

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3449 of 2025

With

R/SPECIAL CRIMINAL APPLICATION NO. 3439 of 2025

With

R/SPECIAL CRIMINAL APPLICATION NO. 3451 of 2025

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**TREE HOUSE EDUCATION AND ACCESSORIES LTD. THRO RAJESH
BHATIA & ORS.**

Versus

STATE OF GUJARAT & ORS.

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Appearance:

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SCR.A No.3439/2025

Shri N.D. Nanavaty, Senior Advocate with Mr.Ashish M. Dagli, Learned Advocate for Applicant.

SCR. A No.3449/2025

Shri R.S. Sanjanwala, Senior Advocate with Mr.Jinesh Kapadia, learned Advocate for Applicant.

SCR. A No.3451/2025

Mr.Ashish H. Shah, Learned Advocate for Applicant.

Mr Jal Unwala Senior Advocate with Mr. Rahil P Jain for the Respondent No. 3

Mr Manan Mehta Additional Public Prosecutor for the Respondent No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 20/03/2025

COMMON ORAL ORDER

The captioned petitions are filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "the BNSS, 2023) seeking quashment of the FIR registered with DCB Police Station, District Vadodara bearing FIR No.11196010250002 for the offences punishable under Sections

316(2), 316(4), 318(3), and 61(2)(A), of the Bhartiya Nyaya Sanhita, 2023 (hereinafter referred to as "the BNS, 2023") and Sections 4 and 5 of the Gujarat Land Grabbing (Prohibition) Act, 2020 (for short "the Act").

2. Heard Shri N.D. Nanavaty, learned Senior Advocate with Mr.Ashish M. Dagli, learned Advocate for the petitioners of SCR.A No.3439 of 2025, Shri R.S. Sanjanwala, learned Senior Advocate with Mr.Jinesh Kapadia, learned Advocate for the petitioners of SCR. A No.3449 of 2025 and Mr.Ashish H. Shah, learned Advocate for the petitioner of SCR. A No.3451of 2025, Shri Jal Unwala, learned Senior Advocate with Mr. Rahil P Jain for the Respondent No. 3-private complainant and Shri Manan Mehta, learned Additional Public Prosecutor for the Respondent No. 1-State.

3. In a petition seeking quashment of the questioned FIR, learned Senior Counsels and learned Counsel appearing for the respective petitioners, for the interim relief would submit that purely civil dispute has been given a colour of criminal proceedings. It is submitted that gross abuse of process of law could be seen in invoking the provisions under the Act. It is also

submitted that the police machinery have abetted the petitioners in invoking the provisions of the Act in an arbitrary manner.

3.1 On factual aspect, it is submitted that in city of Vadodara land bearing Survey No.49, City Survey No.792, Village Atladar, Dist: Vadodara (for short "subject property") was originally belong to and owned by the Tree House Education (for short "Tree House"). It has been leased out to the Mira Education Trust (for short "Mira") for 33 years commencing from 02/04/2014 for starting school in the name of "Tree House". The lease also includes the premises belong to the school building. It is further submitted that since there was financial hick-ups faced by the "Tree House", HDFC Bank with whom the subject property was mortgaged started proceedings under the SARFAESI Act. Meanwhile, "Tree House" contacted Rameshbhai Amthabhai Desai, partner of Zebur Reality LLP and agreement to sell was executed. Certain amount was fixed towards the sale consideration. Agreement to sell, later on converted into the sale-deed in favour of Zebur Reality LLP; with the understanding that lease-deed which is executed in favour of "Mira" shall be terminated on the date of execution of the sale-deed; but fresh lease-deed to be executed after the sale-deed in favour of Zebur

Reality LLP. It is also submitted that though the sale-deed was executed in favour of Zebar Reality LLP, for some reason, lease-deed was not executed. It is also submitted that “Mira” had forwarded draft lease-deed to Zebar Reality LLP and also transferred Registration fee, etc., but lease-deed was not executed. It is submitted that Zebar Reality LLP in order to get the possession of the subject property take a different approach and sent some headstrong persons in the premises. Under such circumstances, “Mira” filed SCS No.175 of 2023 before the competent Civil Court at Vadodara seeking specific performance of the lease agreement alongwith the relief of declaration and permanent injunction and also moved application under O.39 R.1 and 2 read with Section 151 of the Code of Civil Procedure at Exh.5 seeking interim relief. It is also submitted that learned Senior Civil Judge passed an ex-parte order on 28/07/2023 and restrained Zebar Reality LLP from interfering with the possession of “Mira” over the subject property. It is submitted that pursuant to service of the process upon Zebar Reality LLP, the complainant Rameshbhai and his son filed a pursis at Exh.14 and declared that they will not disturb the educational activity and the possession. Pursuant to which, the learned 4th Additional Senior Civil Judge recorded the pursis.

