

Harishbhai Ramanbhai Rathod vs State Of Gujarat & on 10 July, 2017

Author: J.B.Pardiwala

Bench: J.B.Pardiwala

R/CR.MA/16731/2016

CAV JUDGE

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 16731 of 2016

With
CRIMINAL MISC.APPLICATION NO. 13733 of 2016
With
CRIMINAL MISC.APPLICATION NO. 14842 of 2016
With
SPECIAL CRIMINAL APPLICATION NO. 4387 of 2016
With
SPECIAL CRIMINAL APPLICATION NO. 4357 of 2016
With
SPECIAL CRIMINAL APPLICATION NO. 4951 of 2016
With
CRIMINAL MISC.APPLICATION NO. 32440 of 2016
In
CRIMINAL MISC.APPLICATION NO. 16731 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

=====

1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES 2 To be referred to the Reporter or not ?

NO 3 Whether their Lordships wish to see the fair copy of the judgment ? NO 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or NO any order made thereunder ?

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===== HARISHBHAI
RAMANBHAI RATHOD....Applicant(s) Versus STATE OF GUJARAT & 1....Respondent(s)
===== Appearance:

MR YN OZA, MR MIHIR THAKORE, SENIOR ADVOCATES WITH MR NIRAD D
BUCH, MR VIRAT G POPAT, MR VIRAL K SHAH, MR APURVA R KAPADIA, MR
PP MAJMUDAR, MR MASOOM K SHAH ADVOCATES for the respective Applicants
MR TIRTH N BHATT, ADVOCATE for the Applicant(s) No. 1 MR AB MUNSHI,
ADVOCATE for the Respondent(s) No. 1 MS NISHA THAKORE WITH MS SHRUTI
P A T H A K , A P P s f o r t h e

=====
CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA Date : 10/07/2017 CAV
COMMON JUDGMENT 1 As all the applicants of the captioned applications are co
accused of a selfsame First Information Report and the prayer is also to quash the
selfsame F.I.R., those were heard analogously and are being disposed of
by this common judgment and order.

2 By these applications under Section 482 of the Code of Criminal Procedure, 1973,
the applicants - original accused persons seek to
invoke the inherent powers of this Court, praying for quashing of the
First Information Report being C.R. No.I□90 of 2016 registered on 6 th June 2016
with the Khatodara Police Station, Surat for the offence
punishable under Sections 406, 420, 465, 467, 468, 471, 120B of the
Indian Penal Code and Sections 3(1)(iv) and 3(2)(v) of the Scheduled HC-NIC Page 2
of 89 Created On Tue Jul 11 01:32:51 IST 2017 Caste and Scheduled Tribe
(Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act').

3 The dispute pertains to a plot of land bearing Revenue Survey
No.96/3/2, Block No.121 admeasuring 5261 sq. mtrs. of the Final Plot
No.71 admeasuring 3475 sq. mtrs. of the Town Planning Scheme No.36
of village: Althan, Taluka: Surat, District: Surat. The respondent No.3,
namely, Arjun Shankarbhai Rathod claims to be the original owner of the
land in question along with his family members. The respondent No.3 is
a member of the Scheduled Caste.

4 As this litigation has a chequered history, it is necessary for me to
state the facts in details.

5 It all started with the filing of one writ application before this Court
being the Special Criminal Application No.200 of 2014 by the
respondent No.3 seeking a mandamus to register an F.I.R. against the
applicants herein for the alleged offence committed with respect to the
land bearing survey number referred to above.

6 On 29th September 2015, this Court (J.B. Pardiwala, J.) passed the following order:

"1. By this writ application under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs;

(a) Your Lordships be pleased to issue a writ of Mandamus or any other appropriate writ, order and/or direction and be pleased to direct the respondent nos.2 and 3 to immediately direct the P.I. Khatodara Police Station, Surat to register the F.I.R on the basis of the complaints given by the petitioner at Annexure A colly and then proceed further in accordance with law;

(b) Your Lordship be pleased to issue a writ of mandamus or any other appropriate writ, order and / or direction and be pleased to direct the State of Gujarat by way of interim relief to appoint a high rank officer to inquire and investigate into the complaints given by the petitioners at Annexure A colly and submit action taken report before this Honourable Court within stipulated time period;

(c) Your Lordships be pleased to issue appropriate writ, order or direction quashing and setting aside the circular dated 26.07.2010 Issue by respondent No.6 herein at Annexure K as ultra vires and illegal;

(d) Your Lordships be pleased to direct the respondent Nos.2 and 3 to immediately direct the P.I. Khatodara Police Station, Surat to register the F.I.R on the basis of the complaints given by the petitioners at Annexure A colly and then proceed further in accordance with law pending the admission, hearing and final disposal of this petition;

(e) Your Lordships be pleased to direct the State of Gujarat to pay exemplary cost to the petitioners;

(f) Your Lordships be pleased to grant such other and further relief/s, as are deemed fit, in the interest of justice.

2. The case of the petitioner in his own words as averred in the petition is as under;

2.1 The petitioner and his family members are members of the weaker section of the Society. They are primarily attached to the land and are wholly dependent upon the lands and if the petitioner is made to part with his land he would suffer huge hardship and would be rendered a destitute. The petitioners only source of livelihood is the land in dispute and if he is

deprived of his only source of livelihood then he would suffer irreparable loss which cannot be compensated in terms of money.

2.2 The land bearing Survey No.96/3/2 which is now forming part of Block No.121 admeasuring 5261 sq. mtrs of lands of village Althan, Taluka: Surat City, District: Surat was owned and possessed by the forefathers of the petitioner. The land of above block number was by virtue of a mutation entry no.1194 effected on 28-10-1982 whereby the land of the petitioner was entered into as a land which was belonging to Adivasi and therefore the provisions of section 73AA of the Bombay Land Revenue Code, 1879 was effected in the revenue record and the same was certified in due course.

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2.3 Pursuant to the said mutation entry in village form No.7x12 extract, section 73AA of the Gujarat Land Revenue Code, 1879 was given effect to and the said effect of Section 73AA is shown in the 7x12 extract since 1982 till date.

2.4 One Shri Dineshbhai Chandubhai Patel claims himself to be a power of attorney holder dated 27.3.2001 of the family members of the petitioner. The said power of attorney is a forged one and a bare perusal of the same would reveal that the signatures of the family members of the petitioner are appended whereas in fact they are illiterate and they used to append their thumb impression. The said power of attorney apart from the land of the petitioner is in respect of other adjoining lands of the petitioner as well. The forged power of attorney was obtained in the year 2001 by the land mafias who at present have put up a scheme on the land and there are luxurious bungalows which have been constructed on the same and the developer of the said land in dispute is one Mr. Manharbhai Kakadia and Jitubhai builder. The said scheme has been put up on the land in question by the name of China Gate-2. Pursuant to the said forged power of attorney by Dineshbhai Chandubhai Patel, who happens to be an employee of Shri Manharbhai Kakadia, has entered into 17 different sale deeds in respect of the petitioners land as well as the land of the adjoining holders.

2.5 In the forged power of attorney apart from the land of the petitioner there are other survey numbers also mentioned. Although the non-agricultural permission was not granted in respect of the land of the petitioner yet by virtue of the said forged power of attorney, the power of attorney holder, in connivance with Shri Manharbhai Kakadia and Jitubhai Builder, got the plans sanctioned and constructed luxurious bungalows on the same as if the N.A. permission was granted in respect of the land of the petitioner.

2.6 The bare perusal of the copy of the sale deed annexed at Annexure E colly suggest that in the sale deed at page 16, the lands of the petitioner and the lands of the other adjoining owners are mentioned in a tabular form. The land of the petitioner would appear at Serial No.6 bearing Survey No.96/3/2 Block No.121. On the next page, i.e., page No.17 of the sale deed, in paragraph 3, there is a reference of the order of N.A permission which bears the date 16.2.1999. The petitioner has already annexed copy of the N.A permission at Annexure F to this petition. In the said N.A permission, though the land of the petitioner is not mentioned, the recital in the sale deed at page no.17 paragraph 3 bears the date of order of N.A permission. A clear cut fraud is alleged to have been committed by the beneficiaries i.e. power of attorney holders and the organizers. The provisions of section 73AA of the Land Revenue Code provides for a prior permission from the competent authority i.e. Collector if the land of a tribal is to be transferred to a non-tribal. Without obtaining such permission, no N.A permission could have been granted in HC-NIC Page 5 of 89 Created On Tue Jul 11 01:32:51 IST 2017 respect of the land in dispute.

2.7 The power of attorney holder, in connivance with Shri Manharbhai Kakadia and Jitubhai Builder, got an MOU executed thereby defeating the rights of the petitioner and his family members. The said fact has also been mentioned in the written application for lodging a complaint/FIR on 7.10.2013 by the petitioner. The bare perusal of the said MOU would indicate that by force the petitioner and his family members were told to append their thumb impression by stating that the power of attorney that was executed in the year 2001 was correct and the bungalows that were put up on the land in dispute were also legal. In the said forged power of attorney the signatures of the family members of the petitioner were shown, whereas in the memorandum of understanding the thumb impression of the family members are appended. This would suggest as to how these head strong people by force and undue influence grabbed the land of the petitioner which is the only source of livelihood of a poor Adivasi.

2.8 The petitioner through his lawyer Shri Vijay Patel had issued a public notice dated 24.3.2011 in the newspaper that no power of attorney had been executed by the petitioner and his family members to which the plot holders replied on 11.4.2011 stating that the plots were sold to them by Manharbhai Kakadia and Jitubhai Builder by virtue of the power of attorney.

2.9 That though the offences are made out prima facie against the concerned persons, the respondent no.3 has failed to register the F.I.R.

2.10 That though the petitioner has given several written complaints with supporting documents along with documentary evidence which is referred to at Annexure A colly, the petitioners complaints has not culminated in to FIR.

3. The criminal misc. application referred to above has been filed by the applicants for being impleaded as party respondents in the main petition. According to the applicants of the criminal misc. application, they are likely to be affected if any relief is granted by this Court to the petitioner in the main petition. It is the case of the applicants that false allegations have been levelled against them of fraud etc.

4. This is one of those cases of a priceless piece of land situated in the city of Surat. Over a period of time, the city of Surat and the villages adjoining the same has gone completely in the hands of land Mafias. Over a period of time, hundreds of criminal prosecutions must have been instituted with regard to different parcels of land situated at different places. This case also appears to be one of such type. It appears from the materials on record that the case is one of breach of section 73AA of the Bombay Land Revenue Code. A restricted tenure land belonging to an Adivasi appears to have been usurped and a posh society has come up on the said land. The society consists of luxurious bungalows. There are serious allegations of forgery etc. levelled by the petitioner.

5. Surprisingly, the respondent No.3 Collector, Surat who is heading the Special Investigation Team seems to have overlooked the fraud. The police department also, as usual, seems to have turned a blind eye for some reason or the other. I am of the view that instead of issuing a mandamus straightway directing the respondents Nos.2 and 3 to register an FIR on the basis of the complaints filed by the petitioner herein, I deem it fit and proper to direct the respondent No.3 Collector, Surat as well as the respondent No.2, Commissioner of Police, Surat to undertake a detailed inquiry into the matter. The inquiry should be thorough and should not be just an eyewash. I have taken a serious note of the allegations which have been levelled in the various complaints. Any dereliction of duty on the part of the respondents would entail appropriate legal action.

6. As observed above, land grabbing in the city of Surat and adjoining areas is at a rampage. The land which belongs to poor people more particularly the tribals have been grabbed and usurped by playing fraud of a great magnitude. Although it is the stance of the State respondents that all possible steps are being taken to curb these type of offences, yet I am not convinced with such explanation offered by the State respondents.

7. I, therefore, direct the respondent No.2, Commissioner of Police, Surat as well as the Collector, Surat being the head of the Special Investigation Team to immediately undertake a detailed and exhaustive investigation in this regard and file an appropriate report before this Court on or before 4th November, 2015. If I find any dereliction of duty or casual approach

on the part of the respondents Nos.2 and 3 in inquiring into the matter, then I may consider transferring the entire investigation to the C.B.I.

8. The matters are treated as part heard. The Registry shall notify these matters before this Court on 27th November, 2015."

7 The record reveals that the above referred order passed by this Court was carried to the Supreme Court by the accused persons by filing the Special Leave to Appeal (Crl.) No.18188 of 2015. On 16th October 2015, the Supreme Court passed the following order:

"UPON hearing the counsel the Court made the following HC-NIC Page 7 of 89
Created On Tue Jul 11 01:32:51 IST 2017 O R D E R Taken on Board.

The permission to file SLP is rejected."

8 Thereafter, on 3rd December 2015, this Court (J.B. Pardiwala, J.) passed a further order in the Special Criminal Application No.200 of 2014, which reads as under:

"1. By this writ application under Article 226 of the Constitution of India, the petitioner, a member of scheduled tribe and resident of Surat, has prayed for the following reliefs:□

(a) Your Lordships be pleased to issue a writ of Mandamus or any other appropriate writ, order and/or direction and be pleased to direct the respondent Nos. 2 and 3 to immediately direct the P.I. Khatodara Police Station, Surat to register the F.I.R. by the petitioner at Annexure□A colly and then proceed further in accordance with law;

(b) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order and/or direction and be pleased to direct the State of Gujarat by way of interim relief to appoint a high rank officer to inquire and investigate into complaints given by the petitioners at Annexure□A colly and submit action taken report before this Honourable Court within stipulated time period;

(c) Your Lordships be pleased to issue appropriate writ, order or direction quashing and setting aside the circular dated 26.07.2010 issued by respondent No.6 herein at Annexure□K as ultra□vires and illegal;

(d) Your Lordships be pleased to direct the respondent nos. 2 and 3 to immediately direct the P.I. Khatodara Police Station, Surat, to register the F.I.R. on the basis of the complaints given by the petitioners at Annexure□A colly and then proceed further in accordance with law

pending the admission, hearing and final disposal of this petition;

(e) Your Lordships be pleased to direct the State of Gujarat to pay exemplary cost to the petitioners;

(f) Your Lordships be pleased to grant such other and further relief/s as are deemed fit, in the interest of justice.

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2. On 29th September, 2015 this Court passed the following order:□

1. By this writ application under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs;

(a) Your Lordships be pleased to issue a writ of Mandamus or any other appropriate writ, order and/or direction and be pleased to direct the respondent nos.2 and 3 to immediately direct the P.I. Khatodara Police Station, Surat to register the F.I.R on the basis of the complaints given by the petitioner at Annexure□A colly and then proceed further in accordance with law;

(b) Your Lordship be pleased to issue a writ of mandamus or any other appropriate writ, order and / or direction and be pleased to direct the State of Gujarat by way of interim relief to appoint a high rank officer to inquire and investigate into the complaints given by the petitioners at Annexure□A colly and submit action taken report before this Honourable Court within stipulated time period;

(c) Your Lordships be pleased to issue appropriate writ, order or direction quashing and setting aside the circular dated 26□7.2010 Issue by respondent No.6 herein at Annexure□K as ultra□vires and illegal;

(d) Your Lordships be pleased to direct the respondent Nos.2 and 3 to immediately direct the P.I. Khatodara Police Station, Surat to register the F.I.R on the basis of the complaints given by the petitioners at Annexure□A colly and then proceed further in accordance with law pending the admission, hearing and final disposal of this petition;

(e) Your Lordships be pleased to direct the State of Gujarat to pay exemplary cost to the petitioners;

(f) Your Lordships be pleased to grant such other and further relief/s,as are deemed fit, in the interest of justice.

2. The case of the petitioner in his own words as averred in the petition is as under;

2.1 The petitioner and his family members are members of the weaker section of the Society. They are primarily attached to the land and are wholly dependent upon the lands and if the petitioner HC-NIC Page 9 of 89 Created On Tue Jul 11 01:32:51 IST 2017 is made to part with his land he would suffer huge hardship and would be rendered a destitute. The petitioners only source of livelihood is the land in dispute and if he is deprived of his only source of livelihood then he would suffer irreparable loss which cannot be compensated in terms of money.

2.2 The land bearing Survey No.96/3/2 which is now forming part of Block No.121 admeasuring 5261 sq. mtrs of lands of village Althan, Taluka: Surat City, District: Surat was owned and possessed by the forefathers of the petitioner. The land of above block number was by virtue of a mutation entry no.1194 effected on 28-10-1982 whereby the land of the petitioner was entered into as a land which was belonging to Adivasi and therefore the provisions of section 73AA of the Bombay Land Revenue Code, 1879 was effected in the revenue record and the same was certified in due course.

2.3 Pursuant to the said mutation entry in village form No.7x12 extract, section 73AA of the Gujarat Land Revenue Code, 1879 was given effect to and the said effect of Section 73AA is shown in the 7x12 extract since 1982 till date.

2.4 One Shri Dineshbhai Chandubhai Patel claims himself to be a power of attorney holder dated 27.3.2001 of the family members of the petitioner. The said power of attorney is a forged one and a bare perusal of the same would reveal that the signatures of the family members of the petitioner are appended whereas in fact they are illiterate and they used to append their thumb impression. The said power of attorney apart from the land of the petitioner is in respect of other adjoining lands of the petitioner as well. The forged power of attorney was obtained in the year 2001 by the land mafias who at present have put up a scheme on the land and there are luxurious bungalows which have been constructed on the same and the developer of the said land in dispute is one Mr. Manharbhai Kakadia and Jitubhai builder. The said scheme has been put up on the land in question by the name of China Gate-2. Pursuant to the said forged power of attorney by Dineshbhai Chandubhai Patel, who happens to be an employee of Shri Manharbhai Kakadia, has entered into 17 different sale deeds in respect of the petitioners land as well as the land of the adjoining holders.

2.5 In the forged power of attorney apart from the land of the petitioner there are other survey numbers also mentioned. Although the non-agricultural permission was not granted in respect of the land of the petitioner yet by virtue of the said forged power of attorney, the power of attorney holder, in connivance with Shri HC-NIC Page 10 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Manharbhai Kakadia and Jitubhai Builder, got the plans

sanctioned and constructed luxurious bungalows on the same as if the N.A. permission was granted in respect of the land of the petitioner.

2.6 The bare perusal of the copy of the sale deed annexed at Annexure E collly suggest that in the sale deed at page 16, the lands of the petitioner and the lands of the other adjoining owners are mentioned in a tabular form. The land of the petitioner would appear at Serial No.6 bearing Survey No.96/3/2 Block No.121. On the next page, i.e., page No.17 of the sale deed, in paragraph 3, there is a reference of the order of N.A permission which bears the date 16/2/1999. The petitioner has already annexed copy of the N.A permission at Annexure F to this petition. In the said N.A permission, though the land of the petitioner is not mentioned, the recital in the sale deed at page no.17 paragraph 3 bears the date of order of N.A permission. A clear cut fraud is alleged to have been committed by the beneficiaries i.e. power of attorney holders and the organizers. The provisions of section 73AA of the Land Revenue Code provides for a prior permission from the competent authority i.e. Collector if the land of a tribal is to be transferred to a non tribal. Without obtaining such permission, no N.A permission could have been granted in respect of the land in dispute.

2.7 The power of attorney holder, in connivance with Shri Manharbhai Kakadia and Jitubhai Builder, got an MOU executed thereby defeating the rights of the petitioner and his family members. The said fact has also been mentioned in the written application for lodging a complaint/FIR on 7.10.2013 by the petitioner. The bare perusal of the said MOU would indicate that by force the petitioner and his family members were told to append their thumb impression by stating that the power of attorney that was executed in the year 2001 was correct and the bungalows that were put up on the land in dispute were also legal. In the said forged power of attorney the signatures of the family members of the petitioner were shown, whereas in the memorandum of understanding the thumb impression of the family members are appended. This would suggest as to how these head strong people by force and undue influence grabbed the land of the petitioner which is the only source of livelihood of a poor Adivasi.

8. The petitioner through his lawyer Shri Vijay Patel had issued a public notice dated 24.3.2011 in the newspaper that no power of attorney had been executed by the petitioner and his family members to which the plot holders replied on 11.4.2011 stating that the plots were sold to them by Manharbhai Kakadia and Jitubhai Builder by virtue of the power of attorney.

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2.9 That though the offences are made out prima facie against the concerned persons, the

respondent no.3 has failed to register the F.I.R.

2.10 That though the petitioner has given several written complaints with supporting documents along with documentary evidence which is referred to at Annexure A colly, the petitioners complaints has not culminated in to FIR.

3. The criminal misc. application referred to above has been filed by the applicants for being impleaded as party respondents in the main petition. According to the applicants of the criminal misc. application, they are likely to be affected if any relief is granted by this Court to the petitioner in the main petition. It is the case of the applicants that false allegations have been levelled against them of fraud etc.

