

Navalshankar Ishwarlal Dave And Anr vs State Of Gujarat And Ors on 12 May, 1993

Equivalent citations: 1994 AIR 1496, 1993 SCR (3) 676, AIR 1994 SUPREME COURT 1496, 1994 AIR SCW 956, 1993 AIR SCW 1729, (1993) 3 JT 421 (SC), (1993) 3 SCR 390 (SC), 1994 CALCRILR 106, (1993) IJR 322 (SC), 1993 (3) SCC(SUPP) 745, (1993) 3 SCR 676 (SC), 1993 SC CRIR 433, 1993 CRIAPPR(SC) 264, 1993 () APLJ(CRI) 353, 1993 SCC(CRI) 1117, 1993 BB CJ 173, (1993) 3 JT 163 (SC), (1993) SC CR R 587, (1993) 2 KER LT 617, (1994) 1 MADLW(CRI) 186, (1993) 2 PUN LR 643, (1993) 2 RECCRIR 360, (1993) 2 SCJ 600, (1993) 2 CURCRIR 218, (1993) ALLCRIC 478, (1993) 2 APLJ 28, (1993) 2 ALLCRILR 379, (1993) CRILT 508, (1993) 1 CURLJ(CCR) 826

Author: K. Ramaswamy

Bench: K. Ramaswamy, S. Mohan

PETITIONER:

NAVALSHANKAR ISHWARLAL DAVE AND ANR.

Vs.

RESPONDENT:

STATE OF GUJARAT AND ORS.

DATE OF JUDGMENT 12/05/1993

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

MOHAN, S. (J)

CITATION:

1994 AIR 1496 1993 SCR (3) 676

1993 SCC Supl. (3) 754 JT 1993 (3) 421

1993 SCALE (2) 813

ACT:

Constitution of India, 1950-7th Schedule, List III-Entry 3-
Gujarat Prevention of Anti-Social Activities Act, 1985-
Legislative validity and intention of.

Gujarat prevention of Anti-Social Activities Act, 1985:
Section 3-Power of detention-Delegation-Legality. of-
Illegal possession of public or private lands-Whether

disturbs public order.

Gujarat Prevention of Anti-Social Activities Act, 1985-
Section 3-Indulgence of detenues in property grabbing-
Subjective satisfaction of District Magistrate that such
acts of detenues affecting maintenance of public order-
Detention order-Validity of.

Gujarat prevention of Anti-Social Activities Act, 1985-
Sections 3, 11, 15 read with Section 21, General Clauses Act
and article 22 (5) of the Constitution of India-Detention
order by authorised officer- Approval by Board and State
Government-Procedure-Nor approved within 12 days-Effect-
Power to revoke or rescind by detaining authority and State
Government-Scope of.

Constitution of India, 1950-Articles 21,22 read with section
3, Gujarat prevention of Anti-Social Activities Act, 1985-
Representation of detenue-Consideration by State Government-
Delay-Effect"Forthwith "-Meaning of.

Gujarat Prevention of Anti-Social Activities Act, 1985-
Sections 2(h), 2 (i)--"Property grabber", "unauthorised
structure"-Meaning of.

Words and Phrases-"Property grabber", "unauthorised
structure", 'forthwith "-Meaning of.

Mutation-Revenue Record-Names recorded-Evidentiary value-
Whether evidence to title-Title whether follows possession.
Evidence Act, 1872- Sections 3, 61-Appreciation of evidence-
Mutation

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of names in Revenue Record-Whether evidence to title-Title
whether follows possession.

HEADNOTE:

The detention of the appellants were ordered by the
Magistrate on his satisfaction in exercise of the powers
under Section 3(1)and (2) of the Gujarat Prevention of Anti-
Social Activities Act, 1985.

When the appellants challenged the detention order and the
Act before the High Court filing the writ petitions in pre-
detention execution stage, the High Court dismissed the writ
petitions and upheld the validity of the detention order and
the Act.

The appellants filed SLPS against the High Court judgment.
This Court, when the SLPS came up for admission, directed to
list the cases after the proof of surrender of the detenues
petitioners was filed. The appellants produced the proof of
surrender. As one Pratt, petitioner in SLP (Crl) No. 110 of
1993 did not file the proof, his SLP was dismissed.

The appellants contended that the blanket power of
delegation by the State Government under section 3 of PASA
was a negation of satisfaction on the part of the State
Govt. and likely to be abused by the District Magistrate or
the Commissioner of Police; that the order of delegation

made by the State Govt. without application of mind was illegal and invalid; that the appellants could not be said to be property grabbers of their own land, because they, as partners of Jaya Prabha Traders, whose name was mutated in the revenue records since 26.4.1969, were owners of the land and lawfully in possession, when suo motu revisional order illegally passed by the District Collector was suspended by the Revenue Tribunal; that PASA could not be made applicable retrospectively from 1969 and that the exercise of the power under section 3(2) by the District Magistrate was illegal.

