detention of the petitioner is vitiated, as the order of detention has been executed outside the State of Gujarat in contravention of the provisions of Sec. 4 of the Act.

Referring to the affidavit made by the detaining authority it was submitted that upon reading the affidavit as a whole, it was apparent that the Government Resolution annexed as Annexure RV to the affidavit-in-reply had weighed heavily with the detaining authority while making the detention order, as the same formed

the basis for contending that the petitioner ceased to have any right over the common plot. It was submitted that in the circumstances the said resolution was an important and relevant document and that the same had not been supplied to the petitioner, hence, the detention of the petitioner was bad on the ground of non-supply of relevant documents. Reliance was placed upon the decision of the Apex Court in the case of Tulshi Kahar v. State of W. B., 1975 (3) SCC 309 for the proposition that other strong material which had been taken into consideration by the detaining authority at the time, it made the order had not been communicated to the petitioner, hence, he was not given a fair chance to explain the grounds which were communicated to him which rendered the order of detention invalid.

The learned Senior Counsel also relied upon the decision of the Supreme Court in the case of Krishna Murari v. Union of India, AIR 1975 SC 1877 wherein it has been held that it is true the Court cannot go behind the subjective satisfaction of the detaining authority, but such satisfaction does not confer a blanket power which may authorize the detaining authority to act in a ruthless or arbitrary fashion and the judicial decisions have undoubtedly carved out an area, though limited, within which the subjective satisfaction of the detaining authority can be tested on the touchstone of objectivity. It was further held that it is obvious that the subjective satisfaction of the detaining authority is a sine qua non for the exercise of power of detention and it has got to be exercised properly and discreetly. The Court relied upon the following observations made in the case of Khudiram Das v. State of West Bengal, AIR 1975 SC 550 :

"The basic postulate on which the Courts have proceeded is that the subjective satisfaction being a condition precedent for exercise of power conferred on the executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad."

Reliance was also placed upon the decision of the Supreme Court in the case of Ayya v. State of U. P., AIR 1989 SC 364 to contend that the grounds of detention did not constitute an offence, which negates the requisite degree or gravity of the activity which could reasonably be said to be productive of a "public order" situation. It was submitted that the alleged activities could be dealt with in accordance with the ordinary law of the land. That, the inference drawn by the detaining authority that the activities referred to in the grounds of the order of detention did create a "public order" situation is vitiated by a lack of rational nexus between the activity attributed to the petitioner and the public order situation. It was submitted that the satisfaction reached by the detaining authority, subjective though it be, must rest on material, which is capable in law of producing the

satisfaction, and the concept of "public order" is what law understands and recognizes as such and not what the detaining authority misunderstands it to be.

Reliance was also placed upon the decision of the Supreme Court in the case of Bhim Singh v. State of J. K., 1985 (4) SCC 677 to contend that the Supreme Court has laid down that police officers should have greatest regard for personal liberty of citizens; their mala fide, high-handed and authoritarian conduct in depriving the personal liberty of a person was strongly condemned. It was submitted that it had been held that in appropriate cases the Court has the jurisdiction to award monetary compensation by way of exemplary costs or otherwise. That the present case was an appropriate case for awarding such compensation.

The learned Senior Counsel also assailed the impugned order of detention on the ground of mala fides in that attempt was made to serve the same at Bombay with a view to overreach the process of the Court. It was submitted that it was inconceivable that sale of land admeasuring 322 sq. mts. owned by the petitioner could shake the even tempo of the society merely because the same formed part of the common plot in the original lay-out plan. Reliance was placed upon a decision of the Apex Court in the case of Partap Singh v. State of Punjab, AIR 1964 SC 72 wherein it has been held as follows :

"We must, however, demur to the suggestion that, mala fide in the sense of improper motive should be established only by direct evidence that is that it must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts." It was contended that mala fide can be inferred from the facts that come on record and that the facts of the present case lead to a reasonable and inescapable inference that the order has been made mala fide."

In conclusion, it was submitted that the facts of the case are so glaring, that no reasonable person could have arrived at such a subjective satisfaction. It was urged that the alleged objectionable activities did not constitute any offence; did not fall within the ambit of Secs. 2(h) and (i) of the Act; and were in no manner prejudicial to the maintenance of public order as envisaged under Sec. 3(1) of the Act, so as to warrant such drastic action of detention. It was prayed that the impugned order of detention be quashed and set aside and the petitioner be set at liberty forthwith.

