



2026:AHC:23-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 28263 of 2025

Smt. Soni Petitioner(s)

Versus

State of U.P. and 7 others Respondent(s)

Counsel for Petitioner(s) : Girish Pratap Singh, Manish Nath
Tripathi

Counsel for Respondent(s) : C.S.C., Prabhakar Dubey

**Reserved
A.F.R.**

Court No. - 21

HON'BLE MANOJ KUMAR GUPTA, J.
HON'BLE ARUN KUMAR, J.

1. The present writ petition has been filed for the following reliefs:-

i. Issue a writ, order or direction in the nature of Mandamus commanding and directing the respondent no. 2 to 7 to open the lock and restore the possession of the petitioner over her joint ancestral house.

ii. Issue a writ, order or direction in the nature of Mandamus commanding the State Government to take appropriate action against the Respondent no. 4, 5, 6 and 7 for crushing the rule of law.

FACTS OF THE CASE

2. The case of the petitioner is that her father-in-law namely, Gelhari was a co-tenure holder of plot No.211, area 0.431 hectare. After his death,

the names of the petitioner's husband Shyamji, his brothers Premji, Ramji and Lalji and their mother Shivdhari Devi came to be recorded in the relevant khatauni in his place. During his lifetime, he constructed a two storied building over the said plot, having frontage of 20 feet on Bansi-Dandi Road and a width of 68 feet. On the ground floor, there are two shops, each having a width of 9 feet and a gallery of 6 feet width, which serves as an entrance to the remaining part of the house. In one of the shops, the petitioner has been running a beauty parlour and income from the said business is the only source of livelihood for the petitioner and her family. The husband of the petitioner, namely, Shyamji and his younger brother Premji, unfortunately fell into bad company of respondent No.8 and started consuming liquor with him. Respondent No.8 is a Peshkar in the court of Chief Judicial Magistrate. Taking advantage of the situation, he succeeded in obtaining a sale deed dated 14.2.2024 in his favour for a portion of the undivided residential house, measuring 10 feet from the front and 68 feet in width.

3. It is stated that respondent No.8 procured the said sale deed for a specific portion of the residential house, fully knowing that no division or partition of the aforesaid house had ever taken place amongst the co-sharers and families of all the co-sharers were residing in the same. On 13.1.2025, respondent no.5, the Tehsildar, Tehsil Bansi, District Siddharth Nagar, alongwith police force and respondent no.8, reached the house of the petitioner and asked her to vacate the house. The petitioner strongly opposed the same, stating that the house in question is the

ancestral house, in which she has been residing with her three minor children. When respondent No.8 failed in his attempt to take possession by force, he instituted Original Suit No. 49 of 2025 against the petitioner, her husband Shyamji, and his brother Premji, praying for decree of permanent injunction restraining the defendants from taking possession of property allegedly purchased by him through sale deed dated 14.02.2024; from breaking the lock of the said house; from raising construction over it; and from interfering in his alleged possession. Notably, the other three co-sharers were not impleaded as parties in the said suit.

4. On 27.1.2025, the date of institution of the suit, Civil Judge (Jr. Divn) issued summons to the defendants and fixed 24.2.2025 for filing of written statement and 6.3.2025 for framing of issues. On the very same date, Civil Judge (Jr. Divn.) also granted an *ex parte* interim injunction, restraining the defendants from interfering in the alleged possession of the plaintiff over the suit property. It is categorically stated that respondent No.8 was never put in actual possession of the suit property in pursuance of the sale deed. However, the trial court, without conducting any enquiry on the issue of possession and even in absence of any supporting evidence, hurriedly granted the said *ex parte* injunction.

5. As respondent No. 8 was not in possession, he therefore, with a pre-meditated design, moved an application on 16.5.2025 before the Superintendent of Police, Siddharth Nagar, alleging that the defendants, despite the injunction order, had forcibly taken possession of the house by breaking the lock. It was alleged that the petitioner and the other

defendants of the suit had agreed to vacate the house by the end of March; however, even after repeated requests, they have failed to do so. Accordingly, a request was made to direct the concerned authorities to ensure delivery of possession of the suit property to respondent no.8.

6. It is noteworthy that, in respect of the said application, respondent No.8, in the supplementary affidavit filed by him, clarified that the said application was in fact moved on 4.5.2025 and not on 16.05.2025, as earlier stated. The Superintendent of Police marked the said application to Inspector Incharge of Police Station Khesaraha District- Siddharth Nagar, on 16.5.2025, and therefore the said date came to be mentioned by the Chowky Incharge Sakarpar, Police Station Khesaraha, District – Siddharth Nagar, in his report dated 28.5.2025 submitted on the said application to the Sub Divisional Officer, Bansi, District Siddharth Nagar. He has stated in his report that despite the temporary injunction order dated 27.1.2025 in favour of respondent No.8, he could not get possession of the house and that the same continues to be occupied by Shyamji and his family members. The report further refers to the application dated 16.5.2025 submitted by respondent No. 8 to Superintendent of Police, Siddharth Nagar for being handed over possession of the said house to him. It is also stated therein that, in respect of said house, Original Suit No. 49 of 2025 has been instituted by respondent no.8 against Shyamji in the court of Civil Judge (Jr. Divn.) and an order of temporary injunction was passed in the said suit on 27.1.2025. Based on the aforesaid, a recommendation was made for constitution of a joint team of officials for

the purpose of delivering possession of the house to respondent No.8. On the said application, the Sub Division Magistrate, vide order dated 25.6.2025, directed the Tehsildar to constitute a joint team of Revenue and Police officials and to ensure disposal of the matter. In pursuance thereof, the Tehsildar, by order dated 2.7.2025, directed the Naib Tehsildar to constitute the said team, and in furtherance thereof, a joint team of Revenue officials and police personnel was proposed by Naib Tehsildar vide order dated 8.7.2025. Thereafter, Tehsildar, Tehsil Bansi, district Siddharth Nagar, by letter No. 121/Ra.Li/2025-26 dated __.07.2025, approved the constitution of the revenue team for effecting delivery of possession, purportedly in compliance of the order of temporary injunction of the trial court dated 27.1.2025 in Original Suit No.49 of 2025.