Allowing the appeals of the detenues, this Court,

HELD: 1.1.Gujarat Prevention of Anti-Social Activities, Act, 1985 was made in exercise of the power under entry 3 of concurrent list III of 7th Schedule and reserved for consideration of the President and received his assent. So it is a valid law. (686-B)

1.2.It envisages that the State Govt. under s. 3 (1) would exercise the

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power of detention or authorise an officer under s. 3(2) to detain bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber.The PASA was made to provide for preventive detention of aforesaid persons whose activities were satisfied to be prejudicial to the maintenance of public order. (686-C)

1.3. The Act postulates satisfaction on the part of the State Govt. that the dangerous and anti social activities of any of the aforesaid persons shall be deemed to be acting prejudicial to the maintenance of public order whether the person is engaged in or is making preparation for engaging in any activities enumerated in the definition clauses and the public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if the activities directly or indirectly, causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section therefore a grave or widespread danger to life, property or public health. (686-F)

1.4. Taking illegal possession of public or private lands or unauthorised construction or structures thereon or dealing with those preposition or threatening or criminal intimidation of slum dwellers cause or likely to disturb even public tempo disturbing public orders-To prevent dangerous person or persons indulging in anti social activities like land grabbing or dealing with such properties is a manage to even tempo and the legislature intended to provide remedy by detention, be it by the State Govt. or the authorised officer on subjective satisfaction that such activity or activities adversely affect or likely to adversely affect public order. (688-H, 689-A)

1.5. With a view to have then effectively dealt with, to move swiftly where public order is affected or apprehended and to take action expeditiously instead of laying

information with the Govt. on each occasion and eagerly awaiting action at State Govt. level, the State Govt having exercised the power under s. 3 (2)(conferred on the Distt. Magistrate or the Commissioner the power to order detention under s. 3(1) when he considers or deems necessary to detain any person involved in any of the dangerous or anti social activities prejudicially affecting or "likely to affect the maintenance of public order". (687-D-E)

1.6. So long as the activities of bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber persist within the local limits of the jurisdiction of the concerned Distt. Magistrate and Commis-

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sioners of Police, as the case may be and being directly responsible to maintain public order and to deal with depraved person to prevent anti social and dangerous activities which affects adversely or are likely to affect adversely the maintenance of public order, the necessity would exist. Therefore, the question of periodical review of delegation of the order does not appear to be warranted. The delegation to the authorised officer is legal or valid. (687-FG)

A.K. Roy v. Union of India & Anr., AIR 1982 SC 710; Para 72, distinguished.

2.1. If an order of detention was made by the authorised officer, he should report as early as possible from the date of the execution of the order of detention to the Govt. and the order remains valid and in force for 12 days from the date of execution. If the order is not approved by the State Govt. within 12 days, the order of detention shall stand lapsed. For continuance after 12 days approval is mandatory and remains in force till it is approved by the Advisory Board. If the Board disapproves, the State Govt shall release the define forthwith. It is a condition precedent. If the Board approved it then the State Govt. shall confirm it. However, its operation is for one year from the date of the execution under s, 3(3) (i). However, within three weeks from the date of detention the State Govt. shall report to the Advisory Board and within seven weeks from the date of detention the Board should give its opinion. (692-F-G)

2.2. The detaining authority has no express power under PASA to revoke the order of detention after the approval given by the State Govt. under sub-s. (3) of s. 3 of PASA. The power to rescind the detention order, therefore, would be available to the authorised officer under s. 21 of the General Clauses Act only during its operation for 12 days from the date of execution of the detention order or approval by the State Govt. whichever is later. (692-H)

2.3. The general power of revocation was conferred only on the State Govt., that too in writing for reasons to be recorded in that behalf. (693-H)

2.4. The State Govt alone, has power to revoke or rescind

the order of detention either on representation under Art. 22 (5) or under s. 15 of PASA. The representation should be disposed of accordingly. (693-B)

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2.5. Once the order of detention was approved by the State Govt. within the aforesaid 12 days period or confirmed by the Advisory Board within the period of seven weeks the exercise of power by the authorised officer would run counter to or in conflict thereof. The State Govt. has been expressly conferred with powers under s. 15 to revoke, rescind or modify the order of detention at any time during one year from the date of making the order of detention. (693-C)

3.1. Mutation was got made fraudulently in collusion with the City Planning Superintendent. The same was cancelled by the District Collector by exercising the revisional power. The order of the Gujarat Revenue Tribunal was to maintain status quo. The appellants, instead of maintaining status quo, alienated the major part of the land to various persons. (689-F)

3.2. From the definition of 'property grabber' and the reasons in the impugned order it is clear that the appellants are property grabbers of the government land and that they created sales in favour of third parties, violating the law and the order of status quo directed by the Gujarat Revenue Tribunal which led to create or likely to create disturbance to public order disturbing the even tempo in the locality. Therefore, the Distt.. Magistrate subjectively satisfied that the appellants indulged in property grabbing and for the maintenance of public order the Distt. Magistrate was satisfied that the activities of the appellants have affected adversely or deemed, likely to be affected adversely creating insecurity or feeling of insecurity among the general public of that area. Unless the appellants are detained, it is not possible to maintain public order and tardy legal procedure does not aid to maintain public order. Accordingly the Distt. Magistrate, exercised power of detention under s.3(1) of PASA correctly, justifiably and legally. (690-C-D)

3.3. It being a case of subjective satisfaction, Supreme Court cannot enter upon adjudicating the legality of that satisfaction when it is found that the impugned order is based on sufficient material and the grounds are definite and specific. The impugned order was made on detailed consideration of the material on record. The question of retrospective operation of PASA is misconceived. (690-B)