[10] The learned Assistant Government Pleader, Mr. Gori submitted that the activities of the petitioner fall within the definition of "property grabber" as envisaged under Sec.

2(h) of the Act. It was vehemently contended that the petitioner had made unauthorized construction over margin land for open space as well as the common plot and has unauthorisedly disposed of the land forming part of the common plot and road, and as such, could be said to be a "property grabber" in terms of Sec. 2(h) of the Act.

It was submitted that the petitioner was found to be indulging in certain nefarious activities, which were found to be against the public at large, and such activities were likely to affect adversely the maintenance of public order. It was submitted that the activities of the petitioner, squarely fall within the criteria mentioned in the provisions of Sec. 2(h) of the Act, and accordingly, the petitioner had rightly been labelled as a "property grabber".

The learned Assistant Government Pleader referred to the sale-deeds annexed as Annexure R-3 collectively to the affidavit-in-reply of the detaining authority, to point out that a clause had been stipulated in the said sale-deeds wherein it had been stated that as per the revised plan there was no common plot and that the purchaser had understood and accepted the situation of the land as per the new revised plan, and that, no objection or dispute shall be raised by the purchaser in relation to the common plot. It was submitted that the petitioner had deceived the public at large by posing to the authority that the particular land is his own land and there is no common plot.

It was submitted that, during the course of investigation, it was found that the petitioner had committed several irregularities and disposed of various pieces of land of which the petitioner was found to be not the owner. It was stated that the petitioner had no right, title or interest over the common plot; however, the petitioner had, in utter disregard of the provisions of law, disposed of and executed sale-deeds in favour of various persons. It was submitted that, in doing so, the petitioner had fabricated certain documents/map in an attempt to give sanctity to his misdeeds of fabrication of documents. It was also submitted that in the various sale-deeds executed by the petitioner it was stated that there is no common plot in the revised plan, however, there was no such sanctioned revised plan, therefore, by misrepresentation, the petitioner has disposed of various properties. In support of his contention, the learned Assistant Government Pleader placed reliance upon the copies of three such sale-deeds annexed at Annexure R-3 collectively to the affidavit-in-reply.

The learned Assistant Government Pleader further submitted that the petitioner had fabricated a map which was found to be inconsistent with the sanctioned layout plan and that the same was produced with the application before the office of the

City Survey Superintendent, Patan on 6th August, 1994, and that by doing so, the petitioner has committed an offence. That consequently, on the basis of the aforesaid fabricated map, the petitioner had disposed of valuable parcel of land, which was forming part of the common plot in the original map. It was submitted that in the circumstances, the petitioner had carried out illegal activities which fell within the ambit of Secs. 2(h) and (i) read with Sec. 3(1) of the Act and that the impugned order of detention was just, proper and legal and did not warrant any interference by this Court.

On the issue of jurisdiction under Sec. 4 of the Act, it was submitted that, in view of the provisions of Sec. 4 read with Sec. 7 of the Act, the order of detention is not invalid merely because it is not served within the State of Gujarat. It was submitted that blatant illegalities had been committed by the petitioner and that he had cheated the purchasers by misrepresenting the actual facts. Accordingly, it is submitted that the impugned order of detention was legal and valid, and that the petition was required to be rejected.

[11] Various contentions as set out above have been raised on behalf of the petitioner. However, it appears that the matter can be considered and disposed of on the basic contentions as to whether in the facts and circumstances of the case the activities of the petitioner/detenu fall within the ambit of "property grabber" as defined under Sec. 2(h) of the Act and whether the said activities could be said to be prejudicial to the maintenance of public order, hence, it is not necessary to decide all the contentions raised on behalf of the petitioner.

[12] The impugned order of detention has been made by the District Magistrate, Patan in the exercise of powers under sub-sec. (1) of Sec. 3 of the Act read with Secs. 2(h) and 2(i) of the Act. Section 3(1) of the Act confers power on the authority to detain a person if it is satisfied that such detention is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order. Sub-section (4) of Sec. 3 provides that the person shall be deemed to be "acting in a manner prejudicial to the maintenance of public order" when such person

(a) is engaged in or

(b) is making preparation for engaging in any activities, whether as (i) a bootlegger or

(ii) dangerous person or (iii) drug offender or (iv) immoral traffic offender or (v) property grabber,

which affect adversely or are likely to affect adversely the maintenance of public order.

