

respondent No. 3 mentioning therein that the petitioner is illegally occupying the house situated at Gata No. 860 situated at Village- Tahbarpur, District- Azamgarh. In this regard earlier also oral and written directions have been issued to petitioner to vacate the premises and hand over the possession to the owner but the same has not been complied with. As a last warning you are directed to vacate the premises in dispute within one week and hand over the possession to the owner of the house otherwise, the premises will be vacated by force and damages for the same be also recovered. Notice dated 25.03.2024 impugned in the writ petition is quoted as under:-

"कार्यालय उपजिलाधिकारी-निजामाबाद, आजमगढ़।

संख्या 145/ एस०टी० दिनांक 25 मार्च, 2024

नोटिस

श्रीमती फूलमती पत्नी गोविन्द निवासी ग्राम नवापुर पर० व तहसील निजामाबाद जनपद आजमगढ़।

श्री साधू पुत्र सुचित ग्राम महवार पर० व तहसील निजामाबाद आजमगढ़ द्वारा इस आशय का प्रार्थना-पत्र प्रस्तुत किया गया है कि आपके द्वारा ग्राम तहबरपुर तहसील निजामाबाद में स्थित भूमिधरी गाटा सं० 860 में बने मकान पर अवैध कब्जा किया गया है। उक्त प्रकरण में पूर्व में आपको लिखित व मौखिक रूप से कब्जा खाली कर भवन स्वामी को सौंपने हेतु कई बार निर्देशित किया गया किया जा चुका है। किन्तु आपके द्वारा ऐसा नहीं किया गया।

उक्त के क्रम में आपको अन्तिम रूप से सचेत किया जाता है कि, पत्र प्राप्त के एक सप्ताह के अन्दर विवादित स्थल को छोड़कर भवन स्वामी को सुपुर्द कर दे अन्यथा की स्थिति में खाली कराया जायेगा और खाली कराने का हर्जाना वसूल किया जायेगा।

ह० अपठनीय

(सन्त रंजन)

उपजिलाधिकारी,

निजामाबाद- आजमगढ़।"

4. Brief facts of the case as mentioned in the writ petition are that Plot No. 860 area 14 kari was recorded in the name of one Chandarbali, who had two

daughters. In the year 1988, the father-in-law of the petitioner paid Rs. 3500/- to Chandarbali, the recorded tenure holder/ owner of the land for purchase of Plot No. 860, came in possession over the disputed land and has constructed a house on the said plot. The sale deed however, could not be executed as Chandarbali died. After the death of Chandarbali, name of respondent Nos. 4 to 6 was mutated in the revenue records over the plot in dispute as legal heirs. Respondent Nos. 4 to 6 wanted to dispossess the petitioner from the house in question. The petitioner, therefore, filed Original Suit No. 313 of 2024 (Phoolmati Vs. Ramchander and others) for permanent injunction in the court of Civil Judge (Junior Division) Azamgarh on 15.03.2024 and the said suit is pending between the parties. Respondent Nos. 4 to 6 moved application before the Commissioner Azamgarh, Mandal Azamgarh with the prayer that petitioner be directed to vacate the house in dispute. Thereafter, the respondent moved an application before respondent No. 3 that petitioner be directed to vacate the house in question situated at Gata No. 860 and thereafter, the order dated 25.03.2024 was passed by respondent No. 3.

5. This Court by its previous order dated 01.05.2024 stayed the order passed by the respondent No. 3 dated 25.03.2024 and directed the Sub Divisional Magistrate, Nizamabad, District Azamgarh to file his personal affidavit within a period of three weeks explaining that how such an order has been passed by Sub Divisional Magistrate, Nizamabad, District- Azamgarh and under which provision of law. Order dated 01.05.2024 passed by this Court is quoted as under:-

"1. Heard learned Counsel for the parties and perused the record.

2. *The present writ petition has been filed challenging the order dated 25.3.2024 passed by the S.D.M., Nizamabad, District-Azamgarh. By the order impugned, the S.D.M., Nizamabad, District-Azamgarh has directed the petitioner to vacate the house in question on a complaint made by one Sadhu.*

3. *Let the S.D.M., Nizamabad, District-Azamgarh filed his personal affidavit within a period of three weeks explaining that how such an order has been passed by the S.D.M., Nizamabad, District-Azamgarh and under which provision of law.*

4. *List this case after three weeks, as fresh.*

5. *Until further order of this case, the effect and operation of the order dated 25.3.2024 passed by the S.D.M., Nizamabad, District-Azamgarh shall remain stayed."*

6. Thereafter, the personal affidavit has been filed by respondent No. 3 on 20.05.2024. The petitioner has also filed a reply to the personal affidavit filed by respondent No. 3. In his personal affidavit, respondent No. 3 has stated that petitioner is neither a recorded owner of Plot No. 860 area 14 kari, situated in Village-Tahbarpur, District- Azamgarh as per the revenue records nor the petitioner has submitted any documentary evidence as to the sale deed executed in her favour. It has also been stated by respondent No. 3 that respondent Nos. 5 and 6 are recorded as bhumidhar over Gata No. 860 area 0.044 hectares and are co-owners of the property in dispute and their share is 14 kari and on the said area, they have constructed two rooms house and the writ petitioner has occupied one room illegally and is running her shop. In this regard, the respondents moved applications dated 01.04.2021 and