4.1. The expression forthwith would mean 'as soon as may be', that the action should be performed by the authority with reasonable speed and expedition with a sense of urgency without any unavoidable delay. No hard and fast rule could be laid nor a particular period is prescribed. There should

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not be any indifference or callousness in consideration and

disposal of the representation. It depends on the facts and circumstances of each case. (693E)

4.2. Any delay in consideration of the representation should be satisfactorily explained. If no satisfactory explanation has been given or found to be wilful or wanton or supine indifferent, it would be in breach of the constitutional mandate of Art. 22(5). The liberty of a person guaranteed under Art. 21 of the constitution is a cherished right and it can be deprived only in accordance with law. (693-F)

Jayanarayan Sukul v. State of West Bengal, [1970]3 SCR 225 at 232; Haradham Saha & Anr. v. The State of West Bengal & Ors., [1975] 1 SCR 778; K.M. Abdulla Kunhi and B.L. Abdul Knader v. Union of India & Ors., [1991] 1 SCC 476 and Moosa Husein Sanghar v. The State of Gujarat & Ors., JT 1993 (1) SC 44, referred to.

4.3. Though the representation was received by the State Govt on February 20 1993, the State Govt. decided to keep it pending awaiting the opinion of the Board and on receipt of the report on March 23, 1993, considered the case and the representation was rejected on the even date, namely, March 23, 1993. (695-B)

4.4. The action of the State Govt. in keeping the representation without being considered and disposed of expeditiously, awaiting the decision of the Board till March 23, 1993 and consideration of the representation thereafter and rejection are illegal. (695-C)

4.5. There is no material placed before the Court that the State Govt. has approved within 12 days after execution of the detention order i.e. Feb. 5, 1993. On expiry of 12 days the order of detention becomes nonest and the subsequent confirmation by the Board or by the State Govt. does not blow life into the corpse. In either case the order of detention became illegal. (695D)

5.1. Section 2(h) defined "property grabber" means a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other authorities in respect of such lands or who constructs unauthorised structures thereon for sale or hire or
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gives such lands to any person on rental or lease and licence basis for construction or use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised 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 the lawful procedure or who abets in any manner the doing of any of the above mentioned things. (687H, 688-A-B)

5.2. A persons who illegally takes possession of any lands not belonging to himself but belonging to Govt., local authority or under any other agreement in respect of such

lands or who constructs unauthorised structures thereon or inter into agreement for sale or gives on hire or gives such lands or structures to any person on rental or leave or licence basis for construction or for use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation, or other charges by criminal intimidations 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 or any of the above mentioned acts or things is a property grabber. (688-C-D)

5.3. Sec. 2(1) defined "unauthorised structure" means 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. (688-C)

6. Mutation of the names in the revenue record are not evidence of title though may be relevant for other purposes.

In respect of open land title follows possession. (689-D)

Nirman Singh v. Rudra Patrap Narain Singh, 53 I.A. 200 at 227; Nageshar Baksh Singh v. Mt. Ganesha, 47 I.A 57; Durga Prasad v. Ghansham Das, AIR 1948 PC 210; Ramana v. Sambamoorthy, AIR 1961 A.P. 361; Mohinder Singh v. State of Punjab and Ors., [1978] 1 SCR 177 and Vatticherukuru Village Panchayat and Ors., v. Nori Venkatarama Deekshithula and Ors. [1991] 2 SCR 531, referred to.

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 387388 of 1993.

From the Judgment and Order dated 20.11.1992 of the Gujarat High Court in Special Criminal Application Nos. 1647 and 1648 of 1992.

S. Ganesh, C.H. Patel, M.N. Shroff and Ms. Reema Bhandari for the Appellants.

P.S. Poti Ms. Meenakshi Arora and Anip Sachthey for the Respondents.

The Judgment of the Court was delivered by K. RAMASWAMY, J. Since common questions of law arise from the same facts, the appeals are disposed of by a common judgment.

In exercise of the powers under s.3(1) of Gujarat Prevention of Anti-Social Activities Act, 16 of 1985, for short PASA and the notification of the Govt. of Gujarat under s.3.(2) dated May 20, 1985, the District Magistrate, Rajkot by his proceedings dated September 22, 1992 ordered detention of the appellants on his finding that "from the evidence produced before me I am satisfied as per the