[13] On a plain reading of the aforesaid provision, it is apparent that the power to detain a person can be exercised only on the grounds enumerated in sub-sec. (1) read with sub-sec. (4) of Sec. 3 of the Act. If the exercise of the power is not on the face of the order correlated to any of the said grounds or concerns activities, which are not germane to the any of the said grounds, such exercise would be vitiated by lack of jurisdiction.

[14] Firstly, it may be pertinent to note that the impugned order of detention bears the No. Jameen/N.A./Sharatbhang/05 namely land/N.A. /breach of condition/05. The grounds served upon the petitioner and placed on record consist of 18 numbered paragraphs wherein instances of the alleged irregularities committed by the petitioner are set out. The remaining 6 un-numbered paragraphs contain the reasons for making the order of detention. Broadly stated the 18 instances referred to in the order of detention are as under :

(1) In Paragraph Nos. 1 and 2, it is stated that by orders dated 23-4-1985 and 1-5-1985, of the Collector, Mehsana the petitioner and Shri Rajesh Himatlal Sheth had jointly been given non-agricultural permission for construction for residential purposes in accordance with the sanctioned lay-out plan in respect of lands of Revenue Survey Nos. 69 and 70 of Mouje Gungadipatti, Patan respectively.

(2) In Paragraph No. 3, it is stated that the petitioner had made an unauthorized map which was contrary to the sanctioned lay-out plan and submitted the same in the office of the City Survey, Patan, along with an application dated 6th August, 1994 and had got his name entered in City Survey No. 266, Hissa Nos. 1 to 43.

(3) In Paragraph No. 4, it is stated that on the basis of the fabricated maps, the measurement of plots was wrongly got done through the City Survey Office, Patan, and property Card Nos. 266/1 to 266/43 had been obtained and along with the copy of the assembled plan, an application dated 11-12-1990 had been submitted to the Patan Municipality, seeking building permission. That, accordingly, a rajachiththi dated 22-2-1991 had been obtained.

(4) In Paragraph No. 5, it is stated that another rajachiththi dated 24-7-1998 for construction of compound wall had been obtained on the basis of the aforesaid wrongly obtained property cards.

(5) In Paragraph No. 6, it is stated that by misrepresentation as narrated in Paragraphs 3, 4 and 5, a building known as "Raliyat Chambers, Division-A and

Division-B" consisting of 90 shops, offices/business premises had been constructed for commercial use, contrary to the permission which had been obtained for residential purposes.

(6) Paragraph No. 7 of the detention order refers to various breaches in connection with the building named "Raliyat Chambers".

(7) Paragraph Nos. 8, 9, 10, 11 and 12 of the detention order refer to sale-deeds executed by the petitioner in relation to various plots of land forming part of revenue Survey Nos. 69 and 70, and it is alleged that the sale consideration shown in each of the sale-deeds is less than the actual sale consideration for which the said lands were sold.

(8) Paragraph No. 13 refers to statements of various individuals to whom the property forming part of "Raliyat Chambers" has been sold for commercial purpose.

(9) In Paragraph No. 14, it is alleged that the petitioner has misrepresented to the purchasers of commercial premises that all necessary building permission has been obtained and that everything had been done in accordance with law and misled them into purchasing property which was wholly constructed upon internal road, common plot as well as open margin land.

(10) Paragraph No. 15 refers to the report dated 11th May, 2004, submitted by the City Survey Superintendent, Patan, wherein various breaches in respect of internal roads, common plot, margin land and use of land for commercial purpose are alleged.

(11) Paragraph No. 16 refers to the report of the Chief Officer, Patan dated 30th June, 2005, wherein it is alleged that the construction made is contrary to the rajachiththi given by the Municipality.

(12) Paragraph No. 17 refers to the report of the Deputy Collector, Patan dated 18th January, 2005, wherein it is alleged that the petitioner has made a lay-out plan as per his own whims, and that, the petitioner has committed a serious offence by disposing of lands forming part of common plot and road.

(13) Paragraph No. 18 of the detention order refers to the investigation report dated 29th September, 2005, submitted by the Resident Deputy Collector, Patan, after carrying out detailed investigation. It is stated that, as per the said report, the petitioner along with his brother had prepared an assembled plan and had constructed building for commercial purpose on lands shown as common plot and margin land in the original N.A. permission lay-out plan; had shown lesser

consideration in the sale-deeds, and thus, cheated the purchasers. That, economic loss has been caused to the State Government and as such, exemplary penal action was required to be taken against the petitioner.