7. The case of the petitioner is that, on the basis of aforesaid directions, a heavy police force from two police stations and Revenue team headed by Naib Tehsildar, Khesaraha, and Revenue Inspector, alongwith five Lekhpals, reached the house of the petitioner on 18.7.2025. The petitioner was forcibly arrested and detained in a police vehicle alongwith her three children, aged 8 years, 4 years and 3 years respectively. The Revenue authorities and the police forcibly threw out the entire goods lying in the beauty parlour run by the petitioner. Thereafter, they handed over possession of the house to respondent No.8 by permitting him to put his lock on the premises. The petitioner had no prior knowledge of the interim order dated 27.1.2025 passed in the original

suit. It was only on 18.7.2025, at the time of her forcible eviction, that the joint team of Revenue and Police officials apprised her of the order of temporary injunction. The petitioner alleges that she even had no knowledge of the suit. After her dispossession, she attempted to meet the District Magistrate, Siddharth Nagar on 18.7.2025 and 19.7.2025 but could not succeed in meeting him. The petitioner thereafter submitted several representations to higher authorities, including the Chief Minister, but as none of her grievances were attended to, she was constrained to file the present writ petition.

8. On the first date of hearing of the writ petition, i.e., 22.8.2025, appearance was entered on behalf of respondent No.8. During course of hearing, learned counsel for respondent No.8 sought to justify the action of the administrative authorities in constituting a joint team of Revenue officials and Police personnel for delivering possession to respondent No. 8, on basis of an order said to have been passed by the trial court on 5.2.2025, on the application moved by respondent No.8 under Section 151 CPC. The said order is as under:

वादी द्वारा प्रार्थना पत्र अन्तर्गत धारा – 151 सी0पी.सी0 प्रस्तुत कर कथन किया गया है कि प्रतिवादी द्वारा विवादित मकान में जबरन ताला तोड़कर कब्जा कर लिया है। न्यायालय द्वारा अन्तरिम अस्थायी निषेधाज्ञा जारी किया गया है, उसके बावजूद भी प्रतिवादीगण न्यायालय के आदेश का उल्लंघन कर रहे हैं।

सूना एवं पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से विदित होता है कि न्यायालय द्वारा दिनांक 27.01.2025 को प्रतिवादीगण के विरुद्ध अन्तरिम निषेधाज्ञा जारी किया गया है, इसके बावजूद प्रतिवादीगण द्वारा उक्त विवादित सम्पत्ति में जबरन कब्जा कर लिया है। अतः वादी का प्रार्थना पत्र न्यायहित में स्वीकार किया जाता है। मामला अर्जेन्ट है। ऐसे में थानाध्यक्ष खेसरहा को आदेशित किया जाता है कि

न्यायालय द्वारा पारित आदेश दिनांक 27.01.2025 का अनुपालन कराया जाना सुनिश्चित करें। तदनुसार प्रार्थना पत्र निस्तारित किया जाता है। पत्रावली नियत दिनांक को 7ग2 पर सुनवायी हेतु पेश हो।

9. Having regard to the facts of the case and the submissions made on behalf of respondent No.8, the following order was passed on 22.8.2025 :-

- “1. Sri Prabhakar Dubey, Advocate has entered appearance on behalf of respondent No.8.
2. We have heard learned counsel for the parties at some length and prima facie, it is evident that the present case is gross abuse of the process of law and the administrative powers of the State.
3. Before we proceed to pass orders on merit, as prayed by learned counsel for respondent No.8, he is granted time to complete his instructions.
4. We also require the Civil Judge (Junior Division)/Judicial Magistrate, Bansi, Siddharth Nagar, to submit his comments through the District Judge in relation to the manner in which order dated 05.02.2025 has been passed by him in Original Suit No.49/2025.
5. The Registrar General shall communicate the instant order to the District Judge, Siddharth Nagar for immediate compliance.
6. Put up as fresh on 25.08.2025.”

10. In pursuance of the said order, Sri Pankaj, Civil Judge (Jr. Divn.), who had passed various orders in the suit from time to time, submitted his comments, through the District Judge, Siddharth Nagar, which is as under:

प्रेषक,
सिविल जज (जू0डि0)/जे0एम0
बांसी, जनपद सिद्धार्थनगर।
सेवा में,
माननीय जनपद न्यायाधीश
जनपद सिद्धार्थनगर।

विषय: अर्द्धशासकीय पत्र संख्या 88/2025 दिनांकित 22.08.2025 एवं रिट सी0 नं0 28263/2025 श्रीमती सोनी प्रति उ0प्र0 सरकार व सात अन्य के अनुपालन के संबंध में आख्या।

महोदय,

अति विनम्र निवेदन है कि मूल वाद संख्या 49/2025 संदीप गुप्ता बनाम श्यामजी आदि में वादी संदीप गुप्ता द्वारा न्यायालय सिविल जज (जू0डि0)/जे0एम0 बांसी, सिद्धार्थनगर में दिनांक 27.01.2025 को वाद दायर किया गया एवं न्यायालय सिविल जज (जू0डि0)/जे0एम0 बांसी, सिद्धार्थनगर द्वारा दिनांक 27.01.2025 को प्रथम द्रष्टया वादी के पक्ष में खसरा-खतौनी एवं पंजीकृत बैनामा के आधार पर अंतरिम अस्थायी निषेधाज्ञा पारित किया गया तथा प्रतिवादीगण/विपक्षीगण को नोटिस जारी किया गया।