definition of property grabber under s.2 (h) of the' PASA and considering the seriousness of your activities under s.2(1) for the unauthorised structures..... it clearly appears that you are habitual to grab the Govt. land by creating false partnership firm. People are feeling insecurity of their properties. The situation in this area is very tense and in such circumstance if any actions are taken according to law then there is great possibility of great blast and public orders likely to adversely affected. For creating such situation your illegal activities are solely liable..... Therefore, to prevent the other propels being grabbed in future by you and also to prevent the Govt. lands being grabbed in future and for the exigencies which have arisen, it is necessary to detain you as per the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 and an order has been passed therefore." With detailed reasons running into 31 pages, the detaining authority enumerated the circumstances under which the detention order came to be made. It was stated that the land measuring 58,880 sq.yards in Survey No. 5004 belonging to the Govt. has been grabbed by Girdhar Joshi and Manu Bhai Vora. Manu Bhai Vora created a false partnership firms by name "Jayaprabha Traders" to which the appellants and Prashant Manubhai Vora (Manubhai Vora' s son) are partners. The lands measuring 4,800 sq. yards in plot No. 4 known as Madir of Sheet No. 226 City Survey No. 3959 in Ward No.7 of Rajkot originally belongs to the former state. It was purchased by one gopalji D. Doshi from the former ruler for residential purpose. But within the prescribed time, as per the then existing rules, no construction was made. Consequently the State had confiscated the said property in order No. 8336 of S.Y. 1995 i.e. 1938-39. Naginadas Laxmichand Doshi and Manu Bhai Vora in collusion with City Survey Superintendent created forged documents mutating the aforesaid lands by the order of the City Survey Superintendent, dated April 28, 1968 in the name of Jayaprabha Traders. On May 6, 1969 the above partnership was created and was got registered on October 22, 1969. The appellants and Prashant M. Vora were partners therein. Manubhai Vora is the man behind the scheme. The partnership was dissolved on February 28, 1974. Yet in the name of the partnership the Govt. lands are being grabbed. The department came to know the collusive acts for the first time on August 26, 1986 and necessary particulars were collected to find whether it is a Govt. property or belongs to the aforesaid persons. The Record disclosed that it is the Govt. property and orders were issued on December 14, 1987 cancelling the mutation and also confiscated the property to the Govt. After becoming aware of the activities Manubhai Vora and Naginadas Laxmichand Joshi were detained. The appellants and Prashant M. Vora, though were given show cause notice on August 28, 1986 to appear before him for hearing, neither they availed of it nor produced any evidence in support of their claim. After considering the material the Collector exercising suo motu revisional power under Bombay Revenue Code by order dated December 14, 1987 concluded that the property belongs to the Govt. and was confiscated to the State--The appellants and P.M. Vora as partners of the dissolved partnership firm and in their individual capacity filed appeal before the Gujarat Revenue Tribunal on February 28, 1987, diving their address CIO Economic traders, a firm of which Manu Bhai Vora and his brothers are partners. The Tribunal by orders on January 30, 1988, while suspending the implementation of the Collector's order directed that "till final disposal of this appeal status quo in respect of the lands to be maintained". Yet the appellants and P.M. Vora sold the lands to several persons in their individual capacity. The resident Dy. Collector. Rajkot made an enquiry on June 29, 1992 and recorded the statements of the purchasers which discloses that instead of maintaining status quo, the appellants individually sold away the entire 4,800 sq. yards except 500 to 600 sq. yards to diverse persons. The statements of purchasers show that the appellants assured them clear and marketable title to the

lands without any encumbrance and collected about Rs. 15 lacs from the purchasers and unauthorised constructions were made. While recording the instatement and thereafter the purchasers became panicky. The acts of petitioners created tension in the area. Even on notices given to the purchasers on July 2, 1992 to produce the proof of their title, many of them made admission that they believed the statement made by the appellants and P.M. vora and that they have been misled. They have also stated that the appellants had taken signatures on blank papers and they were fabricated. By notice dated July 8, 1992 when the appellant were called upon to appear on July 13, 1992 before the District Collector, instead of appearing before him and showing cause, they approached the Civil Court and filed O.S. No. 719 of 1992 and obtained injunction against the Distt. Collector, From those facts the detaining authority concluded that "you are not possessing any proof of your ownership in respect of the disputed land. Still, however, you have sold the disputed land and you have remained active in such scandals. You have cheated the buyers of the plots and in such conspiracy you have created baseless evidence whereby more and more people would be cheated you have given false assurance to the people regarding clear title of the plots. Thus the people have purchased lands for construction. The poor people have purchased the shops by spending their hard earned money and have purchased shops by making debts. You have played game with the lives of poor people and taking advantage of their- ignorance, and on coming to know that they have been cheated, they feel disappointed and disheartened and the atmosphere of grief has spread all over the said area and they made oral representations and requests to punish the responsible persons..... The detaining authority also referred, wherever necessary to the documentary evidence in that behalf. On subjective satisfaction from those facts the detention order came to be made. The appellants approached the Gujarat High Court in pre-detention execution stage and High Court upheld the validity of delegation order and the Act in its judgment dated 20th November, 1992; dealt with the scope of pre-detention order and dismissed the writ petitions. When special leave petitions came up for admission by order dated Feb. 1, 1993 this court directed to list the cases after the proof of surrender was filed. The appellants Navalshanker Ishwerlal Dave and Shantilal Prabhudas Dhruv after surrendering before the authorities produced its proof. Prasant Manubhai Vora, son of Manubhai Vora did not surrender. By order dated July 22, 1993 the special leave petition (Crl.) No. 110 of 1993 of Prashant Manubhai Vora was dismissed and the appellants' petitions were taken up for admission. The state filed its counter and an additional affidavit and we have heard the learned counsel on either side at length.

