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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4248 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 4264 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 4258 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 4347 of 2021

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RAMJIBHAI NATHUBHAI CHAROLA,
GANGUBEN W/O DOLUBHAI BACHUBHAI MANDURIYA
MUKESHBHAI TAJUBHAI CHAROLA,
&
SOBHABEN W/O DEVRAJBHAI KADABHAI VAGHELA

Versus

STATE OF GUJARAT & DISTRICT MAGISTRATE, AMRELI

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Appearance:

MR O I PATHAN, ADVOCATE for the Petitioners

MR HARDIK SONI, AGP for the Respondents

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CORAM: **HONOURABLE MR. JUSTICE PARESH UPADHYAY**

Date : 25/08/2021

CAV ORDER

1. Challenge in all these petitions is made to the identical but separate orders passed by the District Magistrate, Amreli, dated 17.02.2021, whereby the petitioners are treated as 'property grabbers' and are detained under the Gujarat Prevention of Anti Social Activities Act, 1985.

2. The execution of the impugned orders was suspended by this Court vide order dated 18.03.2021 and the petitioners were directed to be released, for the reasons recorded in the said order.

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3. Pursuant to the order of this Court dated 18.03.2021, affidavit in reply dated 11.08.2021 is filed on behalf of the detaining Authority - the present incumbent, which is on record. Not only there is no justification to invoke PASA in private property dispute, the action of the State is further aggravated by the said reply. Relevant part of the affidavit in reply reads as under.

“7. It is further submitted that the petitioner and others had filed bail application before Hon’ble Additional District Judge, Amreli who pleased to granted regular bail to the petitioner vide order dated 15.02.2021, it was apprehended that if the petitioner would be free at liberty then she would temper the records and act against the maintenance of the public order. The responding authority could take steps of externment against the petitioner under the provisions of the Gujarat Police Act but from which the petitioner might be able to take help of advocates for continuing her illegal activities. Moreover, the responding authority could file an application for cancelling the bail, but it would be a time consuming procedure.”

4. The above would show that the justification put forward by the State Authorities to resort to PASA is that, had that not been done the petitioners would have taken help of advocates for continuing illegal activities. If any citizen faces action from

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the State and if he resorts to the legal remedy available to him, and if the citizen is protected, any attempt to obstruct it, may be viewed very seriously and even the option of initiating proceedings under the Contempt of Court Act, can also be explored. The matter is not stretched that far.

5. Having heard learned advocates for the respective parties and having considered the material on record, including the affidavit in reply, this Court finds that the detaining authority has exercised the powers, treating the petitioners as 'property grabbers' within the meaning of Section 2(h) of the Act. The FIR, which is the basis to treat the petitioners as such persons as referred to in the impugned orders and further details in that regard are on record. Said FIR and other material which is on record is considered by this Court. On conjoint consideration thereof it transpires that, the detaining authority fell in error in treating the activities of the petitioner as prejudicial to the maintenance of the public order. The distinction between 'the law and order' and 'the public order' needs to be kept in mind, in view of the decision of the Supreme Court of India in the case of Pushker Mukherjee v/s. State of West Bengal reported in AIR 1970 SC 852. The impugned order, on facts, fails on this test. The impugned order therefore needs to be quashed and set aside. It is noted that, in the grounds of the detention, the detaining authority has recorded to the effect that, according to him, the activities of the petitioner create a sense of alarm and feeling of insecurity in the minds of public at large, however on weighing this vis-a-vis the material on record, this Court finds that, the citation of such words is more in the nature of rituals rather than with any significance to the alleged activities of the

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petitioner. In totality, this Court finds that, the impugned order is unsustainable and needs to be quashed and set aside.

6. It is noted that on the basis of one FIR, at least four detention orders are passed and two of them are ladies. The complainant resides at Mumbai. The enthusiasm on the part of the State Authorities to throw the weight of the State in favour of one of the contesting parties, in the matters of private property disputes, may lend the State in embarrassing position one day. Further, in the property disputes - the financial stakes from both the sides may be very high. This may also lead to temptation to one of the parties, for soliciting help from the revenue and the police officers, for the considerations less known to law. These are the dangers which need to be kept in view by the Higher Authorities of the State.

7. Considering the totality, the following order is passed.

7.1 All these four petitions are allowed.

7.2 The impugned orders passed by the District Magistrate, Amreli - all dated 17.02.2021 are quashed and set aside.

7.3 Since the petitioners were already ordered to be set at liberty by earlier order of this Court, no further direction needs to be given in that regard.

7.4 Rule is made absolute, in each petition, in above terms.

(PARESH UPADHYAY, J)

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