4. This is one of those cases of a priceless piece of land situated in the city of Surat. Over a period of time. the city of Surat and the villages adjoining the same has gone completely in the hands of land Mafias. Over a period of time, hundreds of criminal prosecutions must have been instituted with regard to different parcels of land situated at different places. This case also appears to be one of such type. It appears from the materials on record that the case is one of breach of section 73AA of the Bombay Land Revenue Code. A restricted tenure land belonging to an Adivasi appears to have been usurped and a posh society has come up on the said land. The society consists of luxurious bungalows. There are serious allegations of forgery etc. levelled by the petitioner.

5. Surprisingly, the respondent No.3 Collector, Surat who is heading the Special Investigation Team seems to have overlooked the fraud. The police department also, as usual, seems to have turned a blind eye for some reason or the other. I am of the view that instead of issuing a mandamus straightway directing the respondents Nos.2 and 3 to register an FIR on the basis of the complaints filed by the petitioner herein, I deem it fit and proper to direct the respondent No.3 Collector, Surat as well as the respondent No.2, Commissioner of Police, Surat to undertake a detailed inquiry into the matter. The inquiry should be thorough and should not be just an eyewash. I have taken a serious note of the allegations which have been levelled in the various complaints. Any dereliction of duty on the part of the respondents would entail appropriate legal action.

6. As observed above, land grabbing in the city of Surat and HC-NIC Page 12 of 89
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adjoining areas is at a rampage. The land which belongs to poor people more particularly the tribals have been grabbed and usurped by playing fraud of a great magnitude. Although it is the stance of the State respondents that all possible steps are being taken to curb these type of offences, yet I am not convinced with such explanation offered by the State respondents.

7. I, therefore, direct the respondent No.2, Commissioner of Police, Surat as well as the Collector, Surat being the head of the Special Investigation Team to immediately undertake a detailed and exhaustive investigation in this regard and file an appropriate report before this Court on or before 4th November, 2015. If I find any dereliction of duty or casual approach on the part of the respondents Nos.2 and 3 in inquiring into the matter, then I may consider transferring the entire investigation to the C.B.I.

8. The matters are treated as part heard. The Registry shall notify these matters before this Court on 27th November, 2015.

3. The order referred to above contains the factual background in which this petition has been filed and therefore I need not reiterate the facts.

4. It is brought to my notice that the order dated 29th September, 2015 passed by this Court referred to above was challenged before the Supreme Court by way of Special Leave to Appeal (CRL) (CRLMP) No.18188 of 2015. It appears that the Supreme Court rejected the permission to file the SLP.

5. Pursuant to the directions issued by this Court vide order dated 29th September, 2015 and inquiry was undertaken by the Police Commissioner, Surat City as well as by the Collector, Surat in his capacity as the Head of the special investigation team i.e. SIT. Mr. J.K. Shah, the learned APP appearing for the State of Gujarat produced two sealed covers today containing two reports one by the Police Commissioner, Surat City and the other by the Collector, Surat.

6. I have gone through both the reports. The reports are quite exhaustive. Prima facie, it appears that all relevant aspects relating to the matter have been looked into. The necessary and relevant documentary evidence has also been annexed with the reports. The report filed by the Police Commissioner, Surat City indicates that some prima facie case is made out against the persons named therein for the offence punishable under Sections 406, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code and Section 3(2) and 5 of the Prevention of Scheduled Caste and Scheduled Tribe (Atrocity) Act.

7. If the preliminary inquiry carried out by the Commissioner of Police, HC-NIC Page 13 of 89
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Surat City reveals a prima facie case as stated in the report then I expect the Commissioner to proceed further in accordance with law.

8. I clarify that I have not expressed any final opinion in this regard. It is now for the police authority to look into the same and proceed in accordance with law without being influenced in any manner by any of the

observations made by this Court in the matter.

9. It goes without saying that all legal remedies available may be availed of by the persons concerned against whom the police may or may not take action in future in accordance with law. The two reports filed by the Police Commissioner, Surat City alongwith the documents and the report filed by the Collector, Surat alongwith the documents be kept in the sealed cover on the record of the case. The Registry shall preserve the two sealed covers containing the reports in accordance with the rules.

10. With the above, this petition is disposed of. In view of the order passed in the main matter the connected Criminal Misc. Application is also disposed of."

9 The record further reveals that the respondent No.3 and others filed one another writ application being the Special Criminal Application No.2820 of 2016 with respect to the very same subject matter. A Coordinate Bench of this Court passed the following order on 28 th April 2016, which reads as under:

"1. Pursuant to the order of this Court dated 03.12.2015 passed in Special Criminal Application No. 200 of 2014 with Criminal Misc. Application No. 2013 of 2014, the Commissioner of Police was required to proceed further in accordance with law, as directed by this Court. Here, it would be profitable to reproduce the observations made by this Court in Paragraphs□ 6, 7, 8 and 9 thereof;

6. I have gone through both the reports. The reports are quite exhaustive. Prima facie, it appears that all relevant aspects relating to the matter have been looked into. The necessary and relevant documentary evidence has also been annexed with the reports. The report filed by the Police Commissioner, Surat City indicates that some prima facie case is made out against the persons named therein for the offence punishable under Sections 406, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code and Section 3(2) and 5 of the Prevention of Scheduled Caste and Scheduled Tribe (Atrocity) Act.

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7. If the preliminary inquiry carried out by the Commissioner of Police, Surat City reveals a prima facie case as stated in the report then I expect the Commissioner to proceed further in accordance with law.

8. I clarify that I have not expressed any final opinion in this regard. It is now for the police authority to look into the same and proceed in

accordance with law without being influenced in any manner by any of the observations made by this Court in the matter.

9. It goes without saying that all legal remedies available may be availed of by the persons concerned against whom the police may or may not take action in future in accordance with law. The two reports filed by the Police Commissioner, Surat City alongwith the documents and the report filed by the Collector, Surat alongwith the documents be kept in the sealed cover on the record of the case. The Registry shall preserve the two sealed covers containing the reports in accordance with the rules.

2. Let the outcome of such procedure be made known to this Court, on the next date.

3. NOTICE be issued to Respondent Nos. 1 and 2, returnable on 4th MAY, 2016. Ms. Pathak, learned APP, waives service of notice for Respondent No.1. Respondent No.2 is permitted to be served directly, TODAY. To be listed within first 10 matters."

10 Thereafter, on 4th May 2016, the following order was passed in the Special Criminal Application No.2820 of 2016:

"1. This Court on 28th April, 2016, issued notice to Respondent Nos. 1 and 2, making the same returnable, today. It had also quoted some of the paragraphs from the earlier order passed by this Court in Special Criminal Application No. 200 of 2014 on 3rd December, 2015. Here, it would be apt, at this stage, to remind the Commissioner of Police, Surat City, Paragraph 11 of the case of LALITA KUMARI V. STATE OF UTTAR PRADESH AND OTHERS, reported in (2014) 2 SCC 1, more particularly, Paragraph v to vii, which read as under;

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(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes (b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

2. Let a report, by way of an affidavit of the progress and compliance of the direction of this Court, to be placed before this Court on 20TH JUNE, 2016."

11 Ultimately, a First Information Report came to be registered against the applicants herein being C.R. No. I □ 90 of 2016 with the Khatodara Police Station, Surat for the offences enumerated above.

12 One of the accused applicants herein namely, Dineshbhai Chandubhai Patel went before the Supreme Court by filing a Special Leave to Appeal (Crl.) No.10222 of 2016 challenging the final judgment and order dated 3rd December 2015 passed by this Court in the Special Criminal Application No.200 of 2014. The Supreme Court passed the HC-NIC Page 16 of 89 Created On Tue Jul 11 01:32:51 IST 2017 following order on 29th June 2016:

"Permission to file the special leave petition is granted. Heard Dr. Abhishek Manu Singhvi, learned senior counsel for the petitioner and Mr. Amar Dave, learned counsel for the respondent. The High Court by the impugned order in paragraphs 6 to 9 has stated thus: □ "I have gone through both the reports. The reports are quite exhaustive. Prima facie, it appears that all relevant aspects relating to the matter have been looked into. The necessary and relevant documentary evidence has also been annexed with the reports. The report filed by the Police Commissioner, Surat City indicates that some prima facie case is made out against the persons named therein for the offence punishable under Sections 406, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code and Section 3(2) and 5 of the

Prevention of Scheduled Caste and Scheduled Tribe (Atrocity) Act.

7. If the preliminary inquiry carried out by the Commissioner of Police, Surat City reveals a prima facie case as stated in the report then I expect the Commissioner to proceed further in accordance with law.

8. I clarify that I have not expressed any final opinion in this regard. It is now for the police authority to look into the same and proceed in accordance with law without being influenced in any manner by any of the observations made by this Court in the matter.

9. It goes without saying that all legal remedies available may be availed of by the persons concerned against whom the police may or may not take action in future in accordance with law. The two reports filed by the Police Commissioner, Surat City along with the documents and the report filed by the Collector, Surat along with the documents be kept in the sealed cover on the record of the case. The Registry shall preserve the two sealed covers containing the reports in accordance with the rules."

It is submitted by Dr. Singhvi, learned senior counsel appearing for the petitioner that the High Court has issued direction for registration of an F.I.R. under Article 226 of the Constitution of India and, in fact, is monitoring the matter. Mr. Dave, learned counsel appearing for the respondent has disputed the same.

Regard being had to the narrow compass in which the grievance rests, we clarify that the aforesaid paragraphs are not to be treated as directions under Article 226 of the Constitution and if any F.I.R. is registered, the investigating agency shall proceed in accordance with law. If the petitioner HC-NIC Page 17 of 89
C r e a t e d O n T u e J u l 1 1 0 1 : 3 2 : 5 1 I S T 2 0 1 7
is grieved with the same, he may approach the appropriate court which shall deal with the matter in accordance with law. Needless to say, when the matter would be dealt with by the appropriate court, it will be done independently without being influenced by any of observation made in the impugned order. We may hasten to clarify that except our clarificatory observation, nothing shall be construed as an expression on merits of the case. The special leave petition is, accordingly, disposed of."

13 Thereafter, one Criminal Appeal No.1164 of 2016 came to be filed before the Supreme Court by one of the co-accused applicants namely, Dinesh Chandubhai Patel challenging the order dated 28th September 2016 passed by this Court in the Special Criminal Applications Nos.4357 and 4951 of 2016 respectively preferred under Section 482 of the Code for quashing of the F.I.R. in question. The Supreme Court granted leave and by order dated 29th

November 2016, disposed of the appeal in the following terms:

"Leave granted.

2. In these appeals, by special leave, the order dated 28.09.2016 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application Nos. 4357 and 4951 of 2016 respectively preferred under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Cr.P.C.") for quashing of investigation is called in question. We do not intend to state anything with regard to the history of litigation. Suffice it to state, certain directions were issued under Article 226 of the Constitution in a petition and when the said was challenged in S.L.P. (Crl.) No. 4703 of 2016 this Court on 29.06.2016 after reproducing few paragraphs from the order of the High Court had directed as follows: □
"Regard being had to the narrow compass in which the grievance rests, we clarify that the aforesaid paragraphs are not to be treated as directions under Article 226 of the Constitution and if any F.I.R. is registered, the investigating agency shall proceed in accordance with law. If the petitioner is grieved with the same, he may approach the appropriate court which shall deal with the matter in accordance with law. Needless to say, when the matter would be dealt with by the appropriate court, it will be done independently without being influenced by any of the observation made in the HC-NIC Page 18 of 89 Created On Tue Jul 11 01:32:51 IST 2017 impugned order. We may hasten to clarify that except our clarificatory observation, nothing shall be construed as an expression on merits of the case."

3. As the factual matrix would show, after the report was filed, a petition under Section 482 Cr.P.C. for quashing of the investigation into case ICR No. 90 of 2016 was registered with Khatodara Police Station under Sections 406, 420, 465, 467, 468, 471, 120(B) of the Indian Penal Code, 1860 (for short "the IP") and Sections 3(1)(v) and 3(1)(iv) of the Scheduled Castes and the Scheduled Tribes Prevention of Atrocities Act, 1989. On a perusal of the order passed by the High Court, it is manifest that it did not really advert to the merits of the case within the guidelines laid down by this Court in State of Haryana and Others vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335.

4. In view of the aforesaid, the order passed by the High Court is set aside and the matter is remitted to the High Court to decide the lis within the parameters of Section 482 of the Cr.P.C. Liberty is granted to the appellants to move an application for stay of investigation, if so advised. Needless to say the High Court shall address to the prayer made in the interim application without being influenced by any of the orders passed by this Court including the present order. If an application of stay is

moved, the High Court is requested to dispose of the same within ten days.

5. The High Court is requested to dispose of the petitions pending before it under Section 482 of the Cr.P.C. within four months hence.

6. The appeals are disposed of accordingly.

In Special Leave Petition (Crl.) No. 8467 of 2016
In view of the judgment passed in Crl. A. Nos. 1164 and 1165-1168 of 2016, nothing remains to be adjudicated in this special leave petition and it is disposed of accordingly.

In Crl. A. No. 1169 OF 2016 @ SLP(Crl.) No. 8967 of 2016 Leave granted.

The present appeal by special leave calls in question the legal propriety of the order dated 4th October, 2016 passed by the learned Single Judge of the High Court of Gujarat at Ahmedabad in Crl. Misc. Application No. 16731 of 2016 preferred under Section 482 of the Cr.P.C. for quashment of the FIR. Needless to say the orders and directions passed in Crl. A. No. 1164 of 2016 shall apply in full force to the present case also.

The appeal is disposed of accordingly. The Impugned Order is set aside and the High Court is requested to decide the matter afresh in view of the law HC-NIC Page 19 of 89
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laid down in Bhajan Lal's case (supra). The High Court Shall decide the main petition under Section 482 of the Cr.P.C."

14 I also take notice of an order passed by this Court (J.B. Pardiwala, J.) in a petition filed by one Manojbhai Kishanbhai Kantharia and others being the Special Criminal Application No.5719 of 2015 and allied matters. The order dated 15th October 2015 reads as under:

"1. By this writ application under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:
"26(a) Your Lordships be pleased to issue a writ of Mandamus or any other appropriate writ, order and/or direction and be pleased to direct the respondent no.7 here to direct the respondent no.8 Police Inspector, Khatodara Police Station, to immediately register the F.I.R. on the basis of the complaints given by the petitioner at Annexure A Colly. and subsequently at Annexure N dated 22/9/2015 and Annexure O dated 23/9/2015 against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel and then proceed further in accordance with law;

(b) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order and/or direction and direct the respondent no.8 to forthwith lodge an FIR against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel for forgoing Government records;

(c) Your Lordships be pleased to direct respondent no.4 to produce the original documents together with the reports that were submitted by Special Investigating Team and any preliminary or final inquiry that was conducted by the respondent no.4 before this Hon'ble Court and this Hon'ble court after perusing the same may direct respondent nos.2 and 3 to initiate appropriate departmental proceedings against the responsible officers of the revenue department for shielding Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel and submit its action taken report before this Hon'ble Court.

(d) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to direct the respondent no.8 i.e. the Police Inspector, Khatodara Police Station, to immediately register the F.I.R. on the basis of the complaints given by the petitioner at HC-NIC Page 20 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Annexure A colly. and subsequently, at Annexure N dated 22/9/2015 and Annexure O dated 23/9/2015 against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel;

(e) Your Lordships be pleased to direct the State of Gujarat to pay exemplary cost to the petitioner;

(f) Your Lordships be pleased to grant such other and further relief/s, as are deemed fit, in the interest of justice."

2. Mr. Marshall, the learned senior advocate appearing for the petitioner has taken me through the contents of the report of the Mamlatdar, Majura, dated 25th August, 2015. The free English translation of the last two paragraphs of the report at Page 247, 248 reads thus: "With respect to the land of village Althan bearing block no.121, admeasuring 5261 sq.mtrs. which is new tenure land and the same are governed by the provisions of Section 73 AA being a restricted tenure as the land belongs to the family of Adivasi being Shri Arjunbhai Shankarbhai Rathod who has preferred a writ petition before the Hon'ble High Court of Gujarat against Shri Manharbhai Muljibhai Kakadiya and other responsible persons for lodging of an FIR against them. As the matter is subjudice before the Hon'ble High Court, nothing is required to be done at present.

With respect to land of village□Bharthana□Vesu bearing block no.93 admeasuring 23371 sq.mtrs and land of village □Bharthana □Vesu bearing block no.197 admeasuring 7487 sq.mtrs. of Taluka Majura District□Surat which is a new tenure land, with respect to the same Shri Manharbhai Muljibhai Kakadiya had prepared false, bogus and fabricated N.A. Permission of District Panchayat as the land is of new tenure, even the premium which was required to be paid before the State Government on an inquiry it is known that the same has not been paid. With respect to block no.93 Shri Manharbhai Muljibhai Kakadiya has entered into different documents in writing in his favour from the original owners of which an application and statement has been given by the applicant which is produced. Shri Manharbhai Muljibhai Kakadiya has organized a society by the name of Ashirwad Villa and entered into registered sale□deeds in favour of the plot holders and in the registered sale□deeds reference is made out N.A. Permission of District Panchayat. With respect to said land, an application was given by the applicant to the District Collector on 25.02.2015 and in the meeting that took place before the SIT, the said report was produced. In the said report, a question was raised as to whether N.A. Permission has been granted or not? With respect to the same, HC-NIC Page 21 of 89 Created On Tue Jul 11 01:32:51 IST 2017 a report from the District Development Officer and District Panchayat, Surat be called for and if no N.A. Permission is granted by the District Panchayat, then necessary instructions be given to the Deputy Collector, City Prant, Surat to lodge FIR against the responsible persons and in the next meeting of SIT detail report be submitted by the Prant Officer. With respect to the subject matter, another application has also be given by the applicant. As in earlier meeting of SIR it has been decided to lodge FIR against the responsible persons, no further opinion is required to be given."

3. It appears that on 03.02.2014, a detailed complaint was lodged in writing by the petitioner addressed to the Police Commissioner, Surat, Page□55, Annexure□A Collectively. It also appears that thereafter one more complaint in the form of a reminder dated 23.09.2015 was addressed to the Police Commissioner, Surat, Page□226, Annexure□O' to this petition.

4. In view of the serious allegations made in the two complaints and the report of the Mamlatdar, Majura□ referred to above and also the further investigation carried out by the Special Investigating Team, more than a prima□facie case is made out for registration of the FIR and the investigation in accordance with law. The petitioner herein shall appear before the Police Inspector of the Khatodara Police Station on 17.10.2015 for lodging of the FIR.

Mr. M.M. Diwan, the Police Inspector of the Khatodara Police Station is personally present in the Court. He makes a statement that the complaint lodged by the petitioner herein dated 23.09.2015, Page□226, Annexure□O'

to this petition shall be taken down as it is as an FIR. The petitioner will be the first informant. After registration of the FIR the investigation shall be carried out in accordance with law. I clarify that I have otherwise not gone into the merit of the matter.

5. Any laxity, favouritism or dereliction of duty in carrying out the effective investigation of the FIR will be viewed very strictly by this Court. I take judicial notice of the fact that in the course of my present sitting, I have come across many writ applications levelling serious allegations of land grabbing against Shri Manharbhai Muljibhai Kakadiya. I fail to understand why the State Government, more particularly the Police machinery and the Revenue Officers are oblivious of this fact.

6. With the above, this petition is disposed of. Direct Service is permitted."

15 Thereafter, one Special Criminal Application No.6373 of 2015 came to be filed for transfer of the investigation to the C.B.I. by one HC-NIC Page 22 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Manojbhai Kishanbhai Kantharia and others. On 29th October 2015, the following order was passed:

"1. On 15th October, 2015, this Court passed the following order in the Special Criminal Application No.5719 of 2015: "1. By this writ application under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs: 26(a) Your Lordships be pleased to issue a writ of Mandamus or any other appropriate writ, order and/or direction and be pleased to direct the respondent no.7 here to direct the respondent no.8 Police Inspector, Khatodara Police Station, to immediately register the F.I.R. on the basis of the complaints given by the petitioner at Annexure A Colly. and subsequently at Annexure N dated 22-9-2015 and Annexure O dated 23-9-2015 against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel and then proceed further in accordance with law;

(b) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order and/or direction and direct the respondent no.8 to forthwith lodge an FIR against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel for forgoing Government records;

(c) Your Lordships be pleased to direct respondent no.4 to produce the original documents together with the reports that were submitted by Special Investigating Team and any preliminary or final inquiry that was conducted by the respondent no.4 before this Hon'ble Court and this Hon'ble

court after perusing the same may direct respondent nos.2 and 3 to initiate appropriate departmental proceedings against the responsible officers of the revenue department for shielding Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel and submit its action taken report before this Hon'ble Court.