Section 3(2) of PASA empowers the State Govt. That having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate and the Commissioners of Police, by an order in writing direct that District Magistrate, the Commissioner of Police may also, if satisfied the existence of conditions envisaged in sub-section (1) of s.3 to exercise the powers of the State Govt. to detain any person. The contention of Shri Ganesh, the learned counsel for the appellants is that the blanket power of delegation is a negation of satisfaction on the part of the State Govt. and likely to be abused by the District Magistrate or the Commissioner of police. The Legislature entrusted the power to the State Govt. and if need be only selectively but not blanket delegation is permissible. After the issue of the notification in 1985 no review thereafter was done. The order of delegation made by the State Govt. without application of mind was, therefore, illegal and invalid and the sequitur detention made became illegal. We find no force in the contention. PASA was made in exercise of the power under entry 3 of concurrent list III

of 7th Schedule and reserved for consideration of the President and received his assent. So it is a valid law. It envisages that the State Govt. under s. 3(1) would exercise the power of detention of authorise an officer under s. 3(2) to detain bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber. The PASA was made to provide for preventive detention of aforesaid persons whose activities were satisfied to be prejudicial to the maintenance of public order. Subs. (4) of Sec.3 declares that a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Explanation thereto postulates that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities by any person referred to in the sub-section (4) directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any action thereof or a grave or widespread danger to life, property or public health. Therefore, the Act postulates satisfaction on the part of the State Govt. that the dangerous and anti social activities of any of the aforesaid persons shall be deemed to be acting prejudicial to the maintenance of public order whether the person is engaged in or is making preparation for unaging in any activities enumerated in the definition clauses and the public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if the activities directly or indirectly, causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof of a grave or widespread danger to life, property or public health. In the counter affidavit filed on behalf of the State in the High Court and consideration thereof the High Court held that "the situation was found prevailing in the State in the year 1985 where the impact of the activities of various persons mentioned in the preamble with reference to their respective, activities has heightened from being anti-social and dangerous activities to be prejudicial to the maintenance of public order". It is, with a view, to curb those dangerous or anti social activities, the Govt. considered it appropriate to delegate the power under sub-s. (2) of sec. 3 to the "authorised officer" and the Govt. has stated in the notification that "having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of each of the District Magistrate specified in the schedule annexed thereto, the Govt. of Gujarat is satisfied that it is necessary so to do" and accordingly exercised the power under sub-s.(2) of sec.3 and directed the authorised officers i.e. the District Magistrate of each District specified in the schedule and also the three Commissioners of Police in the respective Corporations to exercise within their local limits of jurisdiction, the power conferred by sub-s. (1) of sec.3. It is seen that the dangerous or anti social activities are legislatively recognised to be prejudicial to the maintenance of public order. The enumerated activities hereinbefore referred to are not isolated but being indulged in from time to time adversely affecting the public order and even tempo. The Dist. Magistrate concerned, being the highest Dist. Officer on the spot and the Commissioner of Police in the cities have statutory duty to maintain public order. Therefore, with a view to have then effectively dealt with, to move swiftly where public order is affected or apprehended and to take action expeditiously instead of laying information with the Govt. on each occasion and eagerly awaiting action at State Govt. level, the State Govt. having exercised the power under s. 3 (2) conferred on the Dist. Magistrate or the Commissioner the power to order detention under s.3(1) when he considers or deems necessary to detain any person involved in any of the dangerous or anti social activities enumerated hereinbefore,

prejudicially affecting or "likely to affect the maintenance of public order". The later clause lay emphasis on immediacy and promptitude and the authorised officer on the spot is the best Judge to subjectively satisfy himself from the facts and ground situation and take preventive measure to maintain public order. The reliance by Shri Ganesh on the decision of this Court reported in A.K Roy v. Union of India & Anr. AIR 1982 SC 710, para 72 has no application in view of the factual background in this Act. So long as the activities of bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber persist within the local limits of the jurisdiction of the concerned Dist. Magistrate and Commissioners of Police, as the case may be, and being directly responsible to maintain public order and to deal with depraved person to prevent anti social and dangerous activities which affects adversely or are likely to affect adversely the maintenance of public order, the necessity would exist. Therefore, the question of periodical review of delegation of the order does not appear to be warranted. Accordingly, we have no hesitation to reject the contention that the delegation to the authorised officer is illegal or invalid.

Section 2(h) defines "property grabber" means a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other agreements in respect of such lands or who constructs unauthorised structures thereon for sale or hire or gives such lands to any person on rental or leave and licence basis for construction or use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised 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 the lawful procedure or who abets in any manner the doing of any of the above mentioned things. See 2(1) defined "unauthorised structure"

means any structure constructed in any area without express permission in writing of the officer of 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 Govt., local authority or under any other agreement in respect of such lands or who constructs unauthorised structures thereon or enter into agreement for sale or gives on hire or gives such lands or structures to any person on rental or leave or licence basis for construction or for use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised 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 statements and objects of the Act furnishes clue to make the property grabbing or unauthorised 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 get from bootlegging, by taking illegal possession of public or private lands and constructing or permitting construction thereon of unauthorised structure or selling, leasing or giving on leave and licence such land or unauthorised structure after collecting heavy price, rents, compensation 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 unauthorised 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 Govt. or the authorised officer on subjective satisfaction that such activity or activities adversely affect or likely to adversely affect public order.