दौरान मूलवाद सुनवायी वादी द्वारा दिनांक 05.02.2025 को प्रार्थना पत्र मय शपथ पत्र अन्तर्गत धारा 151 व्यवहार प्रक्रिया संहिता दाखिल किया गया। जिसमें वादी द्वारा यह कथन किया गया कि प्रतिवादीगण/विपक्षीगण द्वारा पूर्व में पारित आदेश दिनांकित 27.01.2025 अंतरिम अस्थायी निषेधाज्ञा का पालन नहीं किया जा रहा है, तथा संपत्ति पर जबरदस्ती कब्जा किया जा रहा है। इस संबंध में न्यायालय द्वारा माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय के विधि व्यवस्था को दृष्टिगत रखते हुए— 1. Board of Trustees of the Port of Mumbai Vs. Nikhil N. Gupta, (2015) 10 SCC 139, 2. Sree Ram Vs. State of U.P. 2011 (2) ALJ 187 (AII) (DB) 3. Smt. Jagannathiya Vs. State of U.P.] 2006 (64) ALR 330 (AII) (DB) दिनांक 05.02.2025 को वादी के प्रार्थना पत्र अन्तर्गत धारा 151 व्यवहार प्रक्रिया संहिता स्वीकार करते हुए संबंधित थानाध्यक्ष को आदेशित किया गया कि वह न्यायालय द्वारा पारित आदेश दिनांक 27.01.2025 का अनुपालन कराया जाना सुनिश्चित करें। न्यायालय द्वारा पूर्व में पारित आदेश दिनांकित 27.01.2025 किसी प्रकार का परिवर्तन नहीं किया गया है।

इस न्यायालय द्वारा उस समय उपलब्ध परिस्थितियों एवं प्रस्तुत साक्ष्यों पर विचार करते हुए अंतरिम अस्थायी निषेधाज्ञा आदेश की प्रभावशाली बनाये रखने तथा संभावित विघटन एवं विवाद की स्थिति को टालने के उद्देश्य से उक्त प्रार्थना पत्र स्वीकार किया गया।

पत्रावली में विगत कई तिथि व्यतीत हो जाने पर भी प्रतिवादीगण न्यायालय में उपस्थित नहीं हो रहे हैं और न ही प्रतिवादीगण द्वारा आज तक पत्रावली पर अपना जवाबोत्तर एवं अस्थायी निषेधाज्ञा प्रार्थना पत्र पर आपत्ति दाखिल किया गया है। पत्रावली प्रार्थना पत्र अन्तर्गत आदेश 39 नियम 1 व 2 के गुण दोष पर निस्तारण हेतु दिनांक 10.10.2025 नियत है

आख्या माननीय महोदय की सेवा में सादर प्रेषित ।

दिनांक— 22.08.2025

भवदीय
सिविल जज जू० डि० / जे० एम०
बांसी, जनपद सिद्धार्थ नगर ।

11. Respondent No.8 has also filed his affidavit. The stand taken by him is that the petitioner has not approached this Court with clean hands. It is alleged that the petitioner has incorrectly stated in the writ petition that respondent No.8 was posted as Reader in the court of CJM Siddharth Nagar, whereas, according to him, the correct position is that he was posted as Clerk in Copying Section. He denied having any closeness with the Judge. On merit, it is submitted that the property belonged to Gelhari, and after his death, it devolved on five persons. It is alleged that thereafter an oral settlement took place among the family members, pursuant to which two brothers executed the sale deed dated 14.2.2025 in respect of their shares in favour of respondent no.8. It is further claimed that possession was also delivered to him at the time of execution of the sale deed, and that he put his lock on the room which was allegedly constructed in the part of the property purchased by him. It is also alleged that as respondent No.8 is a permanent resident of District Sant Kabir Nagar and not permanently residing in the disputed house, the petitioner and other co-sharers taking advantage of the situation, broke open the lock, and forcibly entered the room allegedly in his possession, compelling him to institute the suit for permanent injunction restraining the defendants from creating any interference in his possession. The trial court granted a temporary injunction in his favour on 27.1.2025. It is

alleged that in violation of the said injunction order, the petitioner broke open the lock on 2.2.2025, compelling respondent no.8 to move an application on 5.2.2025 before the trial court seeking restoration of possession. The trial court, accordingly, passed the order on 5.2.2025, directing the SHO, Khesarhara, Siddharth Nagar, to ensure restoration of possession in favour of respondent No.8 and to submit a compliance report within three days. In compliance of the said order, the SHO, Police Station Khesarhara submitted a compliance report dated 7.2.2025 stating that possession had been restored in favour of respondent No.8 and that he had put his lock on the premises. Alongwith the compliance report, copies of the relevant reports and certificate was annexed, according to which, possession of the property had been duly handed over to respondent No.8. The further case of respondent No.8 is that, thereafter, the petitioner again broke the lock and entered the house. Consequently, this time, he directly requested the Tehsil authorities for delivery of possession, whereupon the Sub Divisional Magistrate vide order dated 28.5.2025, directed the Tehsil authorities to conduct spot inspection and take necessary action. Pursuant thereto, a team was constituted and possession was again delivered to respondent No.8 on 20.7.2025, and a spot memo was prepared in that regard.

12. Thus, the case of respondent No.8 is that he has not taken possession forcibly, but strictly in accordance with law. It is further asserted that possession of only 10 feet x 15 feet of the house has been delivered to him and the remaining portion continues to be in possession

of the other co-sharers. According to respondent no.8, the petitioner is one of the defendants in the civil suit and has effective alternative remedy of moving an application for vacation of the order of temporary injunction. On this premise, it is contended that the present writ petition is not maintainable and is liable to be dismissed.

13. The petitioner, however, has filed a rejoinder affidavit, reasserting that respondent No.8 wields considerable influence in the district court establishment. It is stated that on enquiry, she came to know that respondent no.8 had earlier worked as Peshkar in the court of Munsif, and was thereafter transferred as a Peshkar in the POCSO Court, and is presently working in the Copying Section. It has been reiterated that respondent No.8 was never in possession of any part of the house. According to the petitioner, respondent No.8 was well aware that the property in question is a residential house, in which families of five co-shares are residing and there has been no physical partition of their respective shares.

14. It has further been reasserted that the case set up by respondent No.8, alleging that the petitioner and other co-sharers twice broke open the lock and took possession, is palpably false. It is specifically pleaded that respondent No.8 never came into actual physical possession of any part of the ancestral property on basis of the sale deed. According to the petitioner, possession was sought to be obtained for the first time on 18.7.2025 through administrative intervention, under garb of the *ex parte* injunction order dated 27.1.2025 and not on basis of any pre-existing

lawful possession. It is further stated that Original Suit No. 49 of 2025 has been instituted by Shivdhari, widow of Gelhari, seeking cancellation of the sale deed and the said civil suit is presently pending. It is submitted that in absence of any fresh order of Civil Court directing the revenue authorities to handover possession to respondent No.8, the administrative authorities had no authority to entertain the application dated 26.05.2025. The dispossession of the petitioner, on the basis of the said application dated 26.05.2025, under the guise of execution of the temporary injunction order dated 27.01.2025, by the administrative authorities, is without jurisdiction.