(d) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to direct the respondent no.8 i.e. the Police Inspector, Khatodara Police Station, to immediately register the F.I.R. on the basis of the complaints given by the petitioner at Annexure A colly. and subsequently, at Annexure N dated 22/9/2015 and Annexure D dated 23/9/2015 against Shri Manharbhai HC-NIC Page 23 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel;

(e) Your Lordships be pleased to direct the State of Gujarat to pay exemplary cost to the petitioner;

(f) Your Lordships be pleased to grant such other and further relief/s, as are deemed fit, in the interest of justice."

2. Mr. Marshall, the learned senior advocate appearing for the petitioner has taken me through the contents of the report of the Mamlatdar, Majura 1, dated 25th August, 2015. The free English translation of the last two paragraphs of the report at Page 247, 248 reads thus: "With respect to the land of village Althan bearing block no.121, admeasuring 5261 sq.mtrs. which is new tenure land and the same are governed by the provisions of Section 73 AA being a restricted tenure as the land belongs to the family of Adivasi being Shri Arjunbhai Shankarbhai Rathod who has preferred a writ petition before the Hon'ble High Court of Gujarat against Shri Manharbhai Muljibhai Kakadiya and other responsible persons for lodging of an FIR against them. As the matter is sub-judice before the Hon'ble High Court, nothing is required to be done at present.

With respect to land of village Bharthana Vesu bearing block no.93 admeasuring 23371 sq.mtrs and land of village Bharthana Vesu bearing block no.197 admeasuring 7487 sq.mtrs. of Taluka Majura District Surat which is a new tenure land, with respect to the same Shri Manharbhai Muljibhai Kakadiya had prepared false, bogus and fabricated N.A. Permission of District Panchayat as the land is of new tenure, even the premium which was required to be paid before the State Government on an inquiry it is known that the same has not been paid. With respect to block no.93 Shri Manharbhai Muljibhai Kakadiya has entered into different documents in writing in his favour from the original owners of which an application and statement has been given by the applicant which is produced. Shri Manharbhai Muljibhai Kakadiya has organized a society by

the name of Ashirwad Villa and entered into registered sale deeds in favour of the plot holders and in the registered sale deeds reference is made out N.A.

Permission of District Panchayat. With respect to said land, an application was given by the applicant to the District Collector on 25.02.2015 and in the meeting that took place before the HC-NIC Page 24 of 89 Created On Tue Jul 11 01:32:51 IST 2017 SIT, the said report was produced. In the said report, a question was raised as to whether N.A. Permission has been granted or not? With respect to the same, a report from the District Development Officer and District Panchayat, Surat be called for and if no N.A. Permission is granted by the District Panchayat, then necessary instructions be given to the Deputy Collector, City Prant, Surat to lodge FIR against the responsible persons and in the next meeting of SIT detail report be submitted by the Prant Officer. With respect to the subject matter, another application has also be given by the applicant. As in earlier meeting of SIR it has been decided to lodge FIR against the responsible persons, no further opinion is required to be given."

3. It appears that on 03.02.2014, a detailed complaint was lodged in writing by the petitioner addressed to the Police Commissioner, Surat, Page 55, Annexure A Collectively. It also appears that thereafter one more complaint in the form of a reminder dated 23.09.2015 was addressed to the Police Commissioner, Surat, Page 226, Annexure O' to this petition.

4. In view of the serious allegations made in the two complaints and the report of the Mamlatdar, Majura referred to above and also the further investigation carried out by the Special Investigating Team, more than a prima facie case is made out for registration of the FIR and the investigation in accordance with law. The petitioner herein shall appear before the Police Inspector of the Khatodara Police Station on 17.10.2015 for lodging of the FIR.

Mr. M.M. Diwan, the Police Inspector of the Khatodara Police Station is personally present in the Court. He makes a statement that the complaint lodged by the petitioner herein dated 23.09.2015, Page 226, Annexure O' to this petition shall be taken down as it is as an FIR. The petitioner will be the first informant. After registration of the FIR the investigation shall be carried out in accordance with law. I clarify that I have otherwise not gone into the merit of the matter.

5. Any laxity, favouritism or dereliction of duty in carrying out the effective investigation of the FIR will be viewed very strictly by this Court. I take judicial notice of the fact that in the course of my present sitting, I have come across many writ applications levelling serious allegations of land grabbing against Shri Manharbhai Muljibhai Kakadiya. I fail to understand why the State Government, more particularly the Police machinery and the Revenue Officers are oblivious of this fact.

6. With the above, this petition is disposed of. Direct Service is permitted.

ORDER IN CRIMINAL MISC. APPLICATIONS: In view of the order passed in the main petition, the two Criminal Misc. Applications are also disposed of.

2. What has been conveyed to me today by Mr. Marshall, the learned senior advocate appearing for the petitioner is something very shocking and disturbing.

3. I am told that one of the co-accused has preferred an anticipatory bail application in the Sessions Court at Surat. The other co-accused is likely to file an anticipatory bail application today. I am also told that pursuant to the order passed by this Court referred to above, the F.I.R. has been registered at the Khatodara Police Station, Surat. Once the F.I.R. is registered, it is always open for the accused named therein to prefer an anticipatory bail application, if he is apprehending arrest. But at the same time, the accused has no right to dictate terms before the Court concerned how his anticipatory bail application should be dealt with. My attention has been drawn to Page 57, which is an application said to have been given by the accused through his advocate dated 27.10.2015, more particularly, the averments made in Para 7 of the said application.

4. An application of this nature is something unheard of and unprecedented. I am sure that the Court concerned who is going to hear the anticipatory bail application would ignore the same and if the Court concerned has even the slightest inclination to look into the said application, then he would be committing a big mistake in law.

5. For the present, I clarify that the Court concerned shall hear the anticipatory bail application on its own merit and ignoring the application filed by one of the co-accused i.e. Annexure 'E', Page 57 to this petition. If the Other co-accused has preferred an identical application like the one which is at Annexure 'E', Page 57, then such application should also be ignored.

6. In my view, such type of the applications are misconceived, misleading and not maintainable in law. What has been alleged against the District Government Pleader, if ultimately found to be true, is also very unfortunate.

7. I am sure that the District Government Pleader knows his role and duties. He has to protect the interest of the State. I am sure what I have conveyed in my order is a message sufficient to take care of the situation.

So far as the other prayers are concerned, the same shall be considered on 03.11.2015.

Let Notice be issued to the respondents, returnable on 03.11.2015. Ms. Punani, the learned APP waives service of notice for and on behalf of the respondent Nos.1, 2, 3, 4, 5, 6 and 8. Direct service to respondent no.7.

The Registry is directed to send the copy of the order immediately by a Fax to the District & Sessions Judge, Surat. Direct service today is permitted."

16 On 3rd November 2015, a further order was passed in the Special Criminal Application No.6373 of 2015, which reads as under:

"1. On 29th October, 2015, the following order was passed;

1. On 15th October, 2015, this Court passed the following order in the Special Criminal Application No.5719 of 2015:□

1. By this writ□application under Article□226 of the Constitution of India, the petitioner has prayed for the following reliefs:□26(a) Your Lordships be pleased to issue a writ of Mandamus or any other appropriate writ, order and/or direction and be pleased to direct the respondent no.7 here to direct the respondent no.8 Police Inspector, Khatodara Police Station, to immediately register the F.I.R. on the basis of the complaints given by the petitioner at Annexure□A Colly. and subsequently at Annexure□N dated 22□9□2015 and Annexure□O dated 23□9□2015 against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel and then proceed further in accordance with law;

(b) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order and/or direction and direct the respondent no.8 to forthwith lodge an FIR against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel for forgoing Government records;

(c) Your Lordships be pleased to direct respondent no.4 to produce the original documents together with the reports HC-NIC Page 27 of 89 Created On Tue Jul 11 01:32:51 IST 2017 that were submitted by Special Investigating Team and any preliminary or final inquiry that was conducted by the respondent no.4 before this Hon'ble Court and this Hon'ble court after perusing the same may direct respondent nos.2 and 3 to initiate appropriate departmental proceedings against the responsible officers of the revenue department for shielding Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel and submit its action taken report before this Hon'ble Court.

(d) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to direct the respondent no.8 i.e. the Police Inspector, Khatodara Police Station, to immediately register the F.I.R. on the basis of the complaints given by the petitioner at Annexure A colly. and subsequently, at Annexure N dated 22/9/2015 and Annexure D dated 23/9/2015 against Shri Manharbhai Muljibhai Kakadiya and Shri Dineshbhai Chandubhai Patel;

(e) Your Lordships be pleased to direct the State of Gujarat to pay exemplary cost to the petitioner;

(f) Your Lordships be pleased to grant such other and further relief/s, as are deemed fit, in the interest of justice.

2. Mr. Marshall, the learned senior advocate appearing for the petitioner has taken me through the contents of the report of the Mamlatdar, Majura, dated 25th August, 2015. The free English translation of the last two paragraphs of the report at Page 247, 248 reads thus: "With respect to the land of village Althan bearing block no.121, admeasuring 5261 sq.mtrs. which is new tenure land and the same are governed by the provisions of Section 73 AA being a restricted tenure as the land belongs to the family of Adivasi being Shri Arjunbhai Shankarbhai Rathod who has preferred a writ petition before the Hon'ble High Court of Gujarat against Shri Manharbhai Muljibhai Kakadiya and other responsible persons for lodging of an FIR against them. As the matter is sub-judice before the Hon'ble High Court, nothing is required to be done at present.

With respect to land of village Bharthana Vesu bearing block no.93 admeasuring 23371 sq.mtrs and land of village Bharthana Vesu bearing block no.197 admeasuring 7487 sq.mtrs. of Taluka Majura District Surat which is a new tenure land, with respect to the same Shri Manharbhai Muljibhai Kakadiya had prepared false, bogus and fabricated N.A. Permission of District Panchayat as the land is of new tenure, even the premium which was required to be paid before the State Government on an inquiry it is known that the same has not been paid. With respect to block no.93 Shri Manharbhai Muljibhai Kakadiya has entered into different documents in writing in his favour from the original owners of which an application and statement has been given by the applicant which is produced. Shri Manharbhai Muljibhai Kakadiya has organized a society by the name of Ashirwad Villa and entered into registered sale deeds in favour of the plot holders and in the registered sale deeds reference is made out N.A. Permission of District Panchayat. With respect to said land, an application was given by the applicant to the District Collector on 25.02.2015 and in the meeting that took place before the SIT, the said report was produced. In the said report, a question was raised as to whether N.A. Permission has been granted or not?

With respect to the same, a report from the District Development Officer and District Panchayat, Surat be called for and if no N.A. Permission is granted by the District Panchayat, then necessary instructions be given to the Deputy Collector, City Prant, Surat to lodge FIR against the responsible persons and in the next meeting of SIT detail report be submitted by the Prant Officer. With respect to the subject matter, another application has also be given by the applicant. As in earlier meeting of SIR it has been decided to lodge FIR against the responsible persons, no further opinion is required to be given.

3. It appears that on 03.02.2014, a detailed complaint was lodged in writing by the petitioner addressed to the Police Commissioner, Surat, Page 55, Annexure A Collectively. It also appears that thereafter one more complaint in the form of a reminder dated 23.09.2015 was addressed to the Police Commissioner, Surat, Page 226, Annexure O' to this petition.

4. In view of the serious allegations made in the two complaints and the report of the Mamlatdar, Majura referred to above and also the further investigation carried out by the Special Investigating Team, more than a prima facie case is made out for registration of the FIR and the investigation in accordance with law. The petitioner herein HC-NIC Page 29 of 89 Created On Tue Jul 11 01:32:51 IST 2017 shall appear before the Police Inspector of the Khatodara Police Station on 17.10.2015 for lodging of the FIR.

Mr. M.M. Diwan, the Police Inspector of the Khatodara Police Station is personally present in the Court. He makes a statement that the complaint lodged by the petitioner herein dated 23.09.2015, Page 226, Annexure O' to this petition shall be taken down as it is as an FIR. The petitioner will be the first informant. After registration of the FIR the investigation shall be carried out in accordance with law. I clarify that I have otherwise not gone into the merit of the matter.

5. Any laxity, favouritism or dereliction of duty in carrying out the effective investigation of the FIR will be viewed very strictly by this Court. I take judicial notice of the fact that in the course of my present sitting, I have come across many writ applications levelling serious allegations of land grabbing against Shri Manharbhai Muljibhai Kakadiya. I fail to understand why the State Government, more particularly the Police machinery and the Revenue Officers are oblivious of this fact.

6. With the above, this petition is disposed of. Direct Service is permitted.

ORDER IN CRIMINAL MISC. APPLICATIONS: In view of the order passed in the main petition, the two Criminal Misc. Applications are also disposed of.

2. What has been conveyed to me today by Mr. Marshall, the learned senior advocate appearing for the petitioner is something very shocking and disturbing.

3. I am told that one of the co-accused has preferred an anticipatory bail application in the Sessions Court at Surat. The other co-accused is likely to file an anticipatory bail application today. I am also told that pursuant to the order passed by this Court referred to above, the F.I.R. has been registered at the Khatodara Police Station, Surat. Once the F.I.R. is registered, it is always open for the accused named therein to prefer an anticipatory bail application, if he is apprehending arrest. But at the same time, the accused has no right to dictate terms before the Court concerned how his anticipatory bail application should be dealt with. My attention has been drawn to Page 57, which is an application said to have been given by the accused through his HC-NIC Advocate dated 27.10.2015, more particularly, the averments made in Paragraph 7 of the said application.

4. An application of this nature is something unheard of and unprecedented. I am sure that the Court concerned who is going to hear the anticipatory bail application would ignore the same and if the Court concerned has even the slightest inclination to look into the said application, then he would be committing a big mistake in law.

5. For the present, I clarify that the Court concerned shall hear the anticipatory bail application on its own merit and ignoring the application filed by one of the co-accused i.e. Annexure 'E', Page 57 to this petition. If the Other co-accused has preferred an identical application like the one which is at Annexure 'E', Page 57, then such application should also be ignored.

6. In my view, such type of the applications are misconceived, misleading and not maintainable in law. What has been alleged against the District Government Pleader, if ultimately found to be true, is also very unfortunate.

7. I am sure that the District Government Pleader knows his role and duties. He has to protect the interest of the State. I am sure what I have conveyed in my order is a message sufficient to take care of the situation.

So far as the other prayers are concerned, the same shall be considered on 03.11.2015.

Let Notice be issued to the respondents, returnable on 03.11.2015. Ms. Punani, the learned APP waives service of notice for and on behalf of the respondent Nos.1, 2, 3, 4, 5, 6 and 8. Direct service to respondent no.7.

The Registry is directed to send the copy of the order immediately by a Fax to the District & Sessions Judge, Surat. Direct service today is permitted."

2. Mr. P.K. Jani, the learned Additional Advocate General assisted by Mr. Mitesh Amin, the learned Public Prosecutor has appeared today for the respondent No.7, i.e., the District Government Pleader and Public Prosecutor, Surat. Mr. Jani submitted that whatever has been alleged in this petition against the respondent No.7 is without any basis and not well founded. Mr. Jani submitted that the respondent No.7, over a period of time, has built up a reputation of being an honest public prosecutor. Mr. HC-NIC Page 31 of 89
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Jani further submitted that the respondent No.7 would take all care to see that the interest of the State is protected and no undue favour is shown to any one.

3. Mr. Marshall, the learned senior advocate appearing for the petitioner submitted that the respondent No.7 had to be impleaded as a party respondent because of the misconceived and unprecedented prayer made by the two accused persons by filing an application which is at page 57. According to Mr. Marshall, when the application was received, strong objection should have been taken by the learned public prosecutor to the filing of such application.

4. Be that as it may, I am told that both the accused have withdrawn the applications which contained an unprecedented prayer. Now the hearing of the two anticipatory bail applications has been fixed on 5th November, 2015. I expect the learned Judge, in charge of the matters to hear the two anticipatory bail applications on merits and pass appropriate orders in accordance with law. It will be open for the petitioner herein who is the original first informant to request or make an appropriate prayer before the learned Sessions Judge to permit him to oppose the two anticipatory bail applications along with the State. If such application is filed, the same may be considered by the learned Judge in accordance with law after hearing the accused persons. So far as this issue is concerned, I leave it to the better discretion of the Presiding Officer who will be hearing the two anticipatory bail applications. So far as the other prayers are concerned, the same will be considered on the other date of hearing. Whatever may be the outcome of the two anticipatory bail applications filed by the accused persons, I expect the investigating officer to carry out a fair and transparent investigation in the right direction. Any laxity, favouritism or dereliction of duty shall be viewed very strictly.

5. In view of the above, the respondent No.7 is ordered to be deleted.

6. Let this matter appear on 4.12.2015 before this Court. The matter is treated as part heard."

17 The matter, ultimately, reached upto the Supreme Court, and the Supreme Court passed the following order on 11th January 2017:

"UPON hearing the counsel the Court made the following O R D E R HC-NIC Page 32 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Applications for permission to delete the respondent No.8 in S.L.P.(Crl.) Nos.9749 and 9753 of 2015 stand allowed.

Heard Dr. Abhishek Manu Singhvi and Mr. Shyam Divan, learned senior counsel being assisted by Mr. Nikhil Goel, learned counsel for the petitioners and Mr. Amar Dave, learned counsel being assisted by Mr. Ariez Munshi, learned counsel for the respondents.

Having heard learned counsel for the parties, we think that the following directions should be issued that shall subserve the cause of justice:□

(a) The F.I.R. that has been registered against the petitioners shall be deemed to be an F.I.R. registered in view of the Constitution Bench judgment in Lalita Kumari vs. Government of Uttar Pradesh and Others (2014) 2 SCC 1.

(b) The order passed by the High Court except that pertains to registration of the F.I.R. shall become extinct.

(c) The petitioners would be entitled to challenge the registration of F.I.R. and the consequent investigation thereof by moving a writ petition under Article 226 of the Constitution or by invoking the inherent jurisdiction of the High Court under Section 482 Cr.P.C., if they are so advised.

(d) The petitioners can move the application under Section 438 Cr.P.C. for grant of anticipatory bail before the appropriate forum.

As we have set aside the orders of the High Court except the direction for lodging of the F.I.R. which is in consonance with Lalita Kumari (supra), the concerned Judge of the court of Session or the High Court, shall deal with the application for grant of anticipatory bail, if filed, in accordance with law.

All the aforesaid directions should not be construed as any expression on the merits of the case. We may further clarify that the registration of the F.I.R. should not be treated as registration of F.I.R. by virtue of direction issued by the court, but as a reflection of certain cognizable offence from the F.I.R. itself as per Lalita Kumari (supra).

Mr. Amar Dave, learned counsel appearing for the respondents submits that the Special Criminal Application No.6373 of 2015 pending before the High Court shall not be pressed by him and, therefore, whenever the matter is listed before the High Court, it shall be well advised to dispose of it by stating

"not pressed" in view of the statement made by Mr. Dave, keeping in view the directions mentioned herein ☐ above. The special leave petitions stand disposed of accordingly."

HC-NIC Page 33 of 89 Created On Tue Jul 11 01:32:51 IST 2017 18 In the aforesaid background, let me now look into the First Information Report lodged by one Shri P.K. Patel, Police Inspector of the Katodara Police Station, Surat city, the quashing of which is prayed for in these applications by the respective accused applicants. The free English translation of the First Information Report is as under:

" D a t e - 0 6 . 0 6 . 2 0 1 6
I, P.K. Patel, Police Inspector, Khatodara Police Station, Surat city have been performing my duty with the Khatodara Police Station, Surat city as the Police Inspector since 12.12.2015. My duty is to comply with the law and order and to initiate appropriate procedure with regard to the complaint/application of the complainant / applicant and to comply with orders of the superior officers and to perform duty as per the duty delegated under the Gujarat Police Act as well as the Police Manual.

My complaint is that the applicant - Arjunbhai Shankarbhai Rathod, resident of - Navi Vasahat, Near Nirman School, village - Arthan, Surat had filed Special Criminal Application Number - 200/2014 before the Hon'ble High Court of Gujarat with regard to the land bearing Revenue Survey Number - 96/3/2 block number - 121, ad measuring - 5261.00 sq.mt. Village - Althan wherein the applicant has sought relief to register F.I.R. in connection of the ancestral land of the applicant bearing Revenue Survey number - 96/3/2, block number - 121, T.P. Scheme Number - 36, Final Plot Number - 71 village - Althan on the ground that Power of Attorney is in the name of the respondent - Dineshbhai Chandubhai Patel and there are signatures therein while his family members have put their thumb impressions in M.O.U. (Memorandum of Understanding) executed by them.

My predecessor Police Inspector and Assistant Police Commissioner, 'E' Division, Surat had commenced investigation and at present I am in ☐ charge. The following facts have been emerged on perusing the papers of investigation.