In the first un-numbered Paragraph of the grounds of detention it is stated that the petitioner and Shri Rajesh Himatlal Sheth had been called upon to remain personally present to represent their case in respect of the above-mentioned illegal activities on the two dates mentioned therein. However, they had not remained personally present, but had submitted a written reply requesting for removal of technical defects and regularising the same.

In the 2nd un-numbered Paragraph, it is stated that upon consideration of the aforesaid facts it is found that the petitioner and Shri Rajesh Himatlal Sheth have consistently violated all laws, rules and provisions in relation to land and land development, and that, they had unauthorisedly grabbed lands which were set apart for public purpose and in public interest under the sanctioned lay-out plan, and had unauthorisedly sold the same by fraudulent sale-deeds. Similarly, the petitioner had constructed a huge building named "Raliyat Chambers" on land forming part of the margin as per the N.A. permission granted in respect of revenue Survey Nos. 69 and 70, and had unauthorisedly sold the shops to various individuals by misleading them solely for the purpose of his personal economic benefit. That by grabbing the lands forming part of margin, road and common plot, as well as by the acts of constructing a building contrary to the sanctioned permission, and by obtaining higher consideration, but showing lesser consideration in the sale-deed, the petitioner had sold the shops forming part of the commercial complex, and as such, indulged in activities which were prejudicial to the maintenance of public order and the provisions of Secs. 3(H) and 3(1) of the P.A.S.A. are applicable to the petitioner.

In the third un-numbered paragraph, it is alleged that the petitioner and Shri Rajesh Himatlal Sheth had jointly in collusion with each other carried out multiple illegal activities narrated above. Like submitting a totally got-up (Assemble) plan which was contrary to the approved plan-map (L.O.P.) before the Patan Municipality and on the basis of the same, fraudulently obtained rajachiththi for making construction thereon and had skillfully contrived to make the said activity legal; had actually on the basis of illegal record made unauthorized construction on land forming part of margin, road and common plot; sold the same vide sale-deeds and as such committed unpardonable illegal acts which are prejudicial to the maintenance of public order. Moreover, the petitioner along with Shri Rajesh Himatlal Sheth has concealed the real value of land/property and has executed sale-deeds showing lesser value and has obtained much higher consideration than

that shown in the sale-deeds in the form of black money and thus has indulged in uncontrolled profiteering as well as land-mafia and has for totally his own personal economic benefit adopted means which are contrary to law and has exploited the purchasers of the property, and as such, caused irreparable loss to the public interest and public purpose and has by resorting to cheating together with commission of acts in the nature of land-mafia, committed serious acts in contravention of land related laws.

The next un-numbered Paragraph of the reasons refers to the construction made for commercial purpose instead of residential purposes as well as to the stipulation in the sale-deed that the facility of common plot shall not be available. It is alleged that the petitioner has, without fear of any law, entered into sale transactions of lands meant for public purpose after making unauthorized construction thereon, and as such, has committed serious irregularities.

The next un-numbered paragraph which is the concluding part of the detention order states that the petitioner and Shri Rajesh Himatlal Sheth have jointly committed the aforesaid illegal and unauthorized activities more than once in respect of more than one land, and that the petitioner and Shri Rajesh Himatlal Sheth have several lands standing in their names, and that it is likely that the petitioner would continue to carry on illegal activities in respect of the said lands also, and that, it would not be possible to effectively stop the petitioner from carrying on such activities. That as the petitioner had grabbed lands meant for public purpose and public interest and constructed unauthorized constructions thereon in terms of provisions of Secs. 3(H) and 3(1) of the Act, and had also violated the laws in relation to the same for the purpose of profiteering and as such, had indulged in activities which are prejudicial to the public interest, and that, it is necessary to forthwith prevent the petitioner from carrying on such activities, and that, there being no other option, as a last resort, it has been ordered to detain the petitioner under the said Act.

[15] From the grounds stated above read with the affidavit-in-reply filed by the detaining authority, it is evident that the main ground for making the order of detention is that the petitioner has made unauthorized construction over the common plot and has actually unauthorisedly disposed of the land forming part of the common plot and internal road, which in the opinion of the detaining authority cannot be treated as property of the petitioner.