The contention of Shri Ganesh that the appellants as partners of Jaya Prabhu Traders whose name was mutated in the revenue records as early as April 26, 1969 are owners of the lands and lawfully in possession and suo motu revisional order passed by the Dist. Collector cancelling the mutation under Bombay Revenue Court on December 14, 1987, was illegal and so it was suspended by the Gujarat Revenue Tribunal on January 30, 1988 which still subsists. Therefore, the appellants cannot be said to be property grabbers of their own land. The Act cannot be made applicable retrospectively from 1969. The exercise of the power under s.3(2) by the Dist. Magistrate, Rajkot is illegal. It is settled law as laid down by the Privy Council in *Nirman Singh v. Rudra Patrab Narain Singh*, 53 Indian Appeal 220 at 227 *Nageshar Baksh Singh v. Mi. Ganesha*, 47 Indian Appeals 57; *Durga Prasad v. Ghansham Das*. AIR 1948 PC 2 10-, *Ramanna v. Sambamoorthy* AIR 1961 A.P. 361 by A.P. High Court and by this Court in *Mohinder Singh v. State of punjab and Ors.*, [1978] 1 SCR 177 and *Vatticherukuru Village Panchayat and Ors. v. Nori Venkatarama Deek-shithulu and Ors.* [1991] 2 SCR 531 that mutation of the names in the revenue record are not evidence of title though may be relevant for other purposes. Equally it is settled law that in respect of open land title follows possession. The detaining authority stated in the impugned orders that for the first time the Dist. Collector, Rajkot became aware in 1987 of the grabbing of Govt. lands by the petitioners' firm, a fictitious one and that the enquiry caused in that behalf revealed that the land is in confirmed list of the government lands. Mutation was got made fraudulently in collusion with the City planning Superintendent. Accordingly the same was cancelled by exercising their revisional power. The order of the Gujarat Revenue Tribunal was to maintain status quo. The appellants, instead of maintaining status quo, alienated the major part of the land to various persons who had averred in their statements recorded by the Resident Dy. Collector and sale deeds would show that the appellants sold the lands individually assuring clear title and non- encumbrance thereof-, permitted many of the purchasers to construct shops un-authorisedly. When questioned and opportunity was given, the appellants did not make any representation nor appeared before the Dist. Collector, Instead they invoked the jurisdiction of the Civil Court for injunction. The purchasers became panic when

became aware that they have no title to their purchased lands and their construction are unauthorised. The Resident Dy. Collector made elaborate enquiry and submitted the report. On consideration of the record he was subjectively satisfied that the activities. of the petitioner constitute property grabbers and in its background the Dist. Magistrate satisfied that their activities affected and likely to affect adversely public order and passed the impugned order. Therefore, it being a case of subjective satisfaction, we cannot enter upon adjudicating the legality of that satisfaction when we find that the impugned order is based on sufficient material and the grounds are definite and specific. The impugned order was made on detailed consideration of the material on record. The question of retrospective operation of PASA is misconceived. Therefore, it is difficult to agree with Sri Ganesh that the appellants are not property rabbits. From the definition of property grabber and the reasons in the impugned order it is clear that the appellants are property grabbers of the government land and that they created sales in favour of third parties, violating the law and the order of status quo directed by the Gujarat Revenue Tribunal which led to create or was likely to create disturbance to public order disturbing the even tempo in the locality. Therefore, the Dist. Magistrate subjectively satisfied that the appellants indulged in property grabbing and for the maintenance of public order the Dist. Magistrate was satisfied that the activities of the appellants have affected adversely or were likely to be affected adversely creating insecurity or feeling of insecurity among the general public of that area. Unless the appellants are detained, it is not possible to maintain public order and tardy legal procedure does not aid in maintaining public order. Accordingly the Dist. Magistrate, Rajkot exercised power of detention under s.3(1) of PASA correctly, justifiably and legally. Though the detention orders were made on September 22, 1992 the appellants and Prashant Manubhai Vora avoided execution thereof and till February 5, 1993 the detention orders remained unexecuted. Manubhai Vora chose to remain unsurrendered and obviously so far avoided execution of the orders. Therefore, we are not called upon to consider the legality of the detention order passed against him. The appellants surrendered on Feb. 5, 1993 and so the detention order was executed on Feb. 5, 1993. The detention orders mention that "You have the right to make representation to the detaining authority and also to the Govt. 1 on have also right to make written representation to the Advisory Board. You may send your representation through the Jail Superintendent to the addresses given herein." The appellants submitted their representations on Feb. 18, 1993 to the detaining authority, respondent No. 2, the State Govt., respondent No. 1, and the Advisory Board through Jail authority. The State Govt. sent the representations to the Advisory Board on Feb. 20, 1993. On March 10, 1993 the Advisory Board fixed its meeting for consideration on March 22, 1993 and the Board confirmed the detention order on March 22, 1993. The State Govt. awaited the opinion of the Advisory Board and on its receipt on March 23, 1993 it was considered and the Govt. rejected the representation on March 23, 1993. It was despatched on March 29, 1993, It is stated in the written submission of the appellants that till April 29, 1993 the second appellant did not receive any reply from the State Govt. The first appellant did not receive any reply till that date from the detaining authority though the second appellant received such a reply rejecting the representation of Feb. 22, 1993. The first appellant received the reply from the State Govt. On April 6, 1993 rejecting the representation after 47 days from the date of his submitting the representation. Sri J.M. Parmar, Under Secretary, Home Department of Gujarat stated in his Addl. Affidavit that a copy of the representation from the appellants was received on Feb. 20, 1993 by which date, i.e. on Feb 18, 1993 the State Govt. had already referred the case along with the relevant material to the Advisory Board for review of the case. "The Department of Home decided to keep the representation

in abeyance awaiting the opinion of the Advisory Board".