The land bearing R.S. No. ☐96/3/2, Block Number ☐121, ad measuring 5261.00 sq. mtr., village - Althan, Surat is originally of the possession of original owners and having new and restricted tenure and does fall under Section 73 ☐AA of the Land Revenue Code. The accused have fabricated fake Power of Attorney dated 27.03.2001 wherein forged signature of the original owners have been put though, having knowledge to have original owners

illiterate had have been putting thumb impressions and became HC-NIC Page 34 of 89 Created On Tue Jul 11 01:32:51 IST 2017 occupant, such land is pertaining to the tribal farmers and so, committed breach of section 73AA of the Land Revenue Code, and committed criminal conspiracy to grab the land and obtained false permission from the Surat Municipal Corporation and other government offices for construction, constructed illegal houses and tempted to the original land owners - applicant and executed M.O.U. (Memorandum of Understanding) on 03.02.2012 and it has been expressly transpired to have committed an offense, offensive play of the accused have been appeared in offense as under.

1. The accused - Dineshbhai Chandubhai Patel - Power of Attorney Holder, resident of - Udhna Meeranagar, Plot Number - 133/B, Surat was aware that Section 73AA of the Land Revenue Code is applicable to the land in dispute bearing R.S. No. 96/3/2, Block Number - 121, admeasuring 5261.00 sq.mt., village - Althan, Surat despite that, he had preferred an application to the Surat Municipal Corporation for approval of plan to construct the houses as well as for the Commencement Certificate ('Rajachitthi') without converting in N.A. (Non-Agricultural) and constructed houses in the name of China Gate 2 though, Commencement Certificate ('Rajachitthi') was issued by the Surat Municipal Corporation on a condition of conversion in N.A. (Non-Agricultural) though, any sanction had not been obtained from the office of the Collector and accepted monetary sale consideration from the different house owners, executed Deed of Conveyance and executed M.O.U. (Memorandum of Understanding) on 03.02.2012 from the applicant and his family members by temptation, greed and allurements.

2. The accused - Manharbhai Muljibhai Kakdia, resident of - 5, City Light Society, City light Road, Surat had planned and prepared entire project of the China Gate Society constructed on the land in question and prepared file to approve plan of the society and had taken the file to the Architecture and got approved plan of the China Gate 2 society and according to the version of the then Chairman and members - witnesses of the China Gate - 2 society, Jitu Builder and Manharbhai Kakdia have been associated the scheme and Manharbhai Kakdia was present at his office at the time of execution of M.O.U. (Memorandum of Understanding) on 03.02.2002 and such M.O.U. (Memorandum of Understanding) has been notarized before the Notary Shri Hemu Christrian, perusing such M.O.U. (Memorandum of Understanding) there is a writing in the nature that development activity was in process in surrounding land of the present land by Shri Jitubhai Modi and Shri Manharbhai Kakadia and therefore, Power of Attorney Holder have executed M.O.U. (Memorandum

of Understanding) to develop the plot etc. Further, 'panchnama' has been carried out before the City Talati, Althan, City Taluka, Surat on 18.6.2013, such document has been produced in Special Criminal Application Number - 200/2014, perusing it also there is a construction of 17 Bungalows and construction has been done through Manharbhai HC-NIC Page 35 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Kakdia. Thus, observing entire facts it has been supported that he has a own interest in project of the China Gate - 2 Society.

3. The accused - Harishbhai Ramanbhai Rathod, resident of Omkar Society, Singanpor, Surat and the accused - Sanjay Dhansukhlal Modi, resident of Talav Faliyu, Singanpor - village, Near Cause Way, Surat had put forged signatures of the original illiterate owners who have been putting thumb impression and executed bogus Power of Attorney performed a role of attendant (remained present) at the time of execution of M.O.U. (Memorandum of Understanding) and accepted huge amount from Dinesh Chandubhai Patel and Balubhai Aahir for settlement and not paid the amount of settlement to the applicant and his family members.

5. The accused□Balubhai Ravjibhai Aahir, resident of - Patel Faliyu, village□Bhimrad, Surat city had first purchased the land in dispute from the original owners and thereafter, he had sold it to Pareshbhai Lavjibhai Patel and obtained fake signatures of illiterate owners in Power and Attorney prepared by him despite having knowledge in connivance with Harishbhai Rathod and Sanjaybhai Modi and M.O.U. (Memorandum of Understanding) had been prepared in favour of Dinesh Chandubhai Patel and Balubhai Ravjibhai Aahir and Sanjay Modi and Haresh Rathod had paid huge amount in the settlement. Thus, Balubhai Aahir had played offensive part.

6. The accused - Pareshbhai Lavjibhai Patel who had expired in the year - 2006, he had prepared Power of Attorney of the land in question in favour of his friend and his co□functionary (partner) i.e. Dineshbhai Chandubhai Patel and though, he was aware to have obtained signatures

- thumb impressions of the original land owners and other owners of the disputed land, preferred an application to the Surat Municipal Corporation for approval of plan of China Gate Society - 2 through Dineshbhai Chandubhai Patel - Power of Attorney Holder and produced such forged Power of Attorney as true by Dinesh Chandubhai Patel.

7. The accused - Jitubhai Hasmukhlal Modi, resident of - 309, Regent Square, Near D Mart Mall, Behind Mahalaxmi Temple, Anand Mahal Road, Adajan, Surat ware aware about that the land pertaining to the China Gate Society - 2 was of new tenure and Section - 73AA is applicable to it

even though there was no prior permission or approval of the Collector, constructed 17 bungalows on the government land as a builder in involvement of Manharbhai Kakdia, got printed broucher and sold the bungalows to the concerned plot holders and it has been supported by the plot holders.

That the above mentioned persons have in collusion of each other committed conspiracy to grab the land bearing R.S. No. 96/3/2, Block HC-NIC Page 36 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Number - 121, admeasuring 5261.00 sq.mt., village - Althan, Surat is originally of the possession of original owners and having new and restricted tenure and does fall under Section 73AA, the accused have fabricated fake Power of Attorney dated - 27.03.2001 wherein forged signature of the original owners have been put though, having knowledge to have original owners illiterate hand have been putting thumb impressions and became occupant, such land is pertaining to the tribal farmers and so, committed breach of Section 73AA of the Land Revenue Code, and committed criminal conspiracy to grab the land and obtained false permission from the Surat Municipal Corporation and other government offices for construction, constructed illegal houses and tempted to the original land owners - applicant and executed M.O.U. (Memorandum of Understanding) on 03.02.2012 and it has been expressly transpired to have committed an offense to gain financial benefit and thus, this is a complaint to initiate legal action u/s. 406, 420, 465, 467, 468, 471, 120(B) of the Indian Penal Code and u/s. 3(2)(5), 3(1)(4)(5) of the Atrocities Act against all above mentioned persons and who so ever made available during investigation. My witnesses are Arjun Shankarbhai Rathod and who so ever made available during the investigation.

This is my complaint.

Before, sd/□(Mukesh Patel) I/c. Assistant Police Commissioner, 'E' Division Surat City."

19 The sum and substance of the allegations levelled against all the accused applicants is with respect to fraudulently usurping the land owned by the tribals. The case of the prosecution is that the tribals are the original owners of the disputed plot of land. The said plot of land is a new tenure land (restricted tenure). The provisions of Section 73AA of the Gujarat Land Revenue Code are applicable to the land in question. One of the co-accused namely, Balubhai Ravjibhai Aahir is said to have entered into an agreement to sale with the owners in the year 1998 with respect to the said parcel of land. Such agreement to sale is not on record. It is alleged that one forged power of attorney dated 28th March HC-NIC Page 37 of 89 Created On Tue Jul 11 01:32:51 IST 2017

1998 was created, purported to have been executed by the owners in favour of one of the applicants herein namely, Dineshbhai Chandubhai Patel, and later, one another power of attorney dated 27th March 2001 was created, purported to have been executed by the land owners in favour of Dineshbhai Chandubhai Patel. It is also alleged that there was tampering with the 7/12 extract, and on the strength of such tampering, the necessary permission to put up construction was obtained from the Surat Municipal Corporation. In the original record of rights, there is a reference of land being one of a restricted tenure covered under Section 73AA. While seeking permission from the Surat Municipal Corporation, the figure 73AA is alleged to have been scored off. Without going into any further details, the case is that the applicants, in collusion with each other, put up construction of bungalows on the disputed plot owned by the tribals and formed a society by name "China Gate". It is the case of the prosecution that in this manner, the tribals came to be cheated of their land by committing the offence of forgery, etc. 20 It is important for me to take note of the fact that all the events, as alleged, are of the period between 1998 and 2001. The construction was completed way back in the year 2001. The owners, for the reasons which I shall discuss at a later stage, kept a conspicuous silence for almost a period of more than ten years. Some of the co-owners are residing just at a distance of about 400 meters from the disputed parcel of land. The construction came up before their eyes almost more than a decade back.

□ SUBMISSIONS OF THE LEARNED COUNSEL APPEARING FOR THE RESPECTIVE ACCUSED APPLICANTS:

21 The learned counsel appearing for the respective accused applicants vehemently submitted that the prosecution instituted at the HC-NIC Page 38 of 89 Created On Tue Jul 11 01:32:51 IST 2017 behest of the original owners of the disputed plot of land could be termed as malicious, frivolous and vexatious. It has been vehemently submitted that the land owners are trying to take undue advantage of the situation and are blackmailing the applicants. This prosecution is nothing, but a desperate attempt to extort a huge amount.

22 Mr. Oza, the learned senior counsel appearing for some of the accused levelled serious allegations against one Mr. Manish J. Patel, a lawyer by profession, of blackmailing and extortion. According to Mr. Oza, the land owners are playing to the tune of Mr. Manish Patel and he is in the habit of indulging in such dubious tactics. Mr. Oza and the other learned counsel would submit that the construction was put up way back in the year 2000. Many families are residing as on date in the scheme floated by the builders. Taking undue advantage of certain procedural irregularities, the land owners are now trying to extort money from the accused persons on the

instigation of unscrupulous persons, like Mr. Manish Patel and others. Mr. Oza pointed out that Mr. Manish Patel is a lawyer by profession, but his only work, as on date, is to indulge in such type of dubious tactics, and thereby, extort money. According to Mr. Oza, although Mr. Manish Patel claims to be fighting for the rights of the tribals, yet he is the main person behind this frivolous and vexatious litigation.

23 It has been submitted that all the owners have settled the matter with the applicants by entering into a Memorandum of Understanding, but now even the Memorandum of Understanding is being disputed, as they are demanding a huge amount to close the matter. Mr. Oza would submit that once the proceedings are shown to be mala fide and initiated with an oblique motive to extort money, then this Court should not hesitate to quash the F.I.R. in exercise of its inherent powers under HC-NIC Page 39 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Section 482 of the Cr.P.C.. According to the learned counsel, the land owners have not been able to explain why they kept quiet for all these years, and why all of a sudden, a hue and cry has been raised of they being deprived of their land. It is submitted that the construction came up before their own eyes almost more than a decade back. None of the land owners questioned any of the applicants when the construction was being put up.

24 It is further submitted that assuming for the moment, without admitting, that the power of attorney dated 20th March 1998 as well as the second power of attorney dated 27th March 2001 executed by the land owners in favour of one of the applicants, namely Dineshbhai Chandubhai Patel were forged, the subsequent settlement arrived at between the parties and reduced into writing in the form of the Memorandum of Understanding would ratify all the acts.

25 Mr. Oza, the learned senior counsel levelled serious allegation of collusion of the Investigating Officer with Mr. Manish Patel. According to Mr. Oza, the investigation, which has proceeded so far, has been according to the dictates of Mr. Manish J. Patel.

26 It has been submitted that in the past, an exhaustive and detailed inquiry was undertaken by the police as regards the allegations levelled by the land owners and the matter was closed. It is only at the instigation and behest of Mr. Manish Patel that the land owners have been once again made a stooge. It is submitted that even otherwise, the plain reading of the F.I.R. fails to disclose commission of any offence. The learned counsel appearing for the applicants pointed out from the materials on record that Mr. Manish Patel, on his own letter pads, has addressed various letters to the Collector in this regard. It has also been HC-NIC Page 40 of 89 Created On Tue Jul 11 01:32:51 IST 2017 pointed out that Mr. Manish Patel called for a press conference for no

rhyme and reason. It is submitted that Mr. Manish Patel is nothing, but, a fox in a sheep's clothing.

27 Mr. Oza submitted that many material facts came to be suppressed before this Court in the earlier round of litigation. But, for such suppression of facts, this Court probably, would not have passed the orders, which are on record.

28 It is submitted that having regard to the dubious conduct and bona fide of the landowners, none of the ingredients to constitute the offence under the Atrocities Act are spelt out. Applying the provisions of the Atrocities Act only on the ground that the land owners are tribals is nothing, but a mockery of justice and misuse of the benevolent provisions of the legislation, which otherwise are meant for the protection of the members of the Scheduled Castes and Scheduled Tribes from atrocities. The persons, who indulge in extortion and blackmailing, cannot complain of atrocities. It is submitted that there is not an iota of evidence even to remotely suggest or infer any criminal conspiracy. It is submitted that none of the ingredients to constitute the offence of criminal breach of trust are spelt out. It is also submitted that none of the ingredients to constitute the offence of cheating are spelt out.

29 It has been submitted that assuming for the moment that the land in question was a restricted tenure land, wherein the provisions of Section 73AA of the Land Revenue Code were applicable, that by itself would not attract the provisions of the Atrocities Act. It cannot be said, by any stretch of imagination, that the land owners were forcibly dispossessed from the land in question.

30 Mr. Virat Popat, the learned counsel appearing for the applicants HC-NIC Page 41 of 89 Created On Tue Jul 11 01:32:51 IST 2017 of the Criminal Miscellaneous Application No.16731 of 2016 submitted that so far as his client is concerned, he has nothing to do with the event that took place almost fifteen years back.

31 In such circumstances referred to above, it is prayed that there being merit in all the applications, those be allowed and the F.I.R. be quashed.

32 In support of their submissions, reliance has been placed on the following decisions:

- DELAY IN REGISTRATION OF FIR (1) Kishan Singh vs. Gurpal Singh & Anr. [(2010) 8 SCC 775 (2) Udaishankar Awasthi vs. State of U.P. [(2013) 2 SCC 435] (3) Lokeshkumar Jain vs. State of Raj. [(2013) 11 SCC 130] (4) Manoj Kumar vs. State of Chhatisgarh [Cri. A. No.775 of 2013] (5) Khandubhai Tandel vs. State of Gujarat [(2015) 2 GLR 146] • MATERIAL SUPPRESSION IN FIR (1) Jinofer Bhujwala vs. State of Gujarat [(2015) 2 GLH 112] • RATIFICATION (1) Pratimaben Desaid vs. State of Gujarat [(2003) 3 GLH 430] (2) Vasanjibhai Patel vs. Dep. Collector [(1998) 3 GLR 2139]

(3) State of Gujarat vs. Patel Raghav [AIR 1969 SC 1297] (4) Chandulal Ranodriya vs. State of Gujarat [(2013) 2 GLR 1788] • QUASHING PETITION OPEN, EVEN AFTER HC DIRECTS FIR HC-NIC Page 42 of 89 Created On Tue Jul 11 01:32:51 IST 2017 REGISTRATION (1) Ramesh Navadiya vs. State of Gujarat [Cr.A. No.55 of 2014] (2) Ritaben Desaid vs. State of Gujarat [S.Cr.A. No.1525 of 2014] (3) Rameshbhai Navadiya vs. Ritaben [S.L.P. No.9651 of 2014] • ATROCITIES ACT (1) Sandip Ughreja vs. State of Gujarat [Cr.M.A. No.15188 of 2014] • LAW AND MORALITY (1) Proprietary Articles Trade Association vs. A.g. For Canada [AIR 1931 PS 94] (2) Chidambaram vs. Shanmugham Pillai [AIR 1938 Mad 129] (3) Jawala Ram vs. State of Pepsu [AIR 1962 SC 1246] (4) Gherulal Parakh vs. Mahadeodas Maiya [AIR (1969) SC 781] • HAVING POCKETED MONEY NO RIGHT TO LITIGATION (1) Smt. Ratnaprabhabai vs. Tulsidas V. Patel [23 GLR 213] 33 On the other hand, all these applications have been vehemently opposed by the learned Additional Public Prosecutor appearing for the State respondent. The learned A.P.P. would submit that a prima facie case is made out for investigation into the allegations levelled in the F.I.R. The learned A.P.P. would submit that indisputably, the land in question was a restricted tenure land and the provisions of Section 73AA of the Gujarat Land Revenue Code were applicable. It is submitted that HC-NIC Page 43 of 89 Created On Tue Jul 11 01:32:51 IST 2017 the so-called agreement to sale executed by the original owners in favour of Balubhai Ravjibhai Aahir in the year 1998 has not been recovered so far in the course of the investigation. There is nothing forthcoming to even remotely suggest that any consideration was paid to the original owners at the time of the execution of the agreement to sale. It is submitted that in the disputed agreement to sale, the land owners have put signatures, wherein they being illiterate persons, they are putting only their thumb impressions. The learned A.P.P. submitted that on the basis of a bogus agreement to sale and power of attorneys, the development permission was obtained from the Surat Municipal Corporation and that too by suppressing the fact that the land is of a restricted tenure. The learned A.P.P. pointed out that somehow the figure Section 73AA came to be erased from the record of rights. The learned A.P.P. submitted that the administrative law and administrative action cannot validate the acts which would attract the penal consequences or acts, which are made punishable otherwise under the law. Therefore, according to the learned A.P.P., the argument of ratification is thoroughly misconceived and without any merit. It is submitted that the Memorandum of Understanding arrived at between the land owners cannot be a ground to quash the F.I.R., as there can be no estoppel of a criminal prosecution and no ratification of a criminal offence. The learned A.P.P. would submit that as a prima facie case has been made out, the Investigating Officer should be permitted to complete the investigation in accordance with law.

34 Mr. Munshi, the learned counsel appearing for the original owners vehemently submitted that more than a prima facie case is made out for the investigation to proceed in accordance with law and no case is made

out for quashing of the F.I.R. He would submit that the land was of a restricted tenure and no development permission could have been HC-NIC Page 44 of 89 Created On Tue Jul 11 01:32:51 IST 2017 granted by the Surat Municipal Corporation without the permission of the Collector. According to Mr. Munshi, the two power of attorneys dated 20th March 1998 and 27th March 2001 purported to have been executed in favour of Dineshbhai Chandubhai Patel were created and a bogus 7/12 extract was also created with Section 73AA being scored off. According to Mr. Munshi, the allegations levelled against Mr. Manish J. Patel are reckless and baseless. According to Munshi, Mr. Manish J. Patel is a practicing lawyer, and has always stood for the rights of the poor section of the society. According to Mr. Munshi, the entire parcel of land of the ownership of his clients came to be grabbed very highhandedly, and on the same, construction was put up. Mr. Munshi submitted that one Shri Maharbhai Muljibhai Kakadiya and Shri Jitubhai Hasmukhlal Modi were the organizers and the developers of the land in question, wherein they constructed 17 luxurious residential bungalows on the land belonging to the tribals without any permission and if the said permission are shown to have been granted, the same were obtained by misleading the authorities without any N.A. permission.

35 Mr. Munshi would submit that his clients came to be dispossessed from the land, and thereby, they were deprived of their use, and therefore, the provisions of the Atrocities Act are attracted. He would submit that there being no merit in any of the applications, those be rejected.