[16] Therefore, the main controversy involved in the present petition is as to whether the said activity falls within the ambit of "property grabber" as defined under Sec. 2(h)

of the Act and as to whether the nature of the said activity is such as can be said to be prejudicial to the maintenance of public order.

[17] The admitted facts of the case are that the petitioner and Shri Rajesh Himatlal Sheth are owners of lands bearing Survey Nos. 69 and 70 and that the common plot and internal road are also part of the said Survey numbers. It is the case of the detaining authority that once the lay-out plan is sanctioned, the lands forming part of common plot and internal roads cease to belong to the original owner under the provisions of the Government Resolution dated 13th August, 1993 annexed as Annexure-R-V to the affidavit-in-reply. It is in these circumstances, that the petitioner has been held to be a "property grabber". It is the case of the detaining authority that the petitioner has grabbed lands forming part of the common plot and the internal road, and therefore, falls within the purview of "property grabber" as defined under the Act.

[18] The Supreme Court has in the case of Navalshankar Ishwarlal Dave & Anr. v. State of Gujarat & Ors., 1993 Supp (3) SCC 754, has extensively laid down as to when property grabbing or unauthorized construction or dealing therewith can be said to be prejudicial to the maintenance of public order. The Supreme Court has held as under :

> "Section 2(h) defined "property grabber" to mean a person who illegally takes possession of any lands not belonging to himself, but belonging to Government, local authority or any other person or enters into or creates illegal tenancies or leave and license agreements or any other agreements in respect of such lands or who constructs unauthorized structures thereon for sale or hire or gives such lands to any person on rental or leave and license basis for construction or use and occupation of unauthorized structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of any occupiers of such lands rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure or who abets in any manner the doing of any of the above mentioned things. Section 2(i) defined "unauthorized structure" to mean any structure constructed in any area without express permission in writing of the officer or authority concerned under the enumerated provisions therein or except in accordance with the law for the time-being in force in such area. Therefore, a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other person or enters into or creates illegal tenancies or leave and license agreements or any other agreement in respect of such lands or who constructs unauthorized structures thereon or enters into agreement for sale or gives on hire or gives such lands or structures to any person on rental or leave or license basis for construction or for use and occupation

of unauthorized structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorized structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to lawful procedure or who abets in any manner the doing of any of the above mentioned acts or things is a property grabber. Para 4 of the statement and objects of the Act furnishes clue to make the property grabbing or unauthorized construction or dealing therewith as prejudicial to the maintenance of public order thus :

"Acute shortage of housing accommodation in major cities is being exploited by certain musclemen of some means, often got from bootlegging, by taking illegal possession of public or private lands and constructing or permitting construction thereon of unauthorized structure or selling, leasing or giving on leave and license such land or unauthorized structure after collecting heavy price, rents, compensations and the like, in so collecting the charge from the occupiers, the musclemen resort to criminal intimidation. The entire community living in the slums is under the grip of perpetual fear of such land grabbers. Such activities of these persons adversely affect the public order."

Therefore, taking illegal possession of public or private lands or unauthorized construction or structures thereon or dealing with those properties or threatening or criminal intimidation of slum dwellers cause or likely to disturb even public tempo disturbing public order. To prevent dangerous person or persons indulging in anti-social activities like land grabbing or dealing with such properties is a menace to even tempo and the legislature intended to provide remedy by detention, be it by the State Government or the authorized officer on subjective satisfaction that such activity or activities adversely affect or likely to adversely affect public order."

[19] Considering the proposition laid down by the Supreme Court in the aforesaid decision, the petitioner does not appear to fall within the ambit of "property grabber" as defined under Sec. 2(h) of the Act. The petitioner and Rajesh Himatlal Sheth are admittedly the original owners of the lands in relation to which illegal activities having been committed are alleged. Placing reliance upon a resolution of the State Government, (a copy of which has not been supplied to the petitioner), it is the contention of the respondents that lands forming part of the common plot and internal road in the N.A. permission lay-out plan cease to be the property of the original land owner. However, upon perusal of the statements and objects of the Act, as reproduced in the aforesaid decision, it is clear that a mere breach of N.A. permission cannot be said to be an activity falling within the definition of "property grabber" under Sec. 2(h) of the Act. The activity contemplated under the Act in relation to property grabbing is