03.02.2022 before the Additional Commissioner, Azamgarh Division, Azamgarh with the prayer that Sub Divisional Magistrate, Nizamabad and the Circle Officer, Tahbarpur be directed to get the premises vacated in illegal possession of the husband of the petitioner with immediate effect and an F.I.R. may also be lodged against the persons in illegal possession. On the aforesaid applications, the Additional Commissioner passed orders on 01.04.2021 and 03.02.2022 which are annexed as Annexure Nos. P.A.3 to the personal affidavit filed by respondent No. 3. The order dated 01.04.2021 is quoted as under:-

"अतिआवश्यक/

समयबद्ध

कार्यालय आयुक्त आजमगढ मण्डल आजमगढ।

संख्या 1176 / जनसुनवाई 2021 दिनांक 01 अप्रैल 2021

1- उप जिलाधिकारी,

निजामाबाद, आजमगढ।

2- क्षेत्राधिकारी,

बूढनपुर, आजमगढ।

कृपया श्री साधु पुत्र सूचित ग्राम महवार थाना तहबरपुर तहसील- निजामाबाद जनपद आजमगढ के प्रस्तुत शिकायती प्रार्थना पत्र दिनांक 01.04.2021 का आवलोकन करें, जिसमें शिकायत द्वारा यह अवगत कराया गया है कि पुस्तैनी मकान में विपक्षी गोविन्द पुत्र होरी आदि के अवैध कब्जा मकान को खाली कराने का अनुरोध की गयी है।

अतः प्रश्नगत प्रकरण में स्थलीय जाँच करा लें यदि जाँच में तथ्य सही पाये जाते हैं तो अभिलेखों के आधार पर नियमानुसार खाली कराते हुये कृत कार्यवाही से इस कार्यालय को दिनांक 25.01.2021 तक अवगत कराने का कष्ट करें।

संलग्न- यथोपरि।

ह० अपठनीय

(अनिल कुमार मिश्र)

अपर आयुक्त (प्रशासन)

आजमगढ मण्डल, आजमगढ"

Thereafter, another order dated 03.02.2022 was passed by Additional Commissioner (Judicial) Azamgarh,

Mandal Azamgarh which is also quoted as under:-

“अनुस्मारक पत्र-1

कार्यालय आयुक्त, आजमगढ़ मण्डल, आजमगढ़।

संख्या में मों/ शि०लि०-2022

दिनांक 03 फरवरी, 2022

1-उप जिलाधिकारी, निजामाबाद, आजमगढ़।

2- क्षेत्राधिकारी,

बूढ़नपुर, आजमगढ़।

कृपया इस कार्यालय के पत्र संख्या-1176/क०स०-2020 दिनांक 01.04.2021 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा श्री साधू पुत्र सूचित ग्राम-महुवार थाना-तहवरपुर तहसील-निजामाबाद जनपद-आजमगढ़ के प्रार्थना पत्र दिनांक 05.12.2020 के सन्दर्भ में उल्लिखित तथ्यों की स्थलीय जाँच करा लें, अभिलेखों के आधार पर आवश्यक कार्यवाही कराने का अपेक्षा की गयी थी, परन्तु प्रश्रगत प्रकरण में वांछित आख्या अनी तक आपके स्तर से प्राप्त नहीं हुई है।

अतः आपसे पुनः अपेक्षा किया जाता है कि इस कार्यालय के पत्र संख्या-1176/ क०स० 2020 दिनांक 01.04.2021 द्वारा की गयी अपेक्षानुसार प्रकरण में कृत कार्यवाही से दिनांक 21-02-2022 तक इस कार्यालय को अवगत कराने का कष्ट करें।

(हंसराज)

अपर आयुक्त (न्यायिक)

आजमगढ़ मण्डल, आजमगढ़”

7. It has been further stated in the personal affidavit that in view of directions issued by the Additional Commissioner, Azamgarh Mandal, Azamgarh, respondent No. 3 has no option but to comply with the order passed by the higher authority i.e. Additional Commissioner, Azamgarh Mandal, Azamgarh. It has been further stated that after the spot inspection made by respondent No. 3 along with Circle Officer of the house in dispute, respondent No. 3 found illegal possession of the petitioner's husband, namely, Govind Singh s/o Hori and neither the petitioner's husband nor the

petitioner had submitted any documentary evidence regarding purchase of the plot in dispute from respondent Nos. 4 and 5 or from their forefathers, namely, Chandarbali, though, they alleged that they had purchased 14 kari of land in the year 1988 from Chandarbali. It has also been stated in personal affidavit that after the spot inspection by the revenue team, it was found as Chandarbali was issueless, the property devolved upon his real brother Suchit and after the death of Suchit, his share came to his sons namely, Sadhu, respondent No. 5 and Dadhibal, successor in interest of Dadhibal respondent No. 6 and their name were also recorded in the revenue records. It is also stated that in view of these facts, respondent No. 3 