36 Mr. Munshi, in support of his submissions, placed reliance on the following decisions:

- (1) National Campaign on Dalit Human Rights & Ors vs. Union of India & Ors [Writ Petition (Civil) No.140 of 2006 decided on 15th December 2016 by the Supreme Court] HC-NIC Page 45 of 89 Created On Tue Jul 11 01:32:51 IST 2017
- (2) Amrendra Pratap Singh vs. Tej Bahadur Prajapati and others [(2004) 10 SCC 65]
- (3) Shamjibhai Keshavjibhai Kansagra (Patel) & Ors. vs. Principal Secretary, Revenue Dept. (Appeals) & Ors. [AIR 2011 Gujarat 55]
- (4) Subhashbhai Bhikhubhai Patel vs. Bimal Ramakant Halpati & 14 [Civil Revision Application No.196 of 2014 decided on 9th June 2015 by the Gujarat High Court]
- (5) Central Bureau of Investigation vs. Maninder Singh [(2016) 1 SCC 389]
- (6) Teeja Devi alias Triza Devi vs. State of Rajasthan [(2014) 15 SCC 221]
- (7) Ram Babu vs. State of Madhya Pradesh [(2009) 7 SCC 194]
- (8) Ram Babu vs. State of M.P. [AIR 2010 SC (supp) 510]
- (9) Ashabai Machindra Adhagale vs. State of Maharashtra [(2009) 3 SCC 789]
- (10) State of Karnataka vs. M. Devendrappa [(2002) 3 SCC 89]
- (11) Kailas and others vs. State of Maharashtra [(2011) 1 SCC 793] HC-NIC Page 46 of 89 Created On Tue Jul 11 01:32:51 IST 2017

- (12) Subrata Das vs. State of Jharkhand [(2010) 10 SCC 798]
- (13) State of Madhya Pradesh vs. Surendra Kori [(2012) 10 SCC 155]
- (15) The State of Telangana vs. Habib Abdullah Jeelani [(2017) SCC Online SC 23]
- (16) Bhikhabhai Govindbhai Kalkani (Pansuriya) vs. State of Gujarat [Criminal Miscellaneous Application No.17519 of 2011 decided on 6th April 2016 by this Court]
- (17) State of Maharashtra through C.B.I. vs. Vikram Anantra Doshi [(2014) 15 SCC 29]

37 Let me at this stage classify the role of each of the applicants accused as alleged.

[1] The Criminal Miscellaneous Application No.16731 of 2016 has been preferred by Harishbhai Ramanbhai Rathod. He is named as the accused No.3 in the F.I.R. It is alleged that he acted as a mediator in getting the Memorandum of Understanding signed and received an amount of Rs.1,50,00,000/□ (Rupees One Crore Fifty Lac only) from Mr. Dineshchandra Chandubhai Patel and Balubhai Aahir, but did not part with the same with the land owners, except Rs.35,00,000/□(Rupees Thirty Five Lac only).

[2] The Special Criminal Application No.4387 of 2016 has been preferred by Manharbhai Muljibhai Kakadia. He is named as HC-NIC Page 47 of 89 Created On Tue Jul 11 01:32:51 IST 2017 the accused No.2 in the F.I.R. He is shown to be the principal accused, who floated the scheme by name 'China Gate □ 2' along with one Jitendra Modi. It is alleged that he obtained development permission by suppressing the fact that the land is of a restricted tenure, to which, the provisions of Section 73AA of the Land Revenue Code are applicable.

[3] The Criminal Miscellaneous Application No.14842 of 2016 has been filed by Jitendra Hashmukhlal Modi. This applicant is named as the accused No.7 in the F.I.R. He is said to be instrumental in floating the scheme of 'China Gate - 2'.

[4] The Special Criminal Application No.4357 of 2016 has been filed by Dinesh Chandubhai Patel. He is shown as the accused No.1 in the F.I.R. It is alleged to have created a bogus power of attorney dated 27th March 2001 purported to have been signed by the original land owners. On the strength of the bogus power of attorney, he applied for permission with the Surat Municipal Corporation by suppressing the fact that the land is of a restricted tenure. He is also alleged to have got the Memorandum of Understanding dated 3rd February 2012 executed through the land owners under the threats, pressure and coercion.

[5] The Criminal Miscellaneous Application No.13733 of 2016 has been filed by Balubhai Ravjibhai Aahir. This applicant is shown as the accused No.5 in the F.I.R. This applicant is said to have purchased the land first in point of time from

the original land owners and transferred the same by sale to one Pareshbhai Lavjibhai. It is alleged that he, in collusion HC-NIC Page 48 of 89 Created On Tue Jul 11 01:32:51 IST 2017 with one Sanjay Modi and Harish Rathod, created a forged power of attorney purported to have been signed by the original land owners.

[6] The Special Criminal Application No.4951 of 2016 has been filed by Sanjay Dhanshukhlal Modi. This applicant is named as the accused No.4 in the F.I.R. It is alleged that he was instrumental in pressuring the land owners to sign the Memorandum of Understanding dated 3rd February 2012. He is also alleged to be a part and parcel of the conspiracy.

38 Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the F.I.R. should be quashed.

39 As noted above, the construction over the disputed parcel of land was put up some time in the year 2001. All through out the hearing, I kept on wondering that when the construction came up before the eyes of the land owners, why they kept quiet and remained silent for all these years. When I took cognizance of the matter for the first time, I was really disturbed with the allegations levelled against the developers of the land and the other co-accused. The impression which was given to me was that here are the poor tribals, who have been deprived of their precious parcels of lands, by the powerful builders of the city. I came down very heavily on one and all by passing the various orders which I have noted above, unmindful of the fact that these tribals were dancing to the tune of few unscrupulous persons, like Mr. Manish Patel and others and were only trying to blackmail and extort money. Why they kept a conspicuous silence for all these years is revealed from the materials on record itself and I shall now highlight the same.

HC-NIC Page 49 of 89 Created On Tue Jul 11 01:32:51 IST 2017 40 It all started with an application filed by the land owners addressed to the Police Commissioner, Surat dated 25th April 2011. The contents of the applications are as under:

"1 I - the complainant has been residing above mentioned address with my family.

2 Facts of the complaint are that, ancestral land of the complainant is located bearing survey number - 96/3/2, Block Number - 121, admeasuring - H. Are. 0.5281 Sq. mt. Having cess - Rs.8.81 under the restriction of Section 43 and 73AA of the Tenancy Act and of new tenure. T.P. Scheme number - 36(Althan), Final Plot Number - 71 has been

implemented to it. The applicant has recently inquired to the office of the village panchayat as well as Revenue record and I came to know that I am owner, attorney of such land and I have executed power of attorney in favour of the accused on 27.3.2001. It is entirely false, bogus and fabricated. So, the complainant had questioned about the subject matter, I have come to know the fact upon inquiry that the accused have prepared writing of General Power of Attorney, got the writing on stamp paper of Bhikhubhai Durlabbhai and executed fake signature at serial number - 17 to 32 in the name of the complainant and got attested such power of attorney before Shri Panwala, Deputy Mamlatdar and Executive (*Designation is incomplete). In fact, the complainants are illiterate, ignorant of law and belong to scheduled tribe, we have not put our signatures anywhere till date and we have put our thumb impression in all offices and documents (papers).

3 Our land is of new tenure land subject to section - 43 of restricted nature under Section - 73AA of the Tenancy Act (*Bombay Tenancy and Agricultural Lands Act - 1948) upon verification of revenue record. Actually, any kind of construction cannot be done on such land without either permission of the Collector or under the Land Revenue Code, despite that the accused have planned society namely China Gate - 2 on our land, on the basis of the false, bogus and fabricated documents, got approved the plan illegally, constructed many houses therein and sold it to the other persons. And challenging persons - i.e. Manhar Kakdia, Builder and Jitu Builder have supported to the accused for construction.

4 The land is subject to section - 43 and of restricted nature under section - 73AA of the Tenancy Act (*Bombay Tenancy and Agricultural Lands Act - 1948) though, the accused had wrongfully got approval of his plan, planned various plots, constructed it and directly sold to the people and thus also committed cheating and breach of trust even with the government because, the accused have not paid amount of premium of the HC-NIC
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government and misappropriated it.

5 The applicant had contacted to the accused upon having such information and informed him that, "you have grabbed our land unlawfully. You pay legitimate payable amount of our land to us. Upon saying so, he had taken us to the person namely i.e. Babubhai Aahir. Babubhai Aahir got annoyed on me - the complainant and told me that "do whatever you can. You belong to tribal - Halpati community's member. You cannot damage me anyway. I belong to tribal - Halpati community person; I do have too much influence with superiors. I can sent you inside (* jail) by only one telephone. You will not return safely if, you will come

again, remember it, I - the complainant had got extremely feared upon listening such versions of the accused and came back silently without raising any dispute".

6 Thus, above mentioned accused have fabricated bogus power of attorney of the our ownership land, put our fake signature at number - 17 to 22, got attested it, got approval of plan of the current land illegally, did construction on the land and sold it to the third person. Upon conversion with the accused in this regard, the accused have abused me by offensive words to the community and issued threat to implicate in false case and to kill. So, it is requested to you to arrest the above mentioned accused and to initiate legal action."

41 In connection with the above referred complaint, an inquiry was initiated. In the course of the inquiry, the statements of all the land owners came to be recorded on 27th September 1991. The statement of Vijayaben @ Vajliben, wd/o Somabhai Mangabhai Rathod reads as under:

"My name is Vijayaben @ Vajliben wd/o Somabhai Mangabhai Rathod, age - 80, occupation - retired, resident of - near Nav Nirman School, village - Althan, Taluka - Choryasi, District□ Surat.

I submit in person that I have been residing at above mentioned address with my son i.e. Shankarbhai and have gave up work. I am having 03 daughters and 03 sons. Wherein 'Budhiya' shown in an application on the day of 'Ganpati' (* Ganesh Chaturthi □ 4th day of Shukla in Bhadrapad according to Gujarati Calender) and 02 daughters also have expired. One daughter namely Chhku has been residing at her matrimonial house at village - Dummas. My husband has expired before so many years.

Today, you have shown me one application having thumb HC-NIC Page 51 of 89 Created On Tue Jul 11 01:32:51 IST 2017 impression of mine as well as my sons, I have put thumb impression in it but, one person had come to my house and obtained it. I do not know contents of an application. I had sold this land to Balubhai Aahir prior to 15 years and he had paid me amount in installments at that point of time, I had taken illegible paisa and put my thumb impression. I do not know who had preferred an application with regard to dispute of our land and I do not have original papers of the land. I do not know anything further. But, my husband had been telling that it is our land. This my fact, the same is true and correct according to me."

42 The statement of Kantubhai Chhotubhai Rathod reads as under:

"My name is Kantubhai Chhotubhai Rathod, age - 65, occupation - cultivation labor work, resident of Althan, Near Satya Sai seva Sankul , Near Navi Vasahat Garden, Surat.

I submit in person upon inquiry that, I am residing at above mentioned address with my wife - Savitaben and my illegible has been residing separately with his family. We are two (02) brothers, wherein elder brother is Chhaganbhai and thereafter I. My parents have expired.

Today you have shown me one application written in Gujarati wherein there are thumb impressions of my brother - Chhaganbhai, aunty - Vijyaben (father's brother's wife) and my aunt's son - Shankar and Sukhabhai (father's brother's son). But, I do not know contents of an application and we had been cultivating one this land and we had been cultivating on this land prior to 20 year thereafter, we have stopped cultivation on, this far was unused and thumb impression has been obtained and thumb impression has been obtained from us from this farm and my aunty has been paid in installments, I did not get money and we have jointly put thumb impression as and when it had to be. And advocate had written application in our name and obtained thumb impression. I do not know except it and there is a name of Buduabhai i.e. My uncle's son (father's brother's son), he has expired on last 'Ganpati' (*Ganesh Chaturvedi 4th day of Shukla in Bhadrapad according to Gujarati calendar) and it has been stated in an application to have used abusive words against community. It is false."

43 On the same line are the statements of the other co-owners.

44 Thereafter, on 23rd January 2012, one another application came to be filed addressed to the Special Investigation Team levelling the same HC-NIC Page 52 of 89
C r e a t e d O n T u e J u l 1 1 0 1 : 3 2 : 5 1 I S T 2 0 1 7
allegations and praying to register an offence. In connection with such an application, the following statement of Chhaganbhai Chhotubhai Rathod came to be recorded on 10th March 2012:

"My name is Chhaganbhai Chhotubhai Rathod, age - 70, occupation - cultivation labor work, resident of - village - Althan, Navi Vasahat, Near Garden, Halpati vas, Surat.

I submit in person upon additional inquiry that, I am residing at above mentioned address with my family. My father has expired when I was younger and cultivation - labour work. And my mother namely Mangiben has expired before 4½ years.

Today you have read over my statement dated - 27.9.2011 recorded by Shri Vadhia, Police Inspector, Althan, Police Chowky, it is true and correct as per my statement. Further, you have inquired me about application filed by me and my brother and cousin brothers and my mother against Dineshchandra Chandulal Patel, Block number - 59, Meeranagar, Udhna, Surat and Balubhai Aahir, resident of - Bhimrad - village etc. for our ancestral new tenure land bearing survey number - 96/3/2, block number

- 121, village - Althan, Taluka - Surat city and it has been running in the name of my brother - Kantubhai and my aunty (father's brother's wife) - Vijyaben @ Vajliben and uncle's sons - Budia Soma, Sikha @ Ramesh Soma, Shankar Soma, all resident of - village - Althan and I and so, I state that, My mother - father and my elder uncle - Chhotubhai Mangabhai and aunty had been residing in Halpati vas, village - Althan since the years. We came to know from my elder uncle and my father that such land has been allotted to them by the government in the sim of village - Althan for cultivation when we were younger after our birth and their name has been entered / mutated. Land of other farmers were also located surrounding to such land. My parents and uncle - aunty had been cultivating the land in alternatively. I and my cousin brothers have left cultivation in this land after demise of my father and uncle. So, the lands were disused. And our surrounding lands were also disused. Nobody had been attending such lands since 15-20 years. In the year 1998-99 surrounding land of our land has been sold at that time Balubhai Aahir had also met to purchase our land and told that "your (*land's) surrounding land has been sold. So, inform if, you also want to sale it." Upon saying so, my brothers, my aunty and cousin brothers have show their interest to sale the land and Balubhai had paid assured monetary consideration and thumb impression has been executed in the papers at the time of sale transaction are of myself and my relatives. Upon contacting to Balubhai, I came to know that China Gate - 2 Society has been constructed on such land and it has been constructed by HC-NIC Page 53 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Dineshchandra Chandubhai Patel and his officials. Upon having information about selling of the land to them, I have got verified from my relative - Harishbhai Ramanbhai Rathod about the land so, I came to know that, all surrounding lands of our land has been purchased by Dineshchandra Chandubhai Patel and Power of Attorney has been executed in the name of Dineshchandra Chandubhai Patel, resident of 176, Ashirwad Township, Bhamroli Road, Surat in the year - 2001 when we sold our land to Balubhai Aahir. So, I / we informed to Harishbhai - my relative that I have not received entire monetary consideration of the land, so, I have to raise objection for it, so Harishbhai Rathod, myself and my cousin brothers have jointly inquired to Balubhai about the land (* sentence incomplete), such land has been purchased by Dineshchandra Chandubhai

Patel and made construction thereon. So value of the land has been increasing just now, so my mother, my brothers, my cousin brothers, had submitted an application before the Commissioner of Police, Surat as per advise of Harishbhai Rathod and his friend Sanjay Modi with a view to obtain illegible extra finance. Police had recorded my statement after our application but, Balubhai Aahir and Dineshchandra Chandubhai had been desiring for settlement with us, but, they had not been offering additional money pursuant to the land and so, we have declined for settlement at that point of time, no one has threatened us nor abused us against the community nor insulted. They have left only after conversion.

You have been informing us time and again to record the statement but, I do labor work and negotiation for settlement was in process by my relative

- Harishbhai Ramanbhai Rathod with purchaser of the land - Dineshchandra Chandubhai and Balubhai Aahir so, I do not turn up. But, Harishbhai Ramanbhai Rathod and Sajaybhai Modi who were also intervened at the time of sale transaction with Balubhai Aahir who had initiated all the procedure and documentation have intervened and got settled the matter on 3.2.2001 with Dineshchandra Chandubhai and Balubhai Aahir. And M.O.U. has been executed in favour of Dineshchandra Chandubhai and Balubhai Aahir before the Notary. They have not put out any thumb impression in earlier proceedings and they have put our thumb impression in all proceedings carried out by them with our consent and understanding. We shall not have any dispute - objection in this regard in future and we hare in agreement of all the proceedings.

So, we do not want to proceed application further against Dineshchandra Chandubhai and Balubhai Aahir with regard to our land. We have preferred application due to say of our relative as we have sold the land at lower price and at present the land is having sky scrapping value. But, after filing of an application our well wishers have advised not to proceed further with an application as we have received an amount so, it is requested to close an application to the file. My statement has been read over in the presence of Harishbhai Ramanbhai Rathod. It is true and correct according to me.

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Above mentioned facts are true and correct according to me. I have put thumb impression in this regard."

45 The statement of Kantubhai Chhotubhai Rathod also came to be recorded on 10th March 2012, which reads as under:

"My name is Kantubhai Chootubhai Rathod, age - 67, occupation - cultivation, labor work, resident of - Near Navi Vasahat, Satya Sai Mahollo, Halpati vas, village - Altan, Surat.

I submit in person upon additional inquiry that, I am residing at above mentioned address with my family. My father has expired when I was younger and cultivation - labour work. And my mother namely Mangiben has expired before 4□5 years. My uncle namely Somabhai Mangabhai has also expired prior to 15□20 years.

Today you have read over my statement dated - 27.9.2011 recorded by Shri Vadhia, Police Inspector, Althan, Police Chowky, it is true and correct as per my statement. Further, you have inquired me about application filed by me and my brother and cousin brothers and my mother against Dineshchandra Chandulal Patel, Block number - 59, Meeranagar, Udhna, Surat and Balubhai Aahir, resident of - Bhimrad - village etc. for our ancestral new tenure land bearing survey number - 96/3/2, block number

- 121, village - Althan, Taluka - Surat city and it has been running in the name of my brother - Kantubhai and my aunty (father's brother's wife) - Vijyaben @ Vajliben and uncle's sons - Budia Soma, Sikha @ Ramesh Soma, Shankar Soma, all resident of - village - Althan and I and so, I state that, My mother - father and my elder uncle - Chhotubhai Mangabhai and aunty had been residing in Halpati vas, village - Althan since the years. We came to know from my elder uncle and my father that such land has been allotted to them by the government in the sim of village - Althan for cultivation when we were younger after our birth and their name has been entered / mutated. Land of other farmers were also located surrounding to such land. My parents and uncle - aunty had been cultivating the land in alternatively. I and my cousin brothers have left cultivation in this land after demise of my father and uncle. So, the lands were disused. And our surrounding lands were also disused. Nobody had been attending such lands since 15□20 years. In the year 1998□99 surrounding land of our land has been sold at that time Balubhai Aahir had also met to purchase our land and told that "your (*land's) surrounding land has been sold. So, HC-NIC Page 55 of 89 Created On Tue Jul 11 01:32:51 IST 2017 inform if, you also want to sale it." Upon saying so, my brothers, my aunty and cousin brothers have show their interest to sale the land and Balubhai had paid assured monetary consideration and thumb impression has been executed in the papers at the time of sale transaction are of myself and my relatives. Upon contacting to Balubhai, I came to know that China Gate - 2 Society has been constructed on such land and it has been constructed by Dineshchandra Chandubhai Patel and his officials. Upon having information about selling of the land to them, I have got verified from my relative

- Harishbhai Ramanbhai Rathod about the land so, I came to know that, all surrounding lands of our land has been purchased by Dineshchandra Chandubhai Patel and Power of Attorney has been executed in the name of Dineshchandra Chandubhai Patel, resident of 176, Ashirwad Township, Bhamroli Road, Surat in the year - 2001 when we sold our land to Balubhai Aahir. So, I / we informed to Harishbhai - my relative that I have not received entire monetary consideration of the land, so, I have to raise objection for it, so Harishbhai Rathod, myself and my cousin brothers have jointly inquired to Balubhai about the land (* sentence incomplete), such land has been purchased by Dineshchandra Chandubhai Patel and made construction thereon. So value of the land has been increasing just now, so my mother, my brothers, my cousin brothers, had submitted an application before the Commissioner of Police, Surat as per advise of Harishbhai Rathod and his friend Sanjay Modi with a view to obtain illegible extra finance. Police had recorded my statement after our application but, Balubhai Aahir and Dineshchandra Chandubhai had been desiring for settlement with us, but, they had not been offering additional money pursuant to the land and so, we have declined for settlement at that point of time, no one has threatened us nor abused us against the community nor insulted. They have left only after conversion.

You have been informing us time and again to record the statement but, I do labor work and negotiation for settlement was in process by my relative

- Harishbhai Ramanbhai Rathod with purchaser of the land - Dineshchandra Chandubhai and Balubhai Aahir so, I do not turn up. But, Harishbhai Ramanbhai Rathod and Sajaybhai Modi who were also intervened at the time of sale transaction with Balubhai Aahir who had initiated all the procedure and documentation have intervened and got settled the matter on 3.2.2001 with Dineshchandra Chandubhai and Balubhai Aahir. And M.O.U. has been executed in favour of Dineshchandra Chandubhai and Balubhai Aahir before the Notary. They have not put out any thumb impression in earlier proceedings and they have put our thumb impression in all proceedings carried out by them with our consent and understanding. We shall not have any dispute - objection in this regard in future and we have in agreement of all the proceedings.

So, we do not want to proceed application further against Dineshchandra Chandubhai and Balubhai Aahir with regard to our land. We have preferred application due to say of our relative as we have sold the land at HC-NIC Page 56 of 89 Created On Tue Jul 11 01:32:51 IST 2017 lower price and at present the land is having sky scrapping value. But, after filing of an application our well wishers have advised not to proceed further with an application as we have received an amount so, it is

requested to close an application to the file. My statement has been read over in the presence of Harishbhai Ramanbhai Rathod. It is true and correct according to me.