Contentions of learned counsel for the parties:

15. Learned counsel for the petitioner submitted that :-

- (a) The administrative authorities had no power or jurisdiction to constitute any joint team for the purpose of delivering possession of the property to respondent No.8. The entire exercise carried out by the joint team constituted in pursuance of the officer memo bearing letter No. 121 dated __ July 25, is without authority of law and liable to be set aside.
- (b) The trial court exceeded its jurisdiction in granting ad-interim *ex parte* injunction, without first ascertaining whether the plaintiff (respondent No.8) was in actual physical possession of the suit property. Again, the trial court fell into error in entertaining the application for restoration of possession under Section 151 CPC, firstly, on a date not fixed in the case, and secondly, in allowing it

on the same date, even without issuing any notice to the petitioner and without conducting any enquiry. According to learned counsel, such an order, having serious civil consequences, could not have been passed in a summary manner.

(c) There was no order of the trial court for delivery of possession to respondent no.8, on basis of which the revenue team could have been constituted vide office memo dated July 25.

(d) Respondent No.8 could never have come into, nor was he ever in possession of any defined or demarcated portion of the property, inasmuch as the property is undivided. Further, the stand taken in the counter affidavit is inconsistent and falsifies the claim of respondent No.8 that he was dispossessed twice by the petitioner and other co-sharers.

(e) Trial court passed various orders in favour of respondent no.8 being swayed by the fact that he was an employee of the district court and worked as Peshkar in different courts. Consequently, the entire exercise stands vitiated.

16. *Per contra*, learned counsel for respondent No.8 submitted that:

(i) Respondent No.8 was lawfully handed over possession of the portion of the house in respect of which sale deed was executed in his favour, the vendors being in actual physical possession thereof at the time of execution of the sale deed.

(ii) The petitioner and other co-sharers twice broke open the locks and succeeded in dispossessing respondent No.8 and, therefore,

the trial court and the administrative authorities have rightly passed the orders to protect his possession and to restore status quo ante.

- (iii) The petitioner has an effective alternative remedy of seeking vacation of the temporary injunction by moving appropriate application before the trial court and, therefore, the present writ petition ought not to be entertained.

17. We have considered the rival submissions advanced by learned counsel for the parties and perused the material on record, including the written submissions.

Discussion and Analysis:

18. Admittedly, Gelhai, father-in-law of the petitioner, was a co-tenure holder along with several other persons of Plot No.211 area 0.4310 hectare. It is also admitted that upon his death, his share in the joint holding devolved on his four sons, namely, Shyamji, Premji, Ramji, Lalji and his wife, Shivdhari Devi. As per revenue records, though after death of Gelhai, name of all his heirs, came to be recorded in his place but there is no physical partition of the respective shares. There is also no evidence brought on record in this regard by respondent No. 8, except the bald assertion in respect of oral settlement. Moreover, there is no such case set up in the suit nor respondent no. 8 has ever asserted that his vendors were exclusive owners of the portion of property being transferred. There was

also no such recital in the sale deed. In fact, in the sale deed, it has not been stated how a specific portion of the property is being sold.

19. The specific case of the petitioner is that the house has been in joint possession of all the co-tenure holders. She has been residing therein along with her three children. One of the two shops on the ground floor was in her possession wherefrom she has been running a beauty parlour and cosmetic shop. It has been stated that since husband of the petitioner is a drunkard, she earns livelihood for the family from the business being run from the aforesaid shop. Respondent No.8, in the counter affidavit filed by him, has not denied that the petitioner was running a beauty parlour from one of the shops on the ground floor. He has also not disputed that the petitioner has been dispossessed on basis of the orders passed by the trial court and the action taken by the Administrative Authorities was ostensibly for giving effect to the orders of the trial court.

20. The present proceedings, in pursuance of which the petitioner and her family have been dispossessed, commenced with an application stated to have been filed by respondent No. 8 on 04.05.2025 before the Superintendent of Police, District Siddharth Nagar. In the said application, respondent no. 8 has asserted that he had purchased a small part of 0.0063197 hectare out of 0.4310 hectare of Gata No. 211, over which a residential building was in existence, by means of sale-deed dated 14.02.2024 from Shyamji and Premji. On basis of the said transaction, his name was mutated in the revenue records on 27.04.2024. It was further stated that he had put his domestic belongings in the said portion and had

put a lock thereon, thereby coming in possession of the same. On 27.01.2025, he instituted a suit in the court of Civil Judge (J.D.), Bansi seeking a decree of permanent injunction restraining the defendants from breaking the lock, raising construction over the property, or otherwise interfering with his alleged possession. It is alleged that despite order of temporary injunction in his favour, the vendors broke open the lock and re-entered the house, assuring him they would vacate the premises by March. However, despite repeated requests, they did not vacate the house. Respondent No.8 further claimed that he attempted to contact the vendor, Shyamji, telephonically as well as personally, but all such attempts failed. On the basis of the aforesaid allegations, the said application was filed seeking issuance of appropriate orders for delivery of possession of the house to respondent No.8. The application, for ease of reference, is extracted below:

“सेवा में,

श्रीमान् पुलिस अधीक्षक महोदय,
जनपद सिद्धार्थनगर।

महोदय,

सविनय निवेदन है कि प्रार्थी मौजा—सकारपार, तप्पा—बीसो, परगना—बांसी पूरब तहसील — बांसी थाना खेसरहा, जनपद सिद्धार्थनगर स्थित आराजी गाटा सं०—211/0.4310 हे० में से 0.0063197 हे० में निर्मित आवासीय मकान का दिनांक 14.02.2024 को श्यामजी व प्रेमजी पुत्रगण गेलहई से बैनामा लिया था। उक्त आराजी का नामांतरण दिनांक 27.04.2024 को प्रार्थी के हक में तहसीलदार महोदय बांसी द्वारा किया जा चुका है, जिसके आधार पर प्रार्थी का नाम खतौनी में बतौर संक्रमणीय भूमिधर दर्ज हो चुका है। क्रय शुदा मकान में प्रार्थी द्वारा कुछ घरेलू सामान रखकर एवं ताला लगाकर आबाद हो गया। माननीय सिविल जज जू०डि० बांसी द्वारा दिनांक 27.01.2025 को प्रार्थी के मकान का न ताला तोड़े न ही उक्त मकान में कोई निर्माण करें न ही वादी के शांति पूर्ण कब्जा दखल में अवरोध उत्पन्न करें। इसके बावजूद विक्रेता द्वारा उक्त मकान का ताला तोड़कर कब्जा कर लिया

और विक्रेतागण द्वारा आज तक उक्त मकान खाली नहीं किया गया। प्रार्थी द्वारा विक्रेता श्यामजी पुत्र गेल्हई के मोबाइन नं08948358513 पर फोन किये जाने पर उक्त विक्रेता श्यामजी द्वारा न तो प्रार्थी का फोन रिसीव किया जाता है और न ही व्यक्तिगत रूप से प्रार्थी से सम्पर्क किया जाता है।

अतः श्रीमान् जी से निवेदन है कि प्रार्थी का उक्त क्रय शुदा आवासीय मकान पर कब्जा दिलाये जाने हेतु सम्बन्धित को आदेशित करने की कृपा करें।

सादर।

दिनांक—04.05.2025

प्रार्थी

संलग्नक—थाना खेसरहा दिनांकित 02.02.2025

की आख्या

संदीप गुप्ता

मो0नं0—9721283848”

21. It is noteworthy that in the said application, respondent No. 8 did not disclose the date on which he was allegedly dispossessed by the vendors by breaking the lock and re-entering the portion claimed to have been sold to him. It is further relevant to note that after obtaining order of ad interim injunction from the trial court on 27.01.2025, respondent No. 8 filed an application under Section 151 CPC on 05.02.2025 alleging that the defendants in the suit had forcibly taken possession of the sold property by breaking open the locks, despite the subsistence of the order of temporary injunction, thereby violating the order passed by the court.

The relevant portion of the said application is extracted herein below:

“उपरोक्त स्थगन आदेश की जानकारी प्रतिवादीगण को हो गयी और वह वादी के अनुपस्थित का लाभ उठाकर दिनांक 02.02.2025 को वादी के मकान अक्षर ABFEA का ताला तोड़कर उसमें जबरन घुस गये और माननीय न्यायालय के स्थगन आदेश का उल्लंघन करके वादी दखिल दावे के उद्देश्य को फेल करने पर आमदा हैं। ऐसी परिस्थित में तहसीलदार बांसी व राजस्व निरीक्षक मय लेखपाल थानाध्यक्ष खेसरहा मय पुलिसबल के साथ वादी के मकान में जो दौरान मुकदमा प्रतिवादीगण द्वारा ताला तोड़कर कब्जा कर लिया गया है को खाली कराया जाना आवश्यक व न्यायसंगत है।”

22. On the same date, the trial court allowed the aforesaid application and directed the SHO, Khesraha, to ensure compliance with the order of ad-interim injunction dated 27.01.2025. The order passed by the trial court on the said date reads as follows:

"दिनांक – 05.02.2025

वादी द्वारा प्रार्थना पत्र अन्तर्गत धारा – 151 सी0पी.सी0 प्रस्तुत कर कथन किया गया है कि प्रतिवादी द्वारा विवादित मकान में जबरन ताला तोड़कर कब्जा कर लिया है। न्यायालय द्वारा अन्तरिम अस्थायी निषेधाज्ञा जारी किया गया है, उसके बावजूद भी प्रतिवादीगण न्यायालय के आदेश का उल्लंघन कर रहे हैं।

सूना एवं पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से विदित होता है कि न्यायालय द्वारा दिनांक 27.01.2025 को प्रतिवादीगण के विरुद्ध अन्तरिम निषेधाज्ञा जारी किया गया है, इसके बावजूद प्रतिवादीगण द्वारा उक्त विवादित सम्पत्ति में जबरन कब्जा कर लिया है। अतः वादी का प्रार्थना पत्र न्यायहित में स्वीकार किया जाता है। मामला अर्जेन्ट है। ऐसे में थानाध्यक्ष खेसरहा को आदेशित किया जाता है कि न्यायालय द्वारा पारित आदेश दिनांक 27.01.2025 का अनुपालन कराया जाना सुनिश्चित करें। तदनुसार प्रार्थना पत्र निस्तारित किया जाता है। पत्रावली नियत दिनांक को 7ग2 पर सुनवायी हेतु पेश हो।

हस्ताक्षर अपठनीय

05.02.2025

सिविल जज (जू0डि0)/जे0एम0

बांसी, सिद्धार्थनगर।"

23. On the same date, the trial court also issued a notice to the Inspector Incharge, Police Station, Khesraha, District Siddharth Nagar directing him to ensure due compliance of the order dated 27.01.2025 and to submit a compliance report within three days. The notice issued by the trial court reads as follows:

न्यायालय सिविल जज (जू0डि0)/न्यायिक मजिस्ट्रेट, बांसी, सिद्धार्थनगर।

नोटिस

बनाम

थाना प्रभारी, खेसरहा, सिद्धार्थनगर।

आपको अवगत कराना है कि मूल वाद संख्या 49/2025 संदीप गुप्ता बनाम श्यामजी आदि में दिनांक 27.01.2025 को प्रतिवादीगण को अन्तरिम निषेधाज्ञा जारी किया गया है, जिसके बावजूद प्रतिवादीगण द्वारा उक्त मकान का ताला तोड़कर घर में धुस गये हैं, न्यायालय के आदेश का उल्लंघन किया गया है, जो कि अत्यन्त आपत्तिजनक है।

अतः आपको आदेशित किया जाता है कि न्यायालय के आदेश दिनांक 27.01.2025 का अनुपालन कराया जाना सुनिश्चित करे और न्यायालय को अन्दर 03 दिवस में उक्त कार्यवाही से अवगत करें।