sub-s. (1) thereof by any authorised officer, he shall forthwith report the fact to the State Govt. together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter and no such order shall remain in force for more than 12 days after making thereof, unless in the meantime it has been approved by the State Govt. The detaining authority, the second respondent, did not file any counter affidavit and the counter affidavit and Addl. affidavit filed by Sri J.M. Parmar, did not mention as to when the 2nd respondent reported to them of the order of detention and the grounds or any other particulars deemed relevant as mandated in s.3(3). We assume that the 2nd respondent sent them and were received by February 20, 1993 and immediately thereafter it was referred to the Advisory Board for its opinion. It was not stated in the counter affidavit that the State Govt. approved the order of detention, within 12 days from the date of receipt by the State Govt. i.e. February 20, 1993. The mandate of s.3(3) is that the action of the authorised officer would be legal only when the State Govt. approves of it and in its absence on expiry of 12 days detention order should stand lapsed. Section 15 postulates that without prejudice to the Bombay General Clause Act, 1904 a detention order may at any time, for reasons to be recorded in the order, be revoked or modified by the State Govt., notwithstanding that the order has been made by an authorised officer. Sub-section (2) is not material for the purpose of this case. Hence omitted. Section 21 of the General Clause Act envisages that where, by any Gujarat Act, a power to issue notification, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notification, order, rules or bye-laws are issued. Article 22(5) of the Constitution accords constitutional right of representation to the detainee against any order made in pursuance of any law. The mandatory duty on the authority making such order, "shall as soon as may be"

communicated to such person, the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Section II of PASA provides that within three weeks from the date of detention of a person under the order the State Govt. shall place before the Advisory Board the grounds on which the order has been made, etc. as well as the report made by the authorised officer under sub-s. (3) of s. 3 and the representation, if any. The Board under s. 12 shall submit its report, after considering the material placed before it and the representation of the detainee and if the detainee desires to be heard, after hearing him in person, within 7 weeks from the date of the detention of the detainee. If the Advisory Board reports that in its opinion there is no sufficient cause for the detention, the State Govt. shall revoke the detention order and cause the detainee to be released forthwith. Under s. 13 the State Govt. may confirm the order of detention for a period of one year from the date of detention. In other words, from the date of execution of the order of detention as provided under s. 14 there appears to be a seeming over-lap in consideration of the representation of the detainee and its effect on the orders by the authorities concerned. It is seen that under sub-s. (1) of s.3 the State Govt. is empowered to pass an order of detention in which event it has to report to the Advisory Board as envisaged in s. 11. If an order of detention was made by the

authorised officer, he shall report the same as early as possible without any delay and the State Govt. shall approve the same within 12 days from the date of its making. In other words, the effect would be that the authorised officer should report as early as possible from the date of the execution of the order of detention to the Govt. and the order remains valid and in force for 12 days from the date of execution. If the order is not approved by the State Govt. Within 12 days, the order of detention shall stand lapsed. For continuance after 12 days approval is mandatory and remains in force till it is approved by the Advisory Board. If the Board disapproves, the State Govt. shall release the detainee forthwith. It is a condition precedent. If the Board approves it then the State Govt. Shall confirm it. However, its operation is for one year from the date of the execution under s.3(3) (i). However, within three weeks from the date of detention the State Govt. shall report to the Advisory Board and within seven weeks from the date of detention the Board should give its opinion. The detaining authority has no express power under PASA to revoke the order of detention after the approval given by the State Govt. under sub-s. (3) of s.3 of PASA. The power to rescind the detention order, therefore would be available to the authorised officer under s.21 of the General Clauses Act only during its operation for 12 days from the date of execution of the detention order or approval by the State Govt. whichever is later. The general power of revocation was conferred only on the State Govt., that too in writing for reasons to be recorded in that behalf. By necessary implication flowing from s.3(3) and concomitant result is that the authorised officer has no express power or general power under s. 21 of the General Clauses Act to revoke or rescind or modify the order after the State Govt. approved of it under sub-s. (3) of s.3 read with S.3(1). The State Govt. alone, thereafter has power to revoke or rescind the order of detention either on representation under Art. 22(5) or under s. 15 of PASA. The representation should be disposed of accordingly. The reason is obvious that once the order of detention was approved by the State Govt. Within the aforesaid 12 days period or confirmed by the Advisory Board within the period of seven weeks the exercise of power by the authorised officer would run counter to or in conflict thereof. The State Govt. has been expressly conferred with powers under s. 15 to revoke rescind or modify the order of detention at any time during one year from the date of making the order of detention. Therefore, the right of representation guaranteed under Art. 22(5) would, thereafter i.e. after approval under s. 3(3) be available to the detainee for consideration by the State Govt.