taking illegal possession of public or private lands by musclemen of some means and construction of unauthorized structures thereon or selling, leasing or giving on lease and licence such land or unauthorized structure after collecting heavy price, rents, compensation etc., and resorting to criminal intimidation in so collecting the charge from the occupiers by the musclemen. It is such activities, which have the entire community living in the slums under the grip of perpetual fear of such land grabbers that can be said to be activities, which adversely affect the public order. In the present case, the lands in relation to which objectionable activities are alleged are admittedly of the ownership of the petitioner. Moreover, none of the objectionable activities alleged against the petitioner are in the nature of criminal intimidation or similar thereto, which have the effect of creating fear in the minds of the people residing in the locality or the public at large. Hence, it cannot be said that the petitioner has illegally taken possession of lands not belonging to himself, but belonging to Government, local authority or any other person, and as such, cannot be said to fall within the ambit of "property grabber" as defined under Sec. 2(h) of the Act. Hence, on this ground alone the detention order must fail.

[20] Under sub-sec. (4) of Sec. 3 of the Act, a person can be said to be acting in a manner prejudicial to the maintenance of public order when such person is (1) engaged in or (2) is making preparation for engaging in any activities enumerated therein, (in the present case, "property grabber") which affect adversely or are likely to affect adversely the maintenance of public order. In the present case, the aforesaid requirements are not fulfilled in that the respondents have failed to show that the petitioner is engaged in or is making preparation for engaging in the activity of property grabbing. The allegation against the petitioner is that he has constructed upon land shown as common plot and road in the lay-out plan, which was completed in the year 1993. The rajachiththi (building permission) was obtained in 1991 for shops etc. and for compound wall in the year 1998. The sale-deeds upon which reliance has been placed for making the impugned detention order have been executed in the year 2000. There is nothing on record to show that on the date of making of the order of detention the petitioner was either engaged in or making preparations for engaging in any of the alleged illegal activities. Hence, on this ground also the order of detention must fail.

[21] Moreover, the activities referred to in the order of detention apart from the fact that the same relate to lands owned by the petitioner and his brother, are in point of time much prior to the making of the detention order. None of the incidents referred to in the order of detention can be said to be proximate to the date of order of detention. Neither in the detention order nor in the affidavit-in-reply filed by the detaining authority is any explanation coming forth as regards the delay in making the detention

order with a view to show that there is proximity between the prejudicial activity and the order of detention. The detention order, must therefore, fail on this ground also.

[22] Upon a perusal of the operative part of the detention order, it is apparent that the said order has been made with a view to prevent the petitioner from engaging in activities contrary to the provisions of law in relation to several other lands held by him. The basic requirement of the provision is that a person should take illegal possession of the land belonging to the Government, local authority or any other person; whereas in the present case, the apprehension voiced by the detaining authority is in relation to the lands held by the petitioner himself. It is therefore, beyond comprehension as to how any activity likely to be carried on by the petitioner in relation to his own lands would fall within the ambit of "property grabber" as defined under Sec. 2(h) of the Act, leave alone call for such drastic action of detention under the provisions of the Act. Moreover, it is stated that the petitioner is likely to indulge in activities contrary to the land laws and land development laws. It is difficult to comprehend as to how the apprehended activities can be said to in any manner have the reach and potentiality to disturb the even tempo or normal life of the community so as to be prejudicial to the maintenance of public order. The Supreme Court in the case of Magan Gope v. State of West Bengal, 1975 (1) SCC 415, has held that where the order ex facie is made with a view to prevent an act prejudicial to the maintenance of public order, the detaining authority cannot be permitted to show that in fact the order was made to prevent an act prejudicial to the maintenance of supplies and services essential to the life of the community. Applying the said principle to the facts of the present case, when the order of detention has been made with a view to prevent activities prejudicial to the maintenance of public order, the detaining authority cannot be permitted to show that in fact the order was made to prevent the petitioner from acting contrary to land development laws, in relation to his own land which did not fall within the ambit of "property grabber" as defined under Sec. 2(h) of the Act.

[23] As can be seen, the grounds of detention narrated hereinabove pertain to commission of breach of the N.A. permission granted by the Collector in respect of lands owned by the petitioner. In fact from the number assigned to the order of detention also, it appears that the same relates to breach of condition of N.A. permission. The aforesaid alleged activities cannot be said to have any rational nexus relatable to the maintenance of public order. Hence, the detention order must fail on this count also.