हस्ताक्षर अपठनीय

दिनांक – 05.02.2025

05.02.2025

सिविल जज (जू0डि0)/जे0एम0
बांसी, सिद्धार्थनगर।

संलग्नक— आदेश दिनांक 27.01.2025 की एक प्रति।”

24. It is noteworthy that on 05.02.2025 itself, the very date on which application under Section 151 CPC was filed, it was entertained and allowed *ex parte*. The suit was not fixed for any other purpose on that date. As a matter of fact, while granting *ex parte* ad-interim injunction on 27.01.2025, the trial court had issued summons to the defendants and had fixed 24.02.2025 for W.S. and 06.03.2025 for settlement of issues. It is further relevant to note here that while passing order of *ex parte* ad-interim injunction and fixing 10.02.2025 for consideration of the application for temporary injunction, the trial court completely overlooked the mandatory provisions of Order XXXIX Rule 3 CPC. Under the said provision, the court granting *ex parte* injunction is required to direct the plaintiff to take immediate steps to serve upon the defendants, by the registered post, copies of the application for injunction alongwith the supporting affidavit, a copy of the plaint, and copies of the documents relied upon and further to file, on the day such injunction was granted or on the immediately

following day, an affidavit stating that copies have been duly delivered or dispatched. A perusal of the order granting temporary injunction reveals that no specific reason has been recorded therein for formation of the opinion that the object of granting the injunction would be defeated by delay. Furthermore, the trial court failed to ensure compliance with the statutory requirement of service of notice upon the defendants alongwith copies of plaint and other relevant documents as mandated under law.

25. The specific case of the petitioner is that she has neither been served with summons in the suit nor was she aware of the *ex parte* injunction order until the Revenue Authorities and the Police Team arrived at the site and delivered possession to respondent No.8. In cases where an *ex parte* injunction order is granted, the law mandates that every endeavour must be made to dispose of the injunction application at the earliest. However, a perusal of the order-sheet reveals that on the very next date i.e. 10.02.2025, the trial court without adverting to the question as to whether respondent No.8 had complied with the mandatory requirements contained in the proviso to Order XXXIX Rule 3 CPC, adjourned the matter to 24.02.2025 and extended the injunction in a routine manner. The same course of action was repeated on subsequent dates, namely, 24.02.2025, 06.03.2025, 18.03.2025, 25.03.2025, 24.04.2025, 15.05.2025, 30.05.2025, 11.07.2025. The orders passed on the aforesaid dates are extracted herein below:

"10 / 2 / 25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 24.02.2025 को पेश हो। TI नियत तिथि तक
प्रभावी।

24/2/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 06.03.2025 को पेश हो। TI प्रभावी।

06/3/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 18.03.2025 को पेश हो। TI नियत तिथि तक
प्रभावी।

18/3/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 25.03.2025 को पेश हो। TI नियत तिथि तक
प्रभावी।

25/3/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 24.04.2025 को पेश हो। TI प्रभावी।

24/4/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 15.05.2025 को पेश हो। TI प्रभावी।

15/5/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 30.05.2025 को पेश हो। TI प्रभावी।

30/5/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 11.07.2025 को पेश हो। TI प्रभावी।

11/7/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० ७ग।
वादीगण दिनांक 10.10.2025 को पेश हो। TI प्रभावी।”

26. The aforesaid circumstances clearly demonstrate that the trial court proceeded in a cursory manner in utter disregard of the mandatory requirements of law. This court is constrained to observe that the manner in which the proceedings were conducted, leaves it unclear as to whether such a course was adopted out of ignorance of law or for reasons extraneous thereto.

27. It is further noteworthy that on 05.02.2025, respondent No. 8 moved an application before the trial court under Section 151 CPC alleging that on 02.02.2025 the defendants broke open the locks of the portion allegedly in his possession and thereby violated the injunction order, and on that basis, sought restoration of possession. The alleged dispossession is stated to have taken place within five days from the date of grant of the *ex parte* injunction and within the period fixed by the trial court for service of summons upon the defendants. However, in the said application, there is no indication whatsoever that respondent no.8 had taken steps to serve the defendants with the summons of the suit, though, by the date of filing of the application, the period granted for services had already expired. It is also relevant to note that, as per the averments contained in the application dated 05.02.2025, the apprehended conduct which formed the basis for seeking injunctions namely, re-entry into the said portion by breaking open the locks, had allegedly materialized in the manner projected by respondent no.8 at the time of institution of the suit.

28. The trial court in the comments submitted in pursuance of the order dated 28.08.2025 has tried to justify his action by placing reliance on the judgement of Supreme Court in **Board of Trustees of the Port of Mumbai Vs. Nikhil N. Gupta and another**, (2015)10 SCC 139 and Division Bench judgements of this Court in **Sree Ram Vs. State of Uttar Pradesh and others**, 2011(2)ALJ 187 and **Smt. Jagannathiya Vs. State of U.P. through Secretary Home, U.P. Lucknow and others**, 2006 (64) ALR 330.

(a) In **Board of Trustees of the Port of Mumbai (Supra)**, one of the party, which had suffered a decree of eviction and had been given time to vacate subject to filing of undertaking before the Supreme Court, failed to vacate the premises. Consequently, when the contempt petition was filed before Supreme Court by the decree holder complaining breach of undertaking on part of the judgement debtor, the Supreme Court directed for execution of warrant of possession notwithstanding the objections by the judgement debtor or by any third party alleged to be in possession of the suit premises. The facts of the said case are clearly distinguishable except that it recognises the principle that in case of violation of undertaking given to a Court, it has power to issue appropriate direction to ensure execution of the decree.

(b) In **Sree Ram (supra)** in a writ petition filed under Article 226 of the Constitution before this Court, it was alleged that the injunction order granted by the trial court in a Civil Suit was being violated. The plaintiff's application under Order XXXIX Rule 2A CPC was stated to be pending.