The word 'forthwith' has been interpreted by this court by plethora of precedents and it is not necessary to burden the judgment by referring them once over copiously though the counsel for the appellants has relied on them. This court held that the expression 'forthwith would mean as soon as may be', that the action should be performed by the authority with reasonable speed and expedition with a sense of urgency without any unavoidable delay. No hard and fast rule could be laid nor a particular period is prescribed. There should not be any indifference or callousness in consideration and disposal of the representation. It depends on the facts and circumstances of each case. Any delay in consideration of the representation should

be satisfactorily explained. If no satisfactory explanation has been given or is found to be wilful or wanton or supinely indifferent it would be in breach of the constitutional mandate of Art. 22(5). The liberty of a person guaranteed under Art. 21 of the constitution is a cherished right and it can be deprived only in accordance with law.

In *Jayanarayan Sukul v. State of West Bengal* [1970] 3 SCR 225 at 232, the facts were that the detainee had made his representation to the State Govt. on June 23, 1969. On July 1, 1969, the Govt. forwarded to the Advisory Board his case together with his representation. On August 13, 1969, the Board sent its report and based thereon the State Govt. rejected the representation of the detainee. A constitution bench of this Court laid four principles, one of which being that the consideration of the representation of the detainee by the State Govt. is independent of any action by the Advisory Board including its consideration of the represen-

tation. The appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detainee's representation to the Advisory Board. If the appropriate government itself releases the detainee the case need not be sent along with detainee's representation to the Advisory Board. If the Advisory Board expresses an opinion in favour of the release of the detainee the release of the detainee thereafter by the appropriate government will be independent. Even if the Advisory Board express any opinion against the release of the detainee still the government may exercise its power to release the detainee. In *Haradhan Saha & Anr. v. The State of West Bengal & Ors.* [1975] 1 SCR 778, if another constitution bench reiterated the same view holding that the presentation is made after the matter has been referred to the Advisory Board, the detaining authority will consider it before it will send representation to the Advisory Board. In *KM. Abdulla Kunhi and B. L Abdul Khader v. Union of India & Ors.* [1991] 1 SCC 476 reviewing the case law the constitution bench held that the representation relates to the liberty of the individual; it is enshrined under Art. 21; therefore Cl.(5) of Art. 22 cast a legal obligation on the government to consider representation as early as possible and should be expeditiously considered and disposed of with a sense of urgency without an unavoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed in this behalf within which the representation should be dealt with but the requirement is that there should not be any indifference or callous attitude in considering the representation. Unexplained delay in disposing of the representation would be a breach of the constitutional mandate rendering the detention impermissible and illegal. Therein the representation was received by the Govt. on April 17, 1989, The Advisory Board was constituted thereafter and held its meeting on April 20, 1989. After its submitting the report the Govt. on April 27, 1989 affirmed the order of detention and held that there was a breach of constitutional mandate of Art. 22(5). In *Moosa Husein Sanghar v. The State of Gujarat & Ors.* JT (1993) 1 SC 44, the detention order was served on the appellant on February 21, 1991. On March 22, 1991 the declaration was made under s. 9 of COFEPOSA by the Central Govt. The

appellant handed over the representation dated March 15, 1991 to jail authorities for onward transmission. It was addressed to the Advisory Board. It was received by the detaining authority on March 18, 1991 who returned it to the appellant on March 27, 1991 to follow the manner of service representation meant for Advisory Board. On March 25, 1991 the Advisory Board considered the representation. On March 30, 1991 again other representation was sent to the Advisory Board. The Zerox copies of the representation were sent to the Chairman of the Advisory Board. On May 6, 1991 the Board sent its opinion to the State Govt. On May 13, 1991 the Govt. confirmed the order of detention and on the same day rejected the represen-

tation of the appellant. When the writ petition was filed the High Court dismissed the petition. On appeal, this Court held that though the representation was addressed to the Advisory Board, the communication was meant to be the representation under Art. 22(5) and the Govt. must consider and dispose it of. The failure to do so and its rejection on receipt of the opinion of the Advisory Board was held to be in breach of the constitutional mandate under Art. 22(5). Accordingly this court declared that the detention was illegal and set them at liberty.

It is seen that though the representation was received by the State Govt. on February 20, 1993, the State Govt. decided to keep it pending awaiting the opinion of the Board and on receipt of the report on March 23, 1993, considered the case and the representation was rejected on the even date, namely, March 23, 1993. In view of this consistent settled law the action of the State Govt. in keeping the representation without being considered and disposed of expeditiously, awaiting the decision of the Board till March 23, 1993 and consideration of the representation thereafter and rejection are illegal. In addition we have on record that detaining authority had not filed its counter as to how the representation of the second appellant was dealt with or rejected. That apart, there is no material placed before the Court that the State Govt. has approved within 12 days after execution of the detention order i.e. Feb. 5, 1993. On expiry of 12 days the order of detention becomes nonest and the subsequent confirmation by the Board or by the State Govt. does not blow life into the corpse. In either case the order of detention became illegal. Accordingly we had allowed the appeals on May 3, 1993 and directed release of the detenus forthwith. The reasons now are as above. The result in this judgment does not enure to Prashant Manubai Vora the absconding detenu.

The appeals are accordingly allowed.

V.P.R. Appeals allowed.