[24] In the present case, there is nothing in the impugned order of detention to show that the petitioner is engaged in or is preparing to engage in any activities, which affect or are likely to affect adversely the maintenance of public order. The alleged breaches of N.A. permission are in relation to lands owned by the petitioner and none

of the alleged breaches can be said to have any rational nexus with the maintenance of public order. The said activities have no causal or proximate connection with the satisfaction arrived at by the detaining authority. From the activities stated in the order of detention, it is apparent that most of the said activities pertain to the under-valuation of land in the sale-deeds, construction on the margin land, loss to the State Government which are not germane to the object for which the order of detention can legally be made, namely the maintenance of public order. In the circumstances, the satisfaction recorded by the detaining authority is vitiated on the grounds of non-application of mind and non-consideration of relevant facts, vitiating the exercise of jurisdiction to detain the petitioner. On this ground also, the order of detention stands vitiated.

[25] Moreover, in the last paragraph of the grounds of detention it is stated that the petitioner had indulged in the objectionable activities stated in the order for the purpose of profiteering for his own economic benefit, and as such, had indulged in activities which are prejudicial to the public interest. These factors have no relevance to the maintenance of public order. It appears that the factors relevant for detaining a person under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 have been taken into consideration by the detaining authority while making the impugned order of detention under the P.A.S.A. Act. In the circumstances, it cannot be said as to how far the mind of the detaining authority has been vitiated by such irrelevant considerations, hence, the order of detention must fail on this count also.

[26] As can be seen from the impugned order of detention, the detaining authority has verbatim employed the phraseology of the provisions of Sec. 3(1) read with Secs. 2(h) and (i) of the Act. The Supreme Court in the case of T. Devaki v. Government of T. N. (supra) has laid down that the mere repetition of words of the statute are not sufficient to inject the requisite degree of quality and potentiality in the alleged activities. Accordingly, in the absence of any material to show that the reach and potentiality of the alleged objectionable activities are so great as to disturb the normal life of the community in the locality or that the same disturbed the peace and tranquility, it is not possible to hold that the alleged activities are prejudicial to the maintenance of public order.

[27] In the result, the petition is allowed. The impugned order of detention No. Jameen/N.A./Sharat Bhang/05 dated 18th October 2005 passed by the District Magistrate, Patan, is hereby quashed and set aside. The petitioner-detenu-Mukesh Himatlal Sheth, residing at Kantilal House, 14, Mama Parmanand Marg, Mumbai, is directed to be set at liberty forthwith, unless he is held in custody pursuant to any

other order under any lawful authority. Rule is made absolute accordingly. Direct service is permitted.

[28] The learned Assistant Government Pleader has prayed that the operation of this order be stayed for a period of two weeks to enable the respondents to challenge the same before the appropriate forum. The prayer is strongly resisted by the learned Counsel appearing on behalf of the petitioner. This Court in the case of Asif Abdul Karim Bidiwala v. Union of India, 2005 (2) GLH 105 : [2005 (1) GLR 693] has while refusing to stay the operation of its order placed reliance upon the following observations made by the Apex Court :

> "Linked with this is also question as to whether when a Court has found an order of detention to be illegal, can it stop the operation of its judgment to enable a detaining authority whose order has been quashed to approach a higher Court. We have not been shown any law on these aspects. The writ of habeas corpus is a high prerogative writ issued by superior Courts at the instance of a subject aggrieved, by commanding the production of that subject and inquiring into the cause of his imprisonment. If in the opinion of the Court there is no legal justification for the detention, the party has to be ordered to be released. Stay of the operation of such orders appears to be a contradiction of the jurisdiction exercised in issuing writs in the nature of habeas corpus. Indeed, in King-Emperor v. Vimla Bai Despande & Anr., 72 Indian Appeals 144, while granting special leave to appeal in respect of a detention, the Judicial Committee of the Privy Council did not stay the operation of the order of the High Court. Sir John Beaumont who delivered the judgment of the Board made it clear that the detenu should not in any event be rearrested in respect of matters to which the appeal relates and that the petitioner (King-Emperor) should pay the cost as between Solicitor and client incurred by the respondents both in opposing the portion and in the appeal. The approach of the Courts, therefore, seems to be that once the superior Court has granted the writ of habeas corpus, it cannot stay the operation of its judgment."

[29] In the facts and circumstances of the case as well as considering the principles laid down in the aforesaid decision, the request to stay the operation of this order does not merit acceptance, and the same is therefore, turned down.