The petitioner prayed for appropriate direction by this Court to the District Administration to ensure compliance of the order of injunction passed by the trial court. After citing various judgements of Supreme Court holding that the Court is competent to pass suitable orders under Section 151 CPC to meet ends of justice and to prevent abuse of process of Court, it has been held that the trial court also has sufficient powers to issue appropriate directions to District Administration/Police Authorities to ensure compliance with its order. While clarifying the above stated legal position, the High Court permitted the petitioner to approach the trial court for enforcement of the order and directed the trial court to look into the matter and pass appropriate orders after providing opportunity of hearing to the parties. The said decision, as noted, recognises the power of the Court to issue appropriate orders to advance the cause of justice subject to opportunity of hearing being provided to the parties. The said judgement, in fact, would go against the stand taken by the learned trial Judge, as in the present case, the application under Section 151 CPC was allowed on the very date it was filed and without affording any opportunity of hearing to the defendants.

(c) The third judgement relied upon by the trial Judge in case of **Smt. Jagannathiya (supra)** also merely holds that once the Court is satisfied that interim order passed by it has been disobeyed, it is obliged to pass appropriate directions for enforcement of its order and it cannot remain a mere spectator. In the said case, an order of temporary injunction was granted by the trial court and the said order was upheld by the revisional

court and also in the petition filed before this Court under Article 227 of the Constitution. The case of the plaintiff was that despite the order of interim injunction in her favour, the defendants were interfering in her possession, and the court below had expressed its inability to enforce its order, observing that the duty to enforce the orders passed by it was that of the Police Authorities. In the said context, it was held that the trial court, apart from specific powers conferred upon it under Order XXXIX, Rule 2A CPC, also has power, to issue necessary instructions to the police, if the facts so warrant, to ensure compliance with its order.

29. The power of trial court to restore status quo ante, in appropriate cases, is not in dispute. However, the question which arises for consideration before this court is whether, in the facts and circumstances of the instant case, there existed any justification or occasion for exercise of such power, particularly in the absence of compliance with the mandatory procedural safeguards and without affording an opportunity of hearing to the affected parties.

30. As already noticed, the application was filed on 05.02.2025 on a date which was not fixed in the suit. The trial court, on the very same date, took up the application for consideration and allowed it *ex parte*. The undue haste with which the application was entertained and granted gives rise to a serious doubt regarding the propriety of the exercise undertaken by the trial court. The court was required to issue notice of the said application to the defendants. It ought to have conducted atleast a *prima facie* fact finding exercise to ascertain whether the plaintiff was, in fact, in

possession of the property and whether the alleged dispossession had taken place after the grant of order of temporary injunction so as to constitute a violation thereof. This requirement was all the more imperative in the facts of the instant case, where the order of temporary injunction was granted *ex parte*, solely on the version of the plaintiff, without even obtaining any Commissioner's report with regard to possession of the suit property.

31. The admitted case of respondent No. 8 is that in pursuance of order of trial court dated 05.02.2025, he was again put in possession of the suit property by the Police Authorities and a written acknowledgement was issued by him, addressed to SHO, Police Station Khesraha stating that possession had been restored. However, in the subsequent application filed by him on 14.05.2025, there is neither any reference to the alleged dispossession in the past nor to the order of the trial court dated 05.02.2025, nor even to the alleged restoration of possession in pursuance thereof on 07.02.2025. The petitioner does not complain of any dispossession in pursuance of order dated 05.02.2025. On the contrary, she categorically denies that respondent No.8 was ever put in possession of the suit property. She has also specifically denied the allegation regarding breaking open of locks on 02.02.2025 as well as alleged restoration of possession to respondent No. 8 in compliance with the order dated 05.02.2025.

32. In the suit, the specific case of respondent No. 8 was that he was in possession on the date of filing of the suit and on that basis, relief of

permanent injunction was sought. The application for temporary injunction was founded on the allegation that there was a threat of dispossession of the plaintiff/respondent No.8 by defendants by breaking open the locks and the trial court, accepting the same to be true, also granted *ex parte* ad interim injunction. However, the aforesaid stand of respondent No. 8 stands totally belied by the pleadings made by him in paragraph-7 of the short counter affidavit filed in the present writ petition, wherein he has stated that after purchasing the property and being put in possession thereof, he came to know that the co-sharers of the house, including the petitioner, had broken the lock and entered into the portion purchased by him, which compelled him to institute the suit. Paragraph-7 of the short counter affidavit of respondent No.8 is reproduced hereinbelow:

“7. That it is stated here that since the answering respondent is the permanent resident of District Sant Kabir Nagar and doing job in District- Siddhartha Nagar, and as such he is not permanently residing in the said house which he purchased through sale deed, and accordingly the answering respondent has put the lock over the property in question, but after some it was informed to the answering respondent that the other co sharer including the petitioner have break the lock and enter in the purchased room, and then the answering respondent filed Suit No- 49 of 2025 Sandeep Gupta Vs Shyamji and others seeking permanent injunction restraining the defendants from creating any interference in the possession of the plaintiff and not to break the lock put over the property in question.”

33. Reverting to the application dated 14.05.2025 filed by respondent No. 8 before the police authorities seeking appropriate orders for handing over possession to him, it is pertinent to note that the said application was

forwarded to Inspector Incharge, Police Station Khesraha, District Siddharthnagar on 16.05.2025 and appears to have been received at the police station on the same date. On the said application, the Inspector Incharge, Sakarpar, Police Station Khesraha submitted his report to Sub Divisional Officer, Bansi. In the said report, it was categorically stated that respondent No. 8 could not get possession of the property on basis of the sale deed in his favour and accordingly, a request was made for constituting a joint team for delivering possession to respondent No. 8. The said report assumes significance and is, therefore, reproduced herein below:

“सेवा में,
श्रीमान् उपजिलाधिकारी बांसी महोदय,
जनपद सिद्धार्थनगर।

महोदय,

सादर निवेदन है कि आवेदक संदीप गुप्ता पुत्र रामप्रसाद सा0 गोवापार थाना घनघटा जनपद सन्तकबीर नगर के द्वारा गाटा सं0-211/0.4310 हे0 में से 0.0063197 हे0 में निर्मित आवासीय मकान मौजा स्थित सकारपार में श्यामजी पुत्र गेलहई सा0 टिकूर थाना खेसरहा जनपद सिद्धार्थनगर से दिनांक 14.02.2024 को बैनामा लिये जो दिनांक 27.04.2024 को नामान्तरण हो चुका है। उक्त मकान का कब्जा आवेदक उपरोक्त को नहीं मिल पाया है। उक्त मकान में विपक्षी श्यामजी पुत्र गेलहई उपरोक्त अपने परिवार के साथ रह रहे हैं। उक्त मकान का कब्जा दिलाने हेतु आवेदक उपरोक्त द्वारा दिनांक 16.05.2025 को श्रीमान पुलिस अधीक्षक सि0नगर महोदय को प्रार्थना पत्र दिया गया है तथा उक्त प्रकरण के सम्बन्ध में मूल वाद सं049/2025 संदीप बनाम श्यामजी मा0 न्यायालय द्वारा दिनांक 27.01.2025 को अस्थाई निषेधाज्ञा आदेश पारित किया गया है।

अतः महोदय से निवेदन है कि आवेदक उपरोक्त का उक्त मकान का कब्जा दिलाने हेतु संयुक्त टीम गठन करने की कृपा की जाय। जिससे उक्त प्रकरण में समस्या का समाधान कराया जा सके। रिपोर्ट सादर सेवा में प्रेषित है।

ह0 / अपठनीय

28.05.2025
राकेश त्रिपाठी
चौकी प्रभारी सकारपार
थाना खेसरहा
जनपद सिद्धार्थनगर''

34. In the report, shelter has been taken behind the *ex parte* injunction order dated 27.01.2025, without appreciating that the said order was in prohibitive terms and not for delivering possession to respondent No. 8 in case he was not already in possession. There is also no reference to order of trial court dated 05.02.2025 apparently for the reason that in purported compliance of the said order, possession had allegedly been restored to respondent No. 8 in the past and therefore, the said order had exhausted itself. On the other hand, the report reinforces the stand of the petitioner that respondent No. 8 never came in actual physical possession of the house on basis of the alleged sale deed. Admittedly, there was no fresh order of the trial court directing the Administrative Authorities to put respondent No. 8 in possession of the house. The order of temporary injunction was purely prohibitory in nature and not mandatory. Therefore, the Chowki Incharge, Sakarpar clearly exceeded his authority in requesting the SDO to constitute a joint team for delivery of possession to respondent No. 8, merely on basis of the request of respondent No. 8.

35. The subsequent direction issued by the SDM dated 25.06.2025 to the Tehsildar for constituting a joint team, followed by order of the Tehsildar dated 02.07.2025 to Naib Tehsildar to the same effect, and

Office Order dated __, July 2025¹ whereby a team of Revenue Officials was constituted for delivery of possession of the property to respondent No. 8, are without jurisdiction. In the facts and circumstances noted above, the Administrative Authorities had exceeded their authority and jurisdiction in constituting a revenue team for delivering possession to respondent No. 8.

36. Although, the name of respondent No. 8 came to be recorded in the revenue records in place of vendors but his name is jointly recorded with other co-tenure holders. As already stated, there is no division of the holding. The theory of oral partition has been set up by respondent No. 8 for the first time in the short counter affidavit. Copy of the khasra which is document of possession has also not been filed in the suit nor before this Court. In the aforesaid situation, even if, we abstain from going into the merits of the *ex parte* injunction order dated 27.01.2025, we are left with no doubt in our mind that the trial court had acted in a patently illegal manner, with material irregularity, in entertaining the application dated 02.02.2025 under Section 151 CPC, for restoring the possession, and in allowing the said application on the same date *ex parte*. At the least, the trial court ought to have issued notice of the said application to the defendants and afforded them an opportunity to contest the same. In no event, the procedure adopted by the trial court was justified.

37. Additionally, we find that there is no finding recorded in the order dated 05.02.2025 that respondent No. 8 was in possession of the suit

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07.2025

property on the date when injunction order was passed in his favour, nor is there any finding as regards the date on which the alleged dispossession had taken place. In the absence of these findings, the order of the trial court allowing the application for restoring status quo ante is wholly illegal.

38. We find that the trial court has exceeded its jurisdiction in passing order dated 05.02.2025 and the Administrative Authorities have equally erred in constituting a revenue team for delivering possession to respondent No. 8 and in thereafter dispossessing the defendants, including the petitioner herein, from the suit property, through the said team. It amounts to a gross abuse of the administrative powers and is wholly without jurisdiction. The tearing hurry in which the matter has proceeded raises serious doubt about the *bona fides* of orders passed by the trial court and the action taken by the Administrative Authorities. The circumstances clearly warrant an enquiry on the administrative side.

39. As we find that both the Court below as well as Administrative Authorities have acted in a totally *mala fide* manner and in colourable exercise of power in dispossessing the petitioner and consequently, we are not declined to accept the submission that the instant petition should not have been entertained and the petitioner should be relegated to the alternative remedy of filing objection and praying for appropriate relief before the trial court.

40. Accordingly, we **dispose of** the writ petition with the following directions:

- a) Respondents No. 2 & 3 are directed to ensure that the possession of the property in dispute is handed over to the petitioner and other co-sharers within 48 hours from the date of communication and receipt of a copy of this order.
- b) Let copy of this order be placed before the Hon'ble Chief Justice for consideration and for passing appropriate orders, if so deemed fit, for initiating disciplinary enquiry against the Civil Judge (Junior Division) who has passed the order dated 05.02.2025.
- c) So far as respondent No. 8, an employee of District Judgeship Siddharthnagar is concerned, the matter be placed before the competent authority for appropriate action in accordance with law.
- d) The petitioner shall be entitled to costs quantified at Rs.1,00,000/-, which shall be paid by respondent No. 8 by way of compensation for illegal dispossession of the petitioner and for the mental trauma suffered by the petitioner and her three minor children. The aforesaid amount shall be paid by respondent No. 8 to the petitioner within a period of one week from the date of this order, failing which respondent No. 2 shall forthwith issue a recovery certificate for recovery of the said amount as arrears of land revenue and shall ensure recovery thereof from respondent No. 8 and payment to the petitioner positively within a further period of one month.

Dated: January 5, 2026
Mukesh Kr./Ankit/gp

(Arun Kumar,J.)

(Manoj Kumar Gupta,J.)