Above mentioned facts are true and correct according to me. I have put thumb impression in this regard."

46 In light of the aforesaid statements recorded by the Police Inspector of the Khatodara Police Station, the matter came to be closed by a closure report dated 10th March 2012. The report reads as under:

"This is hereby explained it to you that you had preferred C.A. Application number - 449/11, dated - 31.8.11 and L.A. Application number - 791/11, dated - 19.10.11 against the respondent - Dineshchandra Chandubhai Patel, resident of - Meeranagar, Udhna, Near Zone Office, Udhna, Surt and Balubhai Ravjibhai Aahir, resident of - Bhimrad - village - Surat pursuant to the land bearing Revenue Survey Number - 96/3/2, block number - 121, village Althan. During investigation of an application, a settlement has been arrived at between all the applicants and respondents and you do not want to carry further these applications, so applications are closed to the files. Please take note of it."

47 On 3rd May 2012, the land owners filed an application addressed to the Circle Officer (Athwa) with a request to close the matter, as a settlement was arrived at between the parties. The application reads as under:

"With reference to the subject noted above, this is to inform that, we - the applicants i.e. Vijyaben @ Vajliben Somabhai Rathod, Shankarbhai Somabhai Rathod, Bhikhabhai Budiabhai Rathod, Sukhabhai @ Rameshbhai Rathod, Chhaganbhai chhotubhai, Kantubhai Chhotubhai etc. had jointly filed an application against Dineshbhai Chandibhai etc. before the Collector, Surat (Head of the S.I.T.) (* Special Investigation Team), on 23.1.2012 pertaining to the land bearing survey number -

96/3/2, block number - 121, village - Althan, Taluka - Surat city, District - Surat due to misunderstanding and illiteracy and ignorant. But, thereafter, our misperception has been wiped out due to mediating by our HC-NIC Page 57 of 89
C r e a t e d O n T u e J u l 1 1 0 1 : 3 2 : 5 1 I S T 2 0 1 7
relative and well conversant about the land i.e. Shri Harishbhai Rathod and Shri Sanjaybhai Modi. And we have even executed separate M.O.U. (* Memorandum of Understanding) on 03.02.2012. It has been enclosed with this application.

Under the circumstances, misunderstanding of the applicants have gone and we - the applicants do not want to further carry out the proceedings,

so it is requested to you to close this application to file immediately. We - the applicant have submitted this application as we are doing labor work and unable to remain present before you."

48 On 24th May 2012, the Police Inspector of the Khatodara Police Station, Surat city filed a report addressed to the Assistant Police Commissioner, 'E' Division, Surat city, as regards the inquiry conducted and why he did not find any substance in the allegations levelled in the complaints. The same reads thus:

"With reference to the subject and 'Reference' noted above that, the applicants i.e. 1) Vijyaben @ Vajliben wd/o Somabhai Mangalbhai Rathod, resident of - Navnirman School, Althan - village, Surat - city, 2) Shankarbhai Somabhai Rathod, resident of - Surat city, 3) Chhaganbhai Chhotubhai Rathod, Budhiabhai Somabhai Rathod, resident of - Khodiyarnagar, Batrishi Mahollo, Althan Road, Surat, 4) Sukhabhai @ Rameshbhai Somabhai Rathod, resident of - as above, 5) Chhaganbhai Chhotubhai Rathod, resident of - village - Althan, Navivasahat, Near Garden, Halpati Vas, Satya Sai Mahollo, Surat 6) Kantubhai Chhotubhai Rathod, resident of village - Althan, Navi Vasahat, Near Garden, Halpati Vas, Satya Sai Mahollo, Near Garden, Halpati Vas, Satya Sai Mahollo, Surat had filed an application against the respondent - Dineshchandra Chandubhai Patel, resident of - plot number - 59, Meeranagar, in the street of zone office Udhna, Udhna, Surat that, That the applicant has been holding the land bearing revenue survey Number - 96/3/2, block number - 121, village - Althan. He has executed fake power of attorney and sold the land. And the applicants number - 1 and 2 have preferred an application before against the respondent I.e Balubhai Ravjibhai Rathod, resident of - village - Bhimrad, Patel Faliyu, Surat with an allegations to have obtained signature and thumb impression had been forcibly and issued threat to kill in connection of such land. Shri B.T. Vadhia, Police Inspector, Althan Chowky had originally conducted an inquiry. Wherein the applicants have stated before him that not to have issued threat nor any abusive language has been spoken nor has any dispute been arisen. Thereafter, the applicant number - 3 has HC-NIC Page 58 of 89 Created On Tue Jul 11 01:32:51 IST 2017 expired on 31.08.11 due to ill health. I have taken charge of further inquiry due to transfer of the Police Sub Inspector. And they have stated in connection of the land upon inquiry before us that, their ancestors had been cultivating the land and thereafter, they have left the cultivation and they have obtained monetary consideration. (*avej) of the land from the respondent - Balubhai Aahir willingly and with consent and sold our land to Dineshchandra Chandubhai Patel and Balubhai Aahir at that point of time, my relative Harishbhai Ramanbhai Rathod and Sanjaybhai Modi

who were also intervened at the time of sale transaction with Balubhai Aahir who had initiated all the procedure and documentation have intervened and got settled the matter and M.O.U. has been executed in favour of Dineshchandra Chandubhai and Balubhai Aahir before the Notary. And copy thereof has been produced.

They have not put any false thumb impression in earlier deeds/writings and they have initiated all the proceedings by putting our signatures - thumb impression, consent and understanding. We have not and we shall not have any dispute or objection in future regarding the subject matter and they (*applicants) are in agreement of all the proceedings carried out by them (*respondents). They (*applicants) do not want to commence further action against them (*respondents) with respect to the land. We have not been abused by using language against the community nor have been issued threat. They (*applicants) have preferred the applicant as per the advice of the so called well wishers as they had sold the land at lower price and currently value of the land is mounting. But, after preferring such application, according to suggestion of the relatives, they have received monetary consideration of the land at the relevant point of time and so, they do not want to proceed further with such application. So, it is requested to close the application to the file. Such facts has been read over in presence of their relative i.e. Harishbhai Ramanbhai Rathod.

The applicants have acknowledged their statement in presence of their relative Harishbhai Rathod. And it has been stated before me that they do not want anything further relating to such application. In addition to it, all the legal heirs have also executed M.O.U. (*Memorandum of Understanding). The names of the applicant are also in revenue record just now. Names of any one has not been added / mutated therein.

Ultimately, verifying the land, it is of new tenure and having a restricted nature of land u/s. 73AA. And the farmers of the land have sold it to the respondent in the year - 2001 by executing power of attorney and obtained monetary consideration at the relevant point of time. The applicants have stated to have levelled false allegations in the application and have submitted an application due to instigate by someone. Moreover, application has been preferred before the Collector - S.I.T. Department (*Special Investigation Team, the same is pending. And any breach of peace has not been committed with regard to prefer application and it has HC-NIC Page 59 of 89 Created On Tue Jul 11 01:32:51 IST 2017 been transpired to have level false allegations. Further M.O.U. (*Memorandum of Understanding) (**Memorandum of Understanding) has been executed by the applicants and got settled it. So, nothing has been remaining to be done relating to the application and so, it is requested to close the application to the file. And

application has been submitted before the office of the Collector □
o S.I.T. (*Special Investigation Team), it is pertaining to the Revenue
Department. This is for your information."

49 Thereafter, the respondent No.3 □ Arjunbhai Shankarbhai Rathod once again initiated the proceedings by filing a complaint dated 7th October 2012 and a second complaint dated 7th February 2014. In this regard, a detailed report came to be filed. The report reads thus:

"A request report from P.N. Patel, Police Inspector, Khatodara Police
S t a t i o n , S u r a t c i t y t h a t ,
With reference to the above mentioned subject and 'Reference' application
has been addressed by the applicant - Arjunbhai Shankarbhai Rathod, age

- 26, resident of - Navi Vasahat, Near Nirman School, Village - Althan, Taluka -
and District - Surat city to the District Collector, Head
(Chairman) of the District grievance Redressal Committee (Forum), Surat City
against 1) Balubhai Ravjibhai Aahir 2) Dineshbhai Chandubhai
Patel, 3) Manharbhai Muljibhai Kakdia, 4) Joban Desai, Proprietor of the
Joban Desai and Associates, 5) Town Planning Officer, 6) the then Talati
cum Mantri, village - Althan, 7) S.N. Patel, 8) Jitu Builder, 9) all the persons who
will be made available during investigation and other application has
been filed separately against Manharbhai Muljibhai Kakadia.

Allegations levelled by the applicant in application that, the ancestral, new
tenure u/s. 73 □ AA land bearing revenue survey number - 96/3/2, block
number - 121, admeasuring - 5261 sq.mt., village - Althan is belonging
to the Adivasi (Tribal) family members of the applicant. And at present
also names of Adivasi (Tribal) family have been running in 7/12 extract in revenue
record. And Adivasi (Tribal) family is having extremely
economically constrained and all the family members have been residing at
separate places and so, they could not monitor the land due to all such reasons. A
bogus power of attorney has been fabricated in favour of
Dineshbhai Chandubhai Patel for such land worth of crores rupees and key
beneficiary of the land - challenging builder - Manhar Kakadia in
connivance of his accomplices have illegally encroached possession without HC-NIC
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prior permission of the Collector as well as the government and pocketed
premium of crores of rupees by forging document and planned China Gate

- 2 society, constructed bungalows valuing crores rupees, sold it to the
various persons, and thus, committed scam and so, written complaint was
filed on 23.01.2012 to initiate legal action against the responsible persons.

Allegations have been levelled in an application to the effect that the challenging builder i.e. Manharbhai Kakadia and person namely Samirbhai Vakil who has been working on his behalf had tempted and lured in various mode and committed cheating and explained unclearly and got issued threat by the uncontrollable accused - Balubhai Ravjibhai Aahir and forcibly got executed M.O.U. (* Memorandum of Understanding) on 03.02.2012 by Notary - Shri Jyorge Christian vide serial number - 499/2012 wherein entirely wrong facts have been stated and stated to have committed scam by the accused.

Individual statements of the applicant as well as his family members have been recorded pursuant to the application. Wherein similar facts as per the application of the applicant have been stated, such statements have been enclosed with the investigation of the application.

Thereafter, inquiry of Dineshbhai Chandubhai Patel, resident of Plot number - 59, Meeranagar in the street of zone office, Udhna, Surat in whose name power of attorney of the land in dispute has been executed on 27.03.2011 has been initiated with regard to allegation leveled in an application and so, he has stated that he has been working as the estate broker since approximately 20 years. He have had developed friendship with Balubhai Ravjibhai Aahir, resident of - village □ Bhimrad in the year

- 2001 and thereafter, he had purchased the land bearing revenue survey number - 96/3/2, block number - 121, village - Althan from the original farmers i.e. Shankarbhai Somabhai Rathod, Vijyaben @ Vajliben Somabhai and Chhaganbhai Chhotubhai, Kantubhai Chhotubhai, Budhiabhai Somabhai and Sukhabhai Somabhai by an intervention of Harish Rathod, Sanjay Modi and Pareshbhai Lavjibhai Patel, wherein monetary consideration (avej) of the land has been paid and such land has been running in the names of the original owners. Pareshbhai had an ill health and so, farmers had executed power of attorney in his name due to say of Balubhai Ravjibhai and he has been appointed as the power of attorney. At that juncture, Harishbhai Rathod - relative of the original owners and Sanjay Modi i.e. their kin had intervened on behalf of the land owners. Pareshbhai Lavjibhai Patel has expired due to cancer. At present also, this land has been running in the names of the farmers. Earlier, Vijyaben @ Vajliben Somabhai - relative of the applicant and land owner amongst them had preferred similar application, after submitting application; she had arrived at settlement due to intervening of Harish Rathod and Sanjay Modi. M.O.U. was executed on 3.2.2012 with regard to the concurrent land. And Vijayaben @ Vajliben Somabhai had HC-NIC Page 61 of 89 Created On Tue Jul 11 01:32:51 IST 2017 withdrawn such application by informing not to carry further procedure.

Thereafter, the present applicant - Arjunbhai Shankarbhai Rathod has filed this application. Main allegation levelled in an application is to have execution of M.O.U., dated 3.2.2012 by issuing threat and pressure. And there is a signature in power of attorney of the year - 2001 and thumb impression in M.O.U. Power of Attorney executed in the year - 2001 is false and bogus and the land has been grabbed on its basis.

Actually, power of attorney executed by the original land owners in the year - 2001 in his favour, was destroyed along with files of the personal documents, books of accounts, some files pertaining to transaction of the land, furniture of the office etc. in the office located at - L-5, New Ashirvad Square, Udhna Magdalla Road, Surat due to flood on 8.8.06 and water level of approximately 06 ft. and I have filed one application before Umra Station to do needful upon considering it.

M.O.U. (Memorandum of Understanding), dated - 03.02.2012 has been executed legally. And such M.O.U. (Memorandum of Understanding) has been executed before Shri Hemu Christian - Notary and relatives of the original owners i.e. Harishbhai Rathod and their friend - Sanjaybhai Modi and video shooting thereof also has been done. M.O.U. (Memorandum of Understanding) has not been executed by issuing threat, pressure or cheating with the original land owners. And the present applicant has identified 04 thumb impressions of his family members and put signature below it.

Perusing application preferred by the applicant and nature of accusation, it has not been appeared to have his name in such property nor it has been transpiring to have obtained permission of his family members. Such false application has been filed only with a view to snatching the money as the price of the land has been moving to sky and to harass him only. And he has produced C.D. of video recording recorded at the time of executing of M.O.U. application dated - 30.6.2006 filed before the Umra Police Station and public notice, dated - 31.08.2006 published in 'Gujarat Mitra' daily newspapers.

Thereafter, inquiry of Balubhai Ravjibhai Rathod - age - 52, resident of - Bhimvad - village, Patel Faliyu, Surat had been conducted who had firstly purchased the land in question in the year - 1998 and he has stated that, The present applicant has no 'Locus standi' to file present application because even today, his name has not been running in 7/12 extract. And even otherwise, the applicant was minor in the year - 1998 when transaction of the land in dispute was effected in the year - 1998.

He has been conducting business as estate broker since last 35 years.

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During that, original owner of the land had came to him with his relative Harishbhai Rathod and Sanyabhai Modi for the land bearing revenue survey number - 96/3/2, block number - 121 and conversed that such land is to be sold and so, he had shown his willingness to purchase the land. And so, the original land owners had sold their land in the presence Harishbhai Rathod and Sanjaybhai Modi and he had paid even cash payment to the original land owners by installments.

Thereafter, in the year - 2001, his friend Pareshbhai Lavjibhai Patel has been working as the developer had to to develop surrounding land of the present land and so, he had decided to sale this land to Pareshbhai Lavjibhai Patel and deal was given shape, but, documents were not executed. But, Pareshbhai Lavjibhai Patel had executed Power of Attorney in favour of Dineshbhai Chandubhai Patel who had been trustworthy to Pareshbhai Lavjibhai Patel and had been working on his behalf for his land as well as all the land which he was to develop. And informed to obtain signatures - thumb impressions of the farmers of the land in question. So, he had informed to Harishbhai Rathod and Sanjaybhai Modi

- interveners to obtain signature - thumb impression of the original land owners of the disputed land in power of attorney. And thus, they had obtained signatures - thumb impression of the original land owners. The power of attorney is even of the other additional lands except the present land.

Thereafter, Pareshbhai Lavjibhai Patel had got sanctioned plan from the Surat Municipal Corporation with a signature of the power of attorney holder - Dineshbhai Chandubhai Patel for all the lands i.e. current land as well as surrounding lands mentioned in power of attorney. And society namely China Gate - 2 had been planned in such lands.

Similar nature of application as of the present application was filed by his elders i.e. original land owners in the year - 2011¹² against him and Dineshbhai Chandubhai Patel before this police station bearing number - C.A. Application number 494/2011, dated 31.08.2011 and L.A. Application number 791/2011. Their statements as well as statements of the original owners have been recorded pursuant to both applications. The land owners have stated in the statements that they have obtained monetary consideration as per their wish and willingness with regard to the land. And have executed power of attorney in favour of Dineshbhai Chandubhai Patel due to intervening of their relative Hareshbhai Rathod and Sanjaybhai Modi. And they themselves had followed the procedure and documentation. Upon saying so, it has been stated that Harishbhai Rathod and Sanjaybhai Modi had executed M.O.U. finalizing all the

procedure and power of attorney in the year - 2012 in connection of above referred applications. It is on record. Signatures - thumb impressions of all the land owners in the statement have been identified by present applicant

- Arjun S. Rathod and Harishbhai Rathod. And above referred HC-NIC Page 63 of 89 Created On Tue Jul 11 01:32:51 IST 2017 applications have been closed to file on the basis of above mentioned statements of the land owners.

And above stated land owners have also filed application before the Collector - S.I.T. (*Special Investigation Team) in the year - 2012. All the land owners have submitted application before the City Mamlatdar on 3.5.2012 to withdraw the applications. Wherein, also identifiers were present applicant - Arjunbhai Rathod and Harishbhai Rathod. And such applications got withdrew on the ground that the land owner had arrived at settlement with the respondent and so, nothing has to be done with regard to the applications. And on such footing, the Mamlatdar had submitted a report to the Deputy Collector, City Prant on 23.1.2012 that the both parties have met with the settlement reciprocally.

Thereafter, the Deputy Collector, City Prant had issued notice u/s. 73□AA to the plot holders residing in the China Gate - 2 society. Being aggrieved by this, the plot holders have filed Special Civil Application number - 341/2014 before the Hon'ble High Court of Gujarat and sought stay / injunction against the notice. Wherein, the Hon'ble High Court of Gujarat had issued notice to the Deputy Collector (*according to original city prant Saheb) granting stay / injunction with regard to not carry further procedure. And it has been ordered to regularize from 'post facto effect' in Special Civil Application number - 341/2014.

Thus, settlement has already arrived at for the land in dispute. And application before the police and application before S.I.T. have been closed to file. And the case before the Hon'ble High Court of Gujarat is pending. And as the present applicant and his fellows have not been fine□tuned anywhere and so, the present applicant has raised new issue and filed the present applicant. And preferred Special Criminal Application bearing number - 200/2014 before the Hon'ble High Court of Gujarat and relief has been sought for to the effect that power of attorney has been executed in the name of Dineshbhai Chandubhai Patel. Signatures have been put therein. And his family members have put thumb impressions in M.O.U. executed by them. So, this power of attorney is false. And so, F.I.R. to be registered on foundation of above application.

Criminal Misc. Application bearing number - 2013/2014 has been filed by himself and Dineshbhai Chandubhai Patel - power of attorney holder also to join as the party. So, the Hon'ble High Court of Gujarat has ordered to precede both the matters together.

Shankarbhai Somabhai Rathod - father of the applicant has given the statement that community people had got settled the matter with regard to selling of the land by Dineshchandra Chandubhai Patel and Balubhai Ravjibhai Aahir on 03.02.2012 and we have executed M.O.U. in favour of Balubhai Aahir and Dineshchandra before the Notary by our consent. They HC-NIC Page 64 of 89
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have not put our signatures - thumb impression in earlier procedure upon our consent and understating and we shall not have any dispute - objection in the future for the subject matter and we are in agreement of all the procedure carries out by them.

Thus, the present applicant has not have any authority to file such application and the present applicant and his relative / friend Harishbhai Rathod and Sanjaybhai Modi has been distressing him only on the indication of one prominent advocate only with a motive to snatch money yet again. It has been appeared from this application that, this is the modus operandi of this gang. Earlier also, they have snatched huge amount for settlement from their nearest Hashmukhbhai Patel residing in Bharthana - Vesu village by issuing false alarm. And also executed one (01) M.O.U. in this regard. Moreover, money has been grasped by blackmailing to many people of Surat City. Evidence thereof shall be produced if need be.

The applicant has preferred an application through his bands of confederate. Wherein he has levelled one allegation also that M.O.U. has been got executed by them by issuing threat. But, real fact is that the present applicant his collaborator i.e. Harishbhai Rathod and Sanjaybhai Modi had put signature in M.O.U. and videography of such M.O.U. has been done. And family members of the applicant has given statement willingly to close an applications to the file only after execution of M.O.U. so, it has been proved that M.O.U. has not been executed under pressure.