3.2 It is also submitted that during the pendency of the suit proceedings, application was moved by the complainant at Exh.9 to return the plaint on the ground that cause of action pleaded in the suit is covered under the Commercial Court Act and therefore ordinary Civil Court has no jurisdiction to decide the issue. The said application has been dismissed by the learned Civil Court. Unsuccessful challenge is made to the order by the complainant by filing CRA No.149 of 2014 before this Court as well as before the Hon'ble Apex Court.

3.3 Learned Counsel also put written statement filed by the complainant to the notice of this Court to contend that in a civil suit it is stated that complainant as well as Zebar Reality LLP has admitted the possession of the plaintiff over the subject property.

4. In backdrop of the above submissions on fact, it is argued that some important aspect has been kept in dark before the Land Grabbing Committee by the complainant. The complainant who failed to get the possession of subject property moved the Land Grabbing Committee for getting the possession under the

garb of allegations that land has been grabbed. It is submitted that this is gross of abuse of process of law under the Land Grabbing Act. It is also submitted that possession of “Mira” over the premises is already protected by the competent civil court and in that circumstances, the provisions of the Land Grabbing Act cannot be invoked. It is therefore submitted that *prima facie* it is established that the provisions of the Land Grabbing Act is wrongly invoked. It is also submitted that in a complaint moved before the Land Grabbing Committee, it was wrongly submitted that ex-parte stay which was granted by the Civil Court is not been extended suppressing fact that complainant and other partner of Zebar Reality LLP had moved the Pursis before the court that they shall not disturb the possession of “Mira” and educational activity carried out by them.

5. It is also argued that Farzan Mohameddin Qurelshi has filed SCA No.2554 of 2025 before this Hon’ble Court challenging the order dated 13/02/2025 passed by the Land Grabbing Committee under the Act with regard to the direction of filing of the complaint. It is further submitted that the co-ordinate Bench of this Court while issuing notice in the said petition vide order dated 07/03/2025 observed that committee may have

been inadvertently or otherwise, allowed itself to be manipulated and therefore, looking to the very observation passed by the co-ordinate Bench, prima facie, it is established that filing of FIR in question is gross abuse of process of law.

6. Insofar as petitioner of SCR.A No.3451 of 2025 is concerned, learned advocate Mr.Shah would argue that petitioner is arraigned as accused no.15 in the FIR in question. He would submit that petitioner was never arraigned as accused in the written complaint filed by the complainant before the Land Grabbing Committee. No summons was ever issued by the Land Grabbing Committee and no order is passed by the Land Grabbing Committee to file FIR against the petitioner; yet the police machinery misused its power for arraigned the present petitioner as accused no.15 in the questioned FIR. He would submit that role of the petitioner as alleged in the FIR was that he was holding two resolutions of "Mira"; whereby, it is decided that possession of the subject property shall be handed over to the complainant. However, no such resolution was ever surfaced even before any of the authority and therefore it is submitted that petitioner is wrongly implicated in the offence.

6.1 By making these submissions, learned advocate Mr.Shah would submit to grant interim relief by staying further proceedings of the FIR in question and to pass necessary order for not to arrest the petitioner.

6.2 On above submissions, learned Senior Counsels and learned Counsel appearing for the petitioners urge to grant interim relief.

7. *Per contra*, learned Senior Counsel Mr.Unwala assisted by Mr.Jain, learned advocate for the org. complainant would firstly drew attention of this Court to the order passed by the co-ordinate Bench in SCA No.2554 of 2025 and submitted that co-ordinate Bench has noticed that despite order dated 13/02/2025 passed by the Land Grabbing Committee which is put to challenge in SCA, direction issued to register FIR, and consequently FIR under the provisions of the At as well as BNNS; yet the co-ordinate Bench took the cognizance and thought it fit to issue Notice before granting interim relief. Learned Senior Counsel Mr.Unwala would submit that since the co-ordinate Bench did not incline to grant interim relief to the petitioners, in similar set of facts, where the questioned FIR is under challenge,

this Court should not exercise its inherent jurisdiction to grant stay against for the investigation of the offence.

8. Learned APP Mr. Manan Mehta, for the respondent – State joining with the submissions of learned Senior Counsel Mr. Unwala for the org. complainant would submit that, few of the petitioners have already been arrested and granted regular bail and few of the petitioners have been granted anticipatory bail and few of them have approached learned Sessions Court for getting anticipatory bail. In this circumstances, the Court may not exercise the discretion to pass the order of restraining the arrest of the petitioners; but rather petitioners be relegated to approach learned Sessions Court for availing remedy under the law. It is also argued that at the initial stage of the FIR, quashing petition is filed; investigation is just begun and going on and therefore at the initial stage of FIR, this Court may not exercise the discretion of granting any interim relief.

8.1 By making this submissions, leaned APP would submit not to grant any interim relief.

9. I have heard the learned Senior Counsels and learned

Counsel appearing for the rival sides and perused the record. At the outset, prima facie, what could be observed in the fact situation that when “Tree House” sold the subject property to Zebar Reality LLP; lease-deed in favour of “Mira” was already in existence, though as a part of condition it was cancelled or revoked for the purpose of executing fresh lease-deed, but fact remains that “Mira” was legally possessing subject property when sale executed between “Tree House” and Zeber Reality LLP. It could further be noticed that entry of “Mira” in subject property was with the consent of owner of the “Tree House” and therefore it was legal one. Possession of “Mira” over subject property was never objected to by even HDFC Bank with whom the subject property was mortgaged. The lease-deed is a recognized mode of transferring possession of subject property. It could also be noticed that when talks of purchase of immovable property was going on between “Tree House” and complainant and subsequently Zebar Reality LLP in which the complainant is a partner, legal entry of “Mira” with lease hold right over the subject property was already in existence and also noticed by the complainant. It is undisputed that possession of subject property, pursuant to creation of lease hold right, is lying with “Mira”. On receiving threat for vacating possession, “Mira” over

subject property filed the suit before the competent civil court having jurisdiction where possession of “Mira” has been protected by granting ex-parte injunction. Later on, plaintiff as well as Zebar Reality LLP and its partner filed a pursis acknowledging the possession of “Mira” over the subject property. The order passed by the competent civil court protecting possession of “Mira” over the subject property was never questioned by the plaintiff before the higher forum. The suit between the party seeking relief of specific performance of the lease-deed is pending for hearing before the competent Civil Court having jurisdiction. The record indicates that some email were exchanged whereby draft lease-deed was sent to the complainant as well as to the Zebar Reality LLP who has obtained Rs.1.00 Crore as security deposit from erstwhile owner of subject property and also amount of registration fee is transferred to Zebar Reality LLP. However, for some reason, the lease-deed was not executed.

10. Apt to note that, prima-facie, an impression is appearing and it could be noticed from the record that possession of “Mira” over the subject property cannot be questioned in a way that it is an illegal possession with the intention of grabbing the land.

11. In above background, invoking of provision of the Act by complainant to file FIR, prima facie indicates abuse of the provisions of law, more particularly, notice that competent Civil Court has granted interim injunction and protected possession of subject property. Notably, in written complaint, complainant mentioned that stay granted by competent Civil Court has not been extended after 08/08/2023; whereas record placed before this Court indicates that complainant and partners of Zeber Reality LLP filed pursis in civil suit and declared that no interference to educational activity or possession shall be made. Filing of the pursis in civil Court has not been disclosed in written complaint filed to the Land Grabbing Committee.

12. I may also notice the order passed by the co-ordinate Bench in SCA No.2554 of 2025 whereby the order dated 13/02/2025 passed by the Land Grabbing Committee has been questioned, which later on culminating into the FIR. Relevant observations made by the co-ordinate Bench reads thus:

“4. To this Court, it would appear that though the FIR is already registered, the same would not preclude this Court from examining the legality and validity of the order passed

by the Committee under the Gujarat Land Grabbing (Prohibition) Act, dated 13.02.2025. To this Court, prima facie it also appears that the said Committee, may have inadvertently or otherwise, allowed itself to be manipulated, more particularly it appears to this Court that the parties i.e. the petitioners as well as the respondent No.4 herein were having a civil dispute and whereas a learned Civil Court had granted interim injunction in a Civil Suit preferred by the petitioners praying for specific performance. It also appears that the interim injunction in the nature of status-quo was also extended on a concession/Pursis preferred by the respondent No.4 herein, who had agreed not to disturb the possession of the petitioners on the property in question. It also appears to this Court that when serious allegations with regard to payment of large sums of money for continuing possession of the petitioners are made and the same were subject matter of a Civil Suit filed by the petitioners where an interim injunction was granted, the said Committee prima facie, ought not to have rushed into directing filing of an FIR as regards allegations made in the complaint.

5. *It also appears to this Court that while the learned AGP Mr. Shah would rely upon the decision of the Hon'ble Division Bench of this Court in case of Kamlesh Jivanlal Dave and Another Vs. State of Gujarat and others, dated 09.05.2024 in Special Civil Application No. 2995 of 2021, more particularly whereby the Hon'ble Division Bench was*

considering the constitutional validity of the Gujarat Land Grabbing (Prohibition) Act, 2020, whereas the learned AGP having relied upon Paragraphs No. 132, 134, 138 and 139 of the said decision to submit that the Special Court would not be precluded from examining allegation of land grabbing in relation to a property inspite of pendency of a Civil Suit preferred in that regard, and whereas to this Court, it would appear that the issue in the present petition appears to be slightly different inasmuch as, the present petitioners do not appear to have filed a Civil Suit for regularizing of their possession etc., rather the petitioners have filed a Civil Suit for specific performance of a document which the petitioners and the respondent No.4 were supposed to enter into. Thus, the effect of the observations of the Hon'ble Division Bench on the facts of the present case would be a subject matter of examination at a later stage.

6. Having regard to the fact that an FIR has already been registered, at this stage, let Notice be issued to the respondents returnable on 28.03.2025. By the returnable date, the State i.e the Committee under the Gujarat Land Grabbing (Prohibition) Act, as well as the private respondent shall file a response/reply to the present petition and whereafter this Court shall decide the prayer, if required, for grant of interim relief.”

13. The observation of the co-ordinate Bench that Land Grabbing Committee prima facie ought not to have rushed into directing filing of an FIR as regards allegations made in the

complaint is apposite to notice. Accordingly, Rule is issued returnable on 07/07/2025. Learned APP Mr.Mehta for State and learned Advocate Mr.Jain for private respondent waives service of notice of rule. Meanwhile, since the FIR is at the initial stage of investigation; investigation shall continue; but no charge-sheet shall be filed; without the prior permission of the Court; subject to condition that petitioners shall co-operate in investigation of the offence.

14. Now, insofar as the arrest of the petitioners are concerned, as submitted by learned Counsel/s appearing for the respective petitioners, in SCR.A No.3449 of 2025, except petitioner no.2, who has not filed any bail application, petitioner no.3 and 4 have been granted regular bail and petitioner no.6 and 7 have been granted anticipatory bail; whilst petitioner nos.5, 8 and 9 have filed anticipatory bail which is pending for adjudication. Likewise, petitioners of SCR.A No.3439 of 2025 and SCR.A No.3451 of 2025 have not filed any bail applications. Orders granting either regular or anticipatory bail in respect of aforesaid accused / petitioners have been made available to this Court by the learned APP, which records reason for grant of bail / anticipatory bail that since civil litigation with regard to the land

in question is pending before the concerned Court and the entire case of prosecution is rested on the documentary evidence.

15. True it is, that power of the High Court in a quashing petition is to be exercised sparingly and with caution. There is no denial of the fact that power under Section 528 of BNSS (old Section 482 CrPC) is very wide, but as observed by the Hon'ble Supreme Court in a catena of decisions, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. The Court requires to struck a balance between the rights of the complainant and the FIR disclosing commission of a cognizable offence and statutory obligation / duty of the investigating agency to investigate into the cognizable offence on the one hand, and on the other hand those innocent persons against whom the criminal proceedings are initiated which in many given cases by abuse of process of law.

16. In the given facts and circumstances of the case, when learned Sessions Court has already exercised the discretion in favour of few of the petitioners as noted herein above and granted either regular or pre-arrest bail on the ground that dispute between the party is of civil in nature and matter

pertains to documentary evidence; I see no reason not to extend such finding and observations for remaining petitioners to grant relief of restraining their arrest.

17. It is also brought to the notice of this Court by learned advocate appearing for the petitioner of SCR.A No.3451 of 2025 that guidelines issued Division Bench of this Court in SCR.A No.12369 of 2023 has not been followed before registering the FIR and therefore petitioner is also entitled for interim relief.

18. In view of the above, the petitioners of SCR.A No.3439 of 2025 viz., Girdharlal Sugonam Bhatia and Farzan Mohameddin Qureshi and petitioner of SCR.A No.3451 of 2025 viz., Abhishek Rajesh Bhatia, as also petitioner no.2-Rajesh Daulatram Bhatia of SCR.A No.3449 of 2025 shall not be arrested till the next date of hearing.

(J. C. DOSHI,J)

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