

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 17528 of 2025**

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LEGAL HEIRS OF DECEASED KOKILABEN NARSINBHAI PATEL & ORS.
 Versus
 STATE OF GUJARAT & ANR.

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Appearance:

MS. PRIYANSHI V TRIVEDI(17555) for the Applicant(s) No.

1,1.1,1.2,1.3,1.4,2

MR H K PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 05/01/2026

ORAL ORDER

1. Learned advocate appearing for the petitioners submit that before initiation of the proceedings under Section 14 of the SARFAESI Act, the respondent no.2 has to issue notice under Section 13(4) of the SARFAESI Act, which is mandatory in nature. Admittedly, in the present case, the respondent no.2 has straightway without issuing notice under Section 13(4) of the SARFAESI Act, has filed an application under Section 14 of the Act before the Court of learned Chief Judicial Magistrate, and the learned Chief Judicial Magistrate, has passed an order below the said application without considering the above stated factual aspect of the matter, and therefore, the said order is required to be quashed and set aside. He further submits that as per the relevant provisions of law, when the property of the applicant which is mortgaged is located within the rural area, in that event, the application ought to have been made before the District Collector and not before the Chief Judicial Magistrate. He also submits that before passing the order, the court

concerned has to verify from the papers that compliance as envisaged under Section 13(4) of the SARFAESI Act are followed or not.

1.1 Learned advocate Mr. Thakkar further submits that even there is no concept of appointing Court Commissioner either in the SARFAESI Act or in the Bharatiya Nagrik Suraksha Sanhita, 2023. He has also submits that pursuant to the impugned order passed by the Magistrate, ordering appointment of Court Commissioner, the Court Commissioner also came to be appointed, who then issued notice to the applicant, and immediately upon receipt of such notice, the applicant has approached this Court by way of filing the present application.

1.2 Learned advocate Mr. Thakkar submits that there is an error in passing the impugned order and then on the basis of the same, issuing notice to the applicant by the Court Commissioner, as the concept of Court Commissioner has always been treated as alien so far as criminal jurisprudence is concerned. Thus, there is a mandatory requirement of issuing notice under Section 13(4) of the SARFAESI Act before initiation of the proceedings under Section 14 of the said Act, and in the absence of same being issued in the present case, the impugned order passed, and the subsequent notice pursuant thereto, are null and void and required to be quashed, and till then, are also required to be stayed from its operation.

2. Considering the aforesaid submissions, the matter requires consideration. Hence, issue Notice, making it returnable on

16.03.2026. Learned APP waives service of notice for and on behalf of the respondent State.

3. Till then, the execution, implementation and operation of the order dated 12.12.2025 passed by the learned Chief Judicial Magistrate, Palanpur in Criminal Misc. Application No.1863 of 2025 as well as the impugned notice dated 18.12.2025 issued by the alleged Court Commissioner is hereby stayed. Direct service is permitted.

AHS

(M. R. MENGDEY,J)