Thereafter, Sanjay Dhansukhbhai Modi, age - 46 resident of - Talav Faliyu, house number 45/02, Near Causeway, Signapor, Surat who had intervened during the transaction of the disputed land in the year - 1998 and obtained signature - thumb impression even in the power of attorney executed in the year - 2001 and also intervened in M.O.U. executed in the year - 2012 and put signature in M.O.U. and submitted his I.D. Proof has stated that the land bearing revenue survey number - 96/3/2, block number - 121, admeasuring - 5261.00 s q . m t . is located at village -

Althan, Taluka - Surat city, District - Surat is new tenure and of restricted nature and is ancestral land of the family members of the Adivasi (tribal) applicant. And at present also, names of Adivasi (tribal) family has been running in 7/12 extract. Members of the Adivasi (tribal) family had preferred one application against Manharbhai Kakdia and other in the year 2011 to initiate legal procedure. At that point of time, the tribal family had given such information and sequence to his relative Harishbhai Rathod and Harishbhai Rathod had made him conversant with it. Parbatbhai - younger brother of Manharbhai Kakdia was a familiar with him and his friend. And he had a meeting with him at many events. So, during daily conversation, such point was raised and Parbatbhai had told him to bring out solution of the disputed land by discussing it with Harishbhai Rathod and he was also furnished false information that my HC-NIC Page 65 of 89
C r e a t e d O n T u e J u l 1 1 0 1 : 3 2 : 5 1 I S T 2 0 1 7
elder brother - Manharbhai had purchased this land in the year - 1998 and deed were also executed but, that deeds have been missing and my brother has planned China Gate - 2 society on such land and sold it to the people. So, optimistic solution will be made available so as to maintain interest of the tribal family by intervening in it so, he had talked with Harishbhai Rathod to intervene between both the parties without any expectation and openly as a part of duty of friendship. So, meeting was arranged in the year - February - 2012 at the office of Parbatbhai Muljibhai Kakdia located at Central Plaza, City Light Road, he did not attend that meeting, but, Parbatbhai had informed him telephonically to come to the office immediately due to not having constructive solution between the parties. He had gone to his office with his Keyur at 2.00 hours in the afternoon on account of his request. Where Manharbhai, Parbatbhai, Balubhai Ravjibhai Aahir and Dineshbhai Chandubhai Patel and Samirbhai Vakil and some Notary - advocate and other one or two unknown persons were present. At that point of time, Manharbhai and Parbatbhai had taken him to inside the chamber and told him that, the land owners are incorrect. He had been paid all the amounts in the year - 1998 for the land transaction and so, I had got executed power of attorney in the name of Dineshbhai at the relevant point of time and planning China Gate - 2 society, plan got approved and sold it to the various members by executing separate registered documents. And half of such land has been in cut off due to reservation. If, you make attempt through Harishbhai Rathod to withdraw such applications any how filed against us by the farmers and we will get execute one M.O.U. from them also so, there will not be any hitch in future after saying so, Parbatbhai had told him that I will assisting you any time in business if, you will do my this job and my brother - Manharbhai will also be helpful to you because of his rich influence. And I also thought at that time that I will be benefited in future due to influence of wealthy persons. And I believed the true that he may perhaps have paid amount of the land and he was assured to his converse on the point that he had executed

r e g i s t e r e d d o c u m e n t s t o t h e members of the society through Dineshbhai. Documents cannot be executed without lawful permission. So, I had believed that he may have done the documents after obtaining legal approval. And during that span, he had commercial dealing with Parbatbhai and due to that relation also he had trusted the verbal conversation and suggested to Harishbhai Rathod and persuaded the tribal family members. At that point of time Parbatbhai and Manharbhai had given full assurance to him to have also obtained permission of sale transaction from the office of the Collector at the relevant point of time and also have obtained permission of non-agricultural. And therefore, Harishbhai Rathod - himself had intervened in the subject matter due to friendship. And so, got execution of signature

- thumb impression of Adivasi (tribal) family in M.O.U. prepared by Manharbhai in the year - 2012. And also executed his signature in M.O.U. as an intervener between both parties and as perversion of Manharbhai and Parbatbhai. It has been specifically mentioned in M.O.U. that all HC-NIC Page 66 of 89 Created On Tue Jul 11 01:32:51 IST 2017 declarations got done by the Tribal family members that whatever permissions had been obtained by Dineshbhai Chandubhai Patel were on the basis of power of attorney executed in the year - 2001 executed in favour of Dineshbhai Chandubhai Patel. Further, any financial transaction had not been done at the time of execution of M.O.U. that also had been clearly specified in M.O.U. But, probability of executing other deeds from Adivasi (tribal) family have been transpiring during our general discussion between myself, Manharbhai, Parbatbhai and Samirbhai Vakil and Balubhai Aahir inside the chamber. So, statement to requesting to initiate legal action against the respondent have been submitted.

Thereafter, statement of other witness - Harishbhai Ramabhai Rathod, age - 42, resident of - Omkar Society, Singanpor, Near Causeway, Surat had been recorded and he has stated the facts fitting to the statement of his friend - Sanjaybhai Modi and has stated that, meeting was arranged between them at the office of Parbatbhai Muljibhai Kakdia located at - Central Plaza, city Light Road, in the February - 2012 he had gone there with the members of tribal family (Adivasi). Where Manharbhai, Parbatbhai, Balubhai Ravjibhai Aahir, Dineshbhai Chandubhai Patel, Samirbhai Vakil and one Notary - Advocate and one or two unknown persons were present. He had trusted to his friend Sanjaybhai Modi and persuaded his nearest tribal family. And he and Sanjaybhai Modi had intervened in the case due to friendship. And so, got execution of signature

- thumb impression of Adivasi (tribal) family in M.O.U. prepared by Manharbhai in the year - 2012. And also executed his signature in M.O.U. as an intervener between both parties and as perversion of Manharbhai and Parbatbhai. It has been specifically mentioned in M.O.U. that all declarations got done by the Tribal family members that whatever

permissions had been obtained by Dineshbhai Chandubhai Patel were on the basis of power of attorney executed in the year - 2001 executed in favour of Dineshbhai Chandubhai Patel. Further, any financial transaction had not been done at the time of execution of M.O.U. that also had been clearly specificity in M.O.U. But, probability of executing other deeds from the Adivasi (tribal) family have been transpiring during our general discussion between myself, Mahnarbhai, Parbatbhai and Samirbhai Vakil and Balubhai Aahir inside the chamber. So, statement to requesting to initiate legal action against the respondent have been submission. Thereafter, the news got published to have committed cheating with the public as well as the government in gigantic mode, it has been come to the knowledge through the people, etc. facts have been stated.

Thereafter, M.O.U. has been executed for the land in dispute before the Notary. Statement of the Notary - Hemu Jyorge Christian, age - 41, Advocate and Notary, resident of - 306, Nil Gagan Apartment, Opp. Anant Avas Apartment, Sagrampura, Surat has been recorded. He has stated that M.O.U. has been done in his present. It is correct. And he has produced extract of his Notary register too.

HC-NIC Page 67 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Thereafter, 'yadi' was sent to the Principal, Primary School, village - Althan with regard to provide information to the effect that whether land owners - Adivasi (Tribal) family members have studied or not? The Principal has issued certificate vide his office O.W. No.□89, dated 21.02.2014 that Shankarbhai Somabhai Rathod amongst tribal family have studies upto standard □1st as per the school record of Althan Gamtal vide G.R. No.□498, D.O.B. □ 1.6.53 and Sukhabhai @ Rameshbhai Somabhai Rathod has not completed standard □1st as per the school record of Althan Gamtal vide G.R. No.654, D.O.B. □1.6.57 and details of other members have not been made available on record.

Similarly record from the Principal, Primary School, Bharthana - Vesugam has been called for pursuant to the effect that whether above mentioned Adivasi (Tribal) family members have studied in your school or not? In turn, he has issued certificate that he has been having school record from date - 05.06.61 to date - 23.06.1968, earlier record is not available with him.

Thereafter, information was sought for from the Zonal Officer South West Zone, Athwam Surat by the present police station O.W. No.796/14, dated

- 18.2.14 about affected area of Surat city and whether water was moved in the office of Dineshbhai Chandubhai Patel or not? And how much damage had been caused in that office due to flood in the year - 2006 in the Surat city. Wherein Executive Engineer of the zone had furnished

information vide his communication number - 6699, dated - 24.2.14 that there was water level of 03 to 5 ft. on Udhna Magdalla Road and office of Dineshbhai Chandubhai Patel has been located in basement and so, water might be gone into in his office also but, he does not have any record in connection of damage caused in this office, such information and one map has been supplied.

Thereafter, Dineshbhai Chandubhai Patel have submitted one 'yadi' before the Umra Police Station with regard ending of his entire record due to gone under water, at the relevant point of time, it had been registered with the Umra Police Station vide station diary entry number - 29/2006, 15.55 hours, dated - 30.8.2006 and extract thereof has been provided. Wherein it has been endorsed that entry has been done in connection of an application and such investigation is being carried out by the team of the Collector, Surat and so it has been persuaded to contact him etc. Statement of both the parties have been recorded and information have been called for from the government offices regarding an application and so, following facts have been emerging that,

1) The applicant has leveled an allegation that signature put by his family members in the power of attorney executed in the year - 2001 are false HC-NIC Page 68 of 89
C r e a t e d O n T u e J u l 1 1 0 1 : 3 2 : 5 1 I S T 2 0 1 7
because his family members are illiterate and cannot put signatures. And there are thumb impressions of his family members in the M.O.U. executed in the year - 2012 in favour of the respondent. On the root of it, power of attorney executed in the year - 2011 is false.

But, such power of attorney is not narrow only qua land of the family members of the applicant. Narration of other land also has been done in this power of attorney. And there are signatures - thumb impressions of other land owners also. And M.O.U. has been executed in the year - 2012 wherein family members of the applicant i.e. original land owners are in agreement to have sold this land to Balubhai Aahir in the year - 2001 due to intervening of Harish Rathod and Sanjay Modi. And Balubhai Aahir had stated in his statement that such power of attorney was given to Harishbhai Rathod and Sanjaybhai Modi - intervener to obtain signature / thumb impression of the family members of the applicant. And themselves have had obtained signature / thumb impression of the family members of the applicant. So, currently, it cannot be said that Dineshbhai Chandubhai Patel has made - up power of attorney.

2) The applicant has stated that the land is belonging to the tribal family and it is of new tenure and u/s. 73□AA and hence, any construction or selling of the land cannot be done without prior permission and planning of China Town - 2 society has been done without any approval and construction of 17 bungalows have been done and documents have been executed for those bungalows

and any nature of premium has not been paid. Accordingly allegation has been leveled.

Owners of the Bungalows have filed Special Civil Application bearing number - 341/2014 before the Hon'ble High Court of Gujarat in connection of the 17 planned bungalows on the land in question; an oral order has been passed on 13.01.14 wherein it has been ordered to recover charge / fee and to regularize it.

3) The applicant has also levelled an allegation that, his family members were issued threat in the year - 2012 and the respondent has got executed false M.O.U. on 3.2.2012 in his favour.

But, such M.O.U. too has been executed upon intervened by Harishbhai Rathod - the relative of tribal family and his friend Sanjaybhai Modi and Harishbhai Rathod has categorically stated in his deposition that he himself had taken up to the tribal family members for execution of M.O.U. and such M.O.U. has been executed by videography in his as well as presence of Sanjayabhai Modi. And the applicant has also identified thumb impression of his family members and put his signature below it. And M.O.U. has been executed in the year - 2012 and the present application has been filed on 7.10.13 i.e. after time span of 1 1/3 year. The applicant and his family members could have registered the complaint before the HC-NIC Page 69 of 89 Created On Tue Jul 11 01:32:51 IST 2017 police if, M.O.U. has been executed by issuing threat but, the applicant and his family members have been withdrawn the applications filed before the police station and S.I.T. (* Special Investigation Team) after execution of M.O.U. and stated not to have follow anything.

In this entire occurrence, Harishbhai Rathod - relative of tribal family and nearest of the tribal family i.e. Sanjaybhai Modi were accompanying even when the land was sold in the year - 1998. Thereafter, they had attended even when power of attorney was executed in the year - 2001 thereafter, there had linked even when an application was filed in the year - 2012 and they had associated even at the time of execution of M.O.U. and they have put their signature and produced their I.D. Proof too. And they are related even at the time of filing of the present application so; Harishbhai Rathod and Sanjaybhai Modi have been associated in entire chapter since initiation. Balubhai Ravjibhai Aahir has produced another M.O.U. regarding this application. Wherein also there is Harishbhai Rathod and Sanjaybhai Modi. In addition to it, it has been appeared that, these two persons have been involving wherever complaint has been filed pursuant to the land of the tribal family.

The respondent has produced principal of estoppel. It has been stated therein that legal bar or obstruction which prevents a party changing his

position. So a party may not be able to state something in Court where he has said something different before. A person who has granted title in a deed may not be able to deny the position as stated in the deed. (*estoppel

- a legal bar or obstruction which prevents a party changing his position.) So, the relatives of the applicant have supported to have execution of false power of attorney and by executed M.O.U. in the year - 2012 and supported to have true power of attorney in the year - 2001 and so, nothing is require to be done by the present office and the applications of the applicant are closed to file on police record."

50 I take notice of the complaint filed by Kantubhai Chhotubhai Rathod dated 26th June 2015 addressed to the Police Commissioner, Surat against Sanjaybhai Dhansukhbhai Modi and Keyurbhai Sanjaybhai Modi. The complaint reads as under:

"Sub : □ Offence punishable u/s. 406, 460, 504, 505(2) and 114 of the Indian Penal Code.

Humble complaint of the complainant is as under□HC-NIC Page 70 of 89 Created On Tue Jul 11 01:32:51 IST 2017 1 The land of the complainant is being located on Final Plot Number - 121, "China Gate - 2" located at - village - Althan. I had sold the land to Shri Balubhai Aahir. But, the said land could not be mutated in the name of the purchaser without permission of Section - 73AA as I am tribal and thereafter, revenue proceedings had been initiated and complaint was also registered before the Khatodara Police Station and applications were filed before the office of the Collector pursuant to the current land.

2 The accused had approached to the complainant, at that point of time my relative i.e. Harishbhai Ramanbhai Rathod was present. At that juncture, the accused had submitted that, we have a business of broker. Simultaneously, we get remove obstacles of the land, get it settled and do get offer huge amount to the land owners, the accused had made such lucrative conversations and so, I have handed over job of settlement of the land to the accused.

3 Thereafter, the accused have got prepared M.O.U. from the complainant and stamp - signature has been executed before the Notary and videography was also carried out and at that point of time, it was informed that the accused will pay amount of Rs.1,50,00,000/□ (Rs. One Crore Fifty Lakhs only) to the complainant. Thereafter, the accused had paid Rs.25,00,000/□ in the beginning and Rs.15,00,000/□ after some time . T h e r e a f t e r ,

frequently, demand of monetary amount had been raised from the accused, but, the accused had been giving vague reply. So, the complainant had met to Shri Balubhai Aahir so, he had told that the accused have taken a huge amount from him to pay you and he has even the writings with him in that regard.

4 So, the complainant had gone to the accused at Bhagwati Arched, city light Road, Opp. Maheshwar Department, Surat to demand an amount and stated that, you have obtained our monetary amount from Balubhai Aahir, so the accused have informed to wait for some time and made assurance repeatedly. Ultimately, prior to two (02) months I had gone to office of the accused as above to demand the money, at that time the accused got annoyed and used abusive words and threatened to kill me and told that, we will kill you, if henceforth you will approach to demand the money. We have link with gangland. At that juncture, many people of the accused were gathered. So, I turned back due to experiencing danger to my own.

5 Under the circumstances, the accused have committed cheating, criminal breach of trust and fraud with me and obtained monetary amount to the tune of Rs.1,10,00,000/□ from the original HC-NIC Page 71 of 89 Created On Tue Jul 11 01:32:51 IST 2017 purchaser and not paid to me and caused financial damage to us, used abusive words, threatened to kill and thus, committed an offence punishable u/s. □ 406, 420, 504, 506(2), 114 of the Indian Penal Code and so, it is requested to register the complaint against the accused and to initiate legal action against him.

6 My witnesses are who so ever will be made available during the investigation."

51 On receipt of the complaint by the office of the Police Commissioner, the statement of Kantubhai Chhotubhai Rathod was recorded by the police officer of the Khatodara Police Station. Kantubhai Rathod reiterated in his statement what has been stated in the complaint. Thus, it appears that Sanjaybhai Dhansukhbhai Modi, who is one of the applicants herein, is alleged to have received Rs.1,50,00,000/□ (Rupees One Crore Fifty Lac only) from Balubhai Aahir to be paid to the land owners. According to the statement of Kantubhai Rathod, he was paid Rs.25,00,000/□ (Rupees Twenty Five Lac only), and thereafter, Rs.15,00,000/□ (Rupees Fifteen Lac only). Thus, in all, he received Rs.35,00,000/□ (Rupees Thirty Five Lac only). The balance amount, although demanded time and again, was not paid.

52 Thereafter, the respondent No.3 came before this Court with the petitions referred to above and the orders which came to be passed by this Court.

53 Thus, the picture that emerges as clear as a noon day from the materials on record is that the tribals had stopped cultivating the land past almost more than a period of twenty years. It is evident from the statements of the land owners recorded time to time by the police officials that they had actually sold the land to Balubhai Ravjibhai Aahir way back in the year 1998 and had also received some amount towards HC-NIC Page 72 of 89 Created On Tue Jul 11 01:32:51 IST 2017 the sale consideration. Of course, it is true that at that point of time, no documents were executed, as the land was of a restricted tenure and the provisions under Section 73AA of the Bombay Land Revenue Code were applicable. However, the fact remains that they were not at all interested in the land. This is the reason why they did not utter a single word when a huge construction came up on their plot of land almost more than fifteen years back. From the year 2002 onwards, the purchasers, started residing in the houses constructed. In all, there are seventeen units in the every land and total 102 units / houses in the subject project. A public notice was issued by the unit holders inviting objections, if any, prior to the transfer. No objections were raised at any point of time. What is important for me to note is that in the statements of the land owners, it has been stated that they had no idea worth the name about any complaints lodged by them before the police. In one of the statements, it has been stated that one lawyer came at their house and obtained thumb impressions on the complaints. They had no idea about the contents of the complaints. In the course of the hearing of all these matters, I repeatedly inquired with the Investigating Officer as well as the learned A.P.P. appearing for the State as to who was that person or the lawyer who obtained the thumb impression on the complaint. There was conspicuous silence at the end of both. The allegations are that it was Mr. Manish Patel and others who entered the fray with an oblique motive and took the land owners in confidence promising them that they would get a handsome amount, if they would support them in taking up the issue.

54 The materials on record further reveals, as evident from the statements, that ultimately, in the year 2012, a Memorandum of Understanding was reduced into writing between the original owners and Dineshbhai Chandubhai Patel and Balubhai Ravjibhai Aahir duly HC-NIC Page 73 of 89 Created On Tue Jul 11 01:32:51 IST 2017 signed, whereby (1) the original owners admitted the execution of the power attorney dated 27th March 2001; (2) also admitted the execution of the registered sale deed by Dineshbhai Chandubhai Patel in favour of the seventeen plot holders; and (3) also forgo, as regards certain applications / revised applications.

55 As on date, even the Memorandum of Understanding is now being disputed. The land owners have been forced to make a statement that they were taken to the office of the builder i.e. Mr. Manharbhai Kakadia,

who is one of the applicants herein, and were made to put their thumb impressions on the documents. This entire exercise of execution of the Memorandum of Understanding was videographed, so that no one, in future, may level any allegations and the C.Ds. were handed over by the accused applicants to the police, but, I am told that those C.Ds. are now not available. How these C.Ds. have been lost, is also a mystery.

56 Thus, in this manner, the power of attorneys and the sale deed came to be ratified by the original owners .

57 It appears that on 10th March 1992, the original owners were informed by the police that there complaints were filed, as the dispute was settled. It also appears that on 10th March 2012, the statement of Chhaganbhai Chhotubhai Rathod and Kantubhai Chhotubhai Rathod were recorded before the Police Inspector of the Khatodara Police Station admitting the execution of the Memorandum of Understanding dated 3rd February 2012. They made themselves very clear that they did not want to do anything and the complaints be filed. Similarly, on 12th April 2012, the statement of Vijayaben @ Vajiben Somabhai Rathod and Shankarbhai Somabhai Rathod were also recorded. On 14th April 2012, the statement of Jiniben was recorded.

On 18th April 2012, the statements of the HC-NIC Page 74 of 89 Created On Tue Jul 11 01:32:51 IST 2017 accused persons namely Dineshbhai Chandubhai Patel and Balubhai Ravjibhai Aahir were also recorded in view of the Memorandum of Understanding dated 3rd February 2012.

58 On 3rd May 2012, an application was filed by the original owners addressed to the Circle Officer, Athwaline, for withdrawal of the application addressed to the Special Investigation Team dated 23rd January 2012.

59 On 31st May 2012, a report was filed by the Police Inspector, Khatodara Police Station addressed to the A.C.P., 'A' Division, Surat as regards the settlement and the closure report of the matter. On 17th June 2012, a report was sent by the A.C.P., 'A' Division, Surat to the Deputy Commissioner of Police to file the report.

60 After everything was over, it seems that few unscrupulous persons entered and took up the issue as if they were espousing the cause of the tribals. It could be Mr. Manish Patel or any other person. The allegations are only against Mr. Manish J. Patel. It seems that the land owners were again taken in confidence by showing them the sparkling stars in the noon day and it also appears that the land owners got carried away by the say of the persons like Mr. Manish Patel, etc., and that is how the entire issue came to be reopened.

61 It is very sad and disturbing to note that all these facts were suppressed very conveniently in the earlier round of litigation.

62 If this Court would have known the true facts as regards the bona fide of the land owners, then probably, the orders, which are noted in the starting of this petition, would not have been passed or at least this HC-NIC Page 75 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Court would have exercised some caution.

63 The only question that falls for my consideration is whether I should quash the entire F.I.R. The reason why I am saying so is because the picture as regards the two power of attorneys dated 20th March 1998 and 27th March 2001 is not clear. How the development permission came to be granted by the Surat Municipal Corporation, is also not clear. I am saying so because indisputably the land is a restricted tenure land, wherein the provisions of Section 73AA of the Land Revenue Code are applicable. The case of the prosecution is that the two power of attorneys referred to above were created by forging the signatures of the land owners. The case is that the land owners are illiterate and they do not know how to write their names or put their signatures. These two power of attorneys also contain the signatures of the other land owners of the the different parcels of lands along with the present tribals. The land owners of the other parcels of lands have nothing to say as regards the two power of attorneys, and at no point of time, they have disputed their signatures.

64 The investigation has proceeded to some extent and I am informed that till this date, the two power of attorneys are not traceable. Of course, it is true that the land owners, in the Memorandum of Understanding, have admitted in no uncertain terms about the execution of the two power of attorneys dated 20th March 1998 and 27th March 2001. The allegations are also with regard to scoring off the figure Section 73AA from the record of rights. The allegations are that the figure Section 73AA was erased only for the purpose of obtaining the development permission from the Surat Municipal Corporation, as the Surat Municipal Corporation would not have granted the development permission, as the land is of a restricted tenure.

HC-NIC Page 76 of 89 Created On Tue Jul 11 01:32:51 IST 2017 65 Therefore, in my view, a limited investigation is required in the present case as regards the genuineness of the two power of attorneys dated 20th March 1998 and 27th March 2001. I find it a little difficult to accept the contention canvassed on behalf of the accused persons that as the land owners, in the Memorandum of Understanding, have ratified the execution of the two power of attorneys, the chapter should be closed. Mr. Oza, the learned senior counsel placed strong reliance on one decision of the Madras High Court in

the case of Chidambaram Chettiar vs. Shanmugam Pillai [AIR 1938 Madras 129]. It has been held that:

"In the world of business things are often done which, are betrayals of confidence and deceptions which arouse moral indignation but are nevertheless civil wrongs which can be righted by Civil Courts and are not crimes which can be punished by a Criminal Court. Not every immoral act is criminal and it is an abuse of the process of a Court to attempt to create new crimes in order to compel men to conform to a high standard of probity in business dealings or to force them to execute their promises."

As regards the powers of the High Court, in the same judgment, I find:

"The inherent jurisdiction of this Court to pass any orders necessary to prevent abuse of the process of any Court is not questioned and indeed has been clearly expressed in Section 561A of the Criminal Procedure Code. Since prevention is always better than cure, the obligation to prevent specious and spiteful criminal prosecutions for actions which, though strictly dishonourable, yet do not amount to crimes is one that must never be shirked."

66 I am of the view considering the decision of the Supreme Court in the case of Ritesh Tiwari vs. State of U.P. [(2010) 10 SCC 677] that the administrative law and administrative action cannot validate the acts, which would attract penal consequences or acts which are made HC-NIC Page 77 of 89 Created On Tue Jul 11 01:32:51 IST 2017 punishable under the law. The law is fairly well settled. On the administrative side, the invalid acts, if any, are deemed to have been ratified on the date of action. That can only absolve from the civil consequences, however, the illegal acts, which are made punishable either under the Indian Penal Code or any other special enactment, cannot be ratified. There can be no estoppel of a criminal prosecution and no ratification of a criminal offence. In the aforesaid context, I may refer to a decision of the Bombay High Court in the case of Emperor vs. Ramchandra Rango Sawkar [1939 (41) Bombay Law Reporter 98]. I may quote the observations of the Division Bench as contained in para 49:

"49. As to the argument based on Markur, In re (1914) I.L.R. 41 Bom. 1 : S.C. 18 Bom. L.R. 185, and Agni Kumar Das v. Mantazaddin (1928) I.L.R. 56 Cal. 290 with reference to suit No. 70 of 1934, namely, whether the conduct of the accused was ratified by the subsequent civil proceedings, I think it is essential to remember that there can be no estoppel of a criminal prosecution and no ratification of a criminal offence.

It also seems to me that however necessary and desirable it may be, as a matter of public policy, to prevent conflicts between decisions of civil and criminal Courts, it is

of far greater moment to the State that no non-compoundable offence should be left unpunished if it is possible to secure evidence to prove such offence. There can be, besides, no "relating back" in the case of an offence as a result of a civil proceeding which treats the act as the foundation of the civil claim, although the criminal Court ought as a rule to take into consideration the civil Court's judgment relating to such claim."

67 Thus, I have reached to the conclusion that no case worth the name is made out so far as the offence punishable under Sections 406, 420 and 120B of the Indian Penal Code is concerned. The only limited investigation, which is necessary, is with regard to the offence of forgery, as alleged.

68 If, ultimately, the original documents i.e. the two power of attorneys are found, then a limited investigation is necessary to verify HC-NIC Page 78 of 89 Created On Tue Jul 11 01:32:51 IST 2017 the genuineness of the signatures of the land owners and the 7/12 extract, which was produced at the time of seeking the development permission from the Surat Municipal Corporation. This is the only issue, in my opinion, which is necessary to be looked into in the interest of justice. Otherwise, I have reached to the conclusion that the land owners, who claim themselves to have been exploited and cheated, are playing to the tune of unscrupulous persons, interested only in blackmailing and extortion. At any cost, this Court should prevent such blackmailing and extortion, and if any particular person, be it Mr. Manish Patel or any other person is involved, then an appropriate action needs to be taken at the earliest in accordance with law.

69 At this stage, let me make a note of one development. On 3rd July 2017, when I was in the midst of finalising the judgment, at 2:30 P.M. Mr. Percy Kavina, the learned senior counsel appearing with Mr. A.B. Munshi, the learned counsel made a mention of this particular matter and sought permission to circulate one Miscellaneous Criminal Application to place on record a report. I inquired what report they were talking about. Mr. Kavina, the learned senior counsel submitted that pursuant to the oral direction issued by this Court as regards the investigation into the dubious role of Mr. Manish Patel and others, some inquiry was undertaken, and at the end of it, it has been found that Mr. Manish Patel has not played any dubious role in the matter. Since the judgment was C.A.V., I declined to grant the request of Mr. Kavina, the learned senior counsel to circulate any such Miscellaneous Criminal Application. I requested Mr. Kavina to make a mention of this development on the next date in presence of the learned counsel, who appeared for the original applicants.

70 On the next day, once again, Mr. Kavina, the learned senior HC-NIC Page 79 of 89 Created On Tue Jul 11 01:32:51 IST 2017 counsel appeared with Mr. Munshi, the learned

counsel and made a mention in the presence of few advocates on record appearing for the applicants. I inquired with the learned A.P.P., who appeared in the matters as regards any such inquiry being undertaken and the outcome of the same. The learned A.P.P., after taking instructions, informed that as it fell from this Court that an appropriate inquiry should be undertaken as regards the alleged dubious role of Mr. Manish Patel and others in the matter, the Police Commissioner asked one of the officers to look into the same, and prima facie, the inquiry revealed that Mr. Manish Patel as such had no role to play.

71 Be that as it may, this development made me wonder as to how Mr. Manish Patel came to learn about the inquiry undertaken. How did he come to know about a report. Mr. Kavina, the learned senior counsel submitted that Mr. Manish Patel inquired about the report under the R.T.I. Act and that is how he learnt about the same. Let me, for the time being, give the benefit of doubt to Mr. Manish Patel. My question still remains unanswered. Who was that lawyer? Who visited the house of the land owners and obtained the thumb impressions on the complaints addressed to the Police Commissioner? The land owners are very clear in their statements that one lawyer came and obtained those thumb impressions and they had no idea about the contents of the application. This is not the only matter in which the allegations have been levelled against Mr. Manish Patel. In many other cases conducted by me, the allegations have been levelled of blackmailing and extortion, of course, between the same parties. I fail to understand how the tribals, who claim themselves to be very poor, were able to reach upto the Supreme Court three to four times in the past. From the orders on record, it appears that a senior counsel appeared for them in certain proceedings. How did they afford to incur these expenses? Who is funding them? These are the HC-NIC Page 80 of 89 Created On Tue Jul 11 01:32:51 IST 2017 questions to which the answers are obvious.

72 I take notice of one complaint lodged by Dineshchandra Chandubhai Patel dated 16th April 2016 addressed to the Commissioner of Police, Surat city, wherein in details all the facts have been narrated as to how the land owners in collusion with Mr. Manish Patel and others were indulging in blackmailing and extortion. Along with the complaint, all the relevant documents were also annexed in support of the contents of the complaint. Let me quote few of the paragraphs of the complaint as under:

"The names of Accused No.4 to 14 - the landowners has been used for the namesake.

In fact, behind the entire chapter, Accused No.1 namely Advocate Manish Maganbhai Patel and his accessory, who are considered to be the masterminds in extortion, blackmailing and forcibly settling the dispute is, are behind the curtains. Accused No.1 - advocate Manish Maganbhai Patel and his accessory have done the forceful settlement,

blackmailing and extortion in the past with the residents and builders in the Surat city. The Accused No.2 - Sanjay Dhansukhbhai Modi and Accused No.3 - Harish Ramanbhai Rathod are also men of Advocate Manish Maganbhai Patel. Accused No.1 to 3, namely Advocate Manish Maganbhai Patel, Sanjay D h a n s u k h b h a i M o d i and H a r i s h R a m a n b h a i Rathod etc have jabbed lands belonging to Adiwasies and Scheduled Tribes, and thereby made the residents and builders of the Surat city settle disputes forcibly and thereby, extorted and blackmailed them. This is the modus operandi of Accused No.1 - Advocate Manish Maganbhai Patel and his men."

"Further, Accused No.1, i.e. Advocate Manish Maganbhai Patel has also lodged complaints before police and SIT against the present complainant and against familiar / known persons of the city with an ulterior motive of HC-NIC Page 81 of 89 Created On Tue Jul 11 01:32:51 IST 2017 forcing to dispute, blackmailing and to settle his personal ego.' "Moreover, Accused No.1 - advocate Manish has also published news in the daily newspapers against the present complainant and other builders and residents of Surat city by creating disputes in relation to lands belonging to Adiwasies and Schedule Tribes and by using the owners of land belonging to such Adiwasies and Schedule Tribes. From these news, it is apparent that Accused No.1 - Manish Mohanbhai Patel and his men are behind the entire modus operandi."

"Further, according to my information, a First Information Report was also registered in the past against the advocate Manish Maganbhai Patel - the Accused No.1 within the city limits of Surat. However, I do not have papers of the said FIR. I will produce the same when available.

Further, according to my information, private complaints have also been instituted against Advocate Manish Maganbhai Patel before the Honourable Judicial Magistrate First Class at Surat, the papers of which are not available at present with me but I will produce the same as and when it is available."

"Thus, in light of the foregoing circumstances and facts, it is humbly played to register offence against Accused No.1 - Advocate Manish Maganbhai Patel and his associates and others is for the offence of mental harassment, blackmailing and extortion with a view to see that Advocate Manish Maganbhai Patel - the Accused No.1 and his associates do not indulge into serious offences like the mental harassment, forcible settlement, blackmailing and extortion with other builders or familiar / known persons of the Surat city; and to register offence punishable under Sections 383, 384, 388, 389, 503, 114 and 120B of the Indian Penal Code against Advocate Manish Maganbhai Patel - the Accused No.1 and his associates for

causing mental harassment, forcible settlement, HC-NIC Page 82 of 89 Created On Tue Jul 11 01:32:51 IST 2017
blackmailing, extortion and Administration of threats, and in the interest of justice and also in the interest of the public at large of Surat city, known / familiar persons and builders, such offences are required to be investigated threadbare and such persons are required to be sent behind the bars."

73 I would also like to make a note of one very unusual thing I noticed in the course of the hearing of these matters. I noticed that whenever any mistake or lapse was taken note of at the end of the Investigating Officer, the Investigating Officer used to hurriedly make a note of it and on the very next day, she used to rectify the same by calling the witnesses again at the office and record their statements accordingly. This is something which had to be deprecated. The learned counsel appearing for the applicants have levelled serious allegations about the interference of Mr. Manish Patel so far as the investigation is concerned and his collusion with the Investigating Officer. It was alleged that the Investigating Officer has been proceeding only in the directions, as suggested by Mr. Manish Patel.

□ ATROCITIES ACT:

74 The above takes me to consider whether the provisions

Atrocities Act will have any application to the facts of this case. As usual, the land owners being the tribals and members of the Scheduled Caste have a very powerful potent weapon in their hands in the form of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the F.I.R., the provisions invoked, so far as the Atrocities Act is concerned, is Sections 3(1)(iv) and (v), as they stood prior to Act 1 of 2016, Section 3(1)(iv), before substitution by Act 1 of 2016, read as under:

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"3. Punishments for offences of atrocities □ (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, □

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;"

75 Section 3(1)(v) of the Atrocities Act, as it stood prior to Act 1 of 2016, read as under:

"3. Punishments for offences of atrocities □ (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, □

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;"

76 Section 3 of the Atrocities Act came to be amended by Act 1 of 2016. What is now sought to be made applicable so far as the accused persons are concerned, is Sections 3(1)(f) and (g) and Section 3(2)(va). Section 3(1)(f) of the Atrocities Act read as under:

"3. Punishments for offences of atrocities □ (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, □

(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;"

77 Section 3(1)(g) of the Atrocities Act reads as under:

"3. Punishments for offences of atrocities □ (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, □

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

HC-NIC Page 84 of 89 Created On Tue Jul 11 01:32:51 IST 2017 Explanation. □ For the purposes of clause (f) and this clause, the expression "wrongfully" includes □ (A) against the person's will (B) without the person's consent;

(C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or (D) Fabricating records of such land;"

78 Section 3(2)(va) of the Atrocities Act reads as under:

"3. Punishments for offences of atrocities □ (2) Whoever, not being a member of a Scheduled or a Scheduled Tribe, □(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of Scheduled Caste or a Scheduled Tribe or such property belongs to such member, Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;"

79 The argument of Mr. Munshi, the learned counsel appearing for the land owners is that as the F.I.R. is of the year 2016, the amended provisions will apply. I am not at all impressed by the submission of Mr. Munshi that the amended provisions would apply in the present case. These are all penal provisions brought into force in the year 2016. The acts, as alleged, are of the year 1998 to 2001, and if the Memorandum of Understanding is taken into consideration, then 2012. I am of the view that the penal provisions cannot be given retrospective effect. Be that as it may, without going into this issue, I am of the view that even otherwise, no case worth the name is made out so far as the Atrocities Act is concerned.

80 The main plank of the submission is that as the land belongs to the tribals, the construction came to be put up on their land in breach of the provisions of Section 73AA of the Land Revenue Code, this by itself is sufficient to invoke the provisions of the Atrocities Act, as it could be said that the accused persons wrongfully occupied the lands of the HC-NIC Page 85 of 89 Created On Tue Jul 11 01:32:51 IST 2017 tribals by wrongfully dispossessing them. The other plank of the submission is that the accused persons had the knowledge that the land owners are tribals, and since they have committed the offence under the Indian Penal Code, which is specified in the Schedule, they are guilty of the offence under the Atrocities Act.

81 There cannot be a better case than the one on hand of gross abuse of the provisions of the Atrocities Act. The F.I.R. on hand is an indication of the extent the members of the Scheduled Castes can go to abuse the provisions of the Atrocities Act, which are otherwise meant for the protection of the underprivileged and downtrodden class of the society.

82 The SC/ST Act was enacted as the laws like the Protection of Civil Rights Act, 1955 and provisions of the Indian Penal Code was found inadequate to arrest the commission of atrocities against members of Scheduled Castes and Scheduled Tribes. A specific legislation to check and deter crimes committed by the non-Scheduled Castes and Scheduled Tribe members thus became necessary. The statement of objects and reasons of the Act reads:

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons. 2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others.

When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded forced labour, the vested interests try to cow them down and terrorize them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on the mass, killing of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and Scheduled Tribes."

83 Section 2 of the Act defines the expression 'atrocities' which is as follows :

"atrocities" means an offence punishable under Section 3."

83 The expression 'atrocities' finds place in the title of the Act itself. It is capable of indicating at the nature of the legislation intended to be undertaken by the Act.

84 In Webster's Third International Dictionary (at page 139), one of the meanings ascribed to the word 'atrocities' is "the quality of state of being atrocious" while the word 'atrocious' has been ascribed, inter alia, the following meaning :

"(1) marked by or given to extreme wickedness;

(2) marked by or given to extreme brutality or cruelty;
(3) outrageous; violating the bounds of common decency; uncivilized, barbaric;

(4) extremely painful; marked by intense distress;
(5) of such a kind as to fill with fright or dismay."

85 Having regard to the lack of bona fide of the land owners, if I still hold that the provisions of the Atrocities Act would apply, then the same will be nothing, but mockery of justice. It cannot be said, by any stretch of imagination, that the land owners were forcibly dispossessed from their land and were not permitted to make use of the same. The facts narrated above speak for themselves. Mere breach of the provisions of Section 73AA of the Gujarat Land Revenue Code or the provisions of any other Land Laws by itself will not amount to atrocities within the meaning of the Atrocities Act.

HC-NIC Page 87 of 89 Created On Tue Jul 11 01:32:51 IST 2017 86 I am informed that the authorities concerned have initiated proceedings with regard to the breach of Section 73AA of the Gujarat Land Revenue Code. Well, such proceedings may go on in accordance with law and this judgment will have no bearing on such proceedings, if any, pending before the authorities. It appears that the purchasers of the Tenements/houses in the scheme have been served with a notice issued by the Collector as regards breach of the provisions of Section 73AA of the Gujarat Land Revenue Code. The purchasers have filed a petition before this Court in that regard and the proceedings have been stayed for the time being. In any view of the matter, the revenue proceedings shall be decided on their own merits without being influenced, in any manner, by any of the observations made by this Court, except the conduct of the land owners.

87 In view of the above, I have reached to the conclusion that the investigation should be taken over from the current Investigating Officer, and the Commissioner of Police, Surat himself should complete the same in accordance with law. It shall be open for the Commissioner of Police, Surat to take assistance of any other subordinate officer, but, in any case, not the current Investigating Officer.

88 In the result, all the applications are partly allowed.

[1] The First Information Report, so far as the offence punishable under Sections 406, 420, 120B of the Indian Penal Code and the Atrocities Act is concerned, is quashed. The investigation as regards the allegations of creating the two bogus power of attorneys and erasing of 73AA is concerned, shall be completed by the Commissioner of Police, Surat in accordance with law.

HC-NIC Page 88 of 89 Created On Tue Jul 11 01:32:51 IST 2017 [2] The Commissioner is also directed to undertake the investigation as regards the persons, who had approached the land owners and had obtained the thumb impressions on the complaints addressed to the Commissioner of Police, Surat. To put it in other words, I direct the Commissioner to undertake proper investigation as regards the allegations of blackmailing and extortion levelled against the particular persons.

89 With the above, all the applications are disposed of. The connected Miscellaneous Criminal Application also stands disposed of.

90 The ad interim protection earlier granted stands vacated so that the investigation can be completed in accordance with law.

(J . B . P A R D I W A L A , J .) F U R T H E R O R D E R
After the judgment and order is pronounced, Mr. Oza, the learned senior

counsel made a request to continue the interim protection granted by this Court earlier. As the applicants would like to challenge this judgment before the Hon'ble Supreme Court, the interim protection earlier granted shall continue for a further period of six weeks from today. The interim protection, which is ordered to be continued, will not come in the way of the Commissioner in commencing the investigation and completing the same.

A copy of this judgment be provided to Ms. Thakore, the learned A.P.P., who appeared in the matters, so that Ms. Thakore can convey to the Commissioner of Surat as regards the directions issued by this Court.

(J.B.PARDIWALA, J.) chandresh HC-NIC Page 89 of 89 Created On Tue Jul 11 01:32:51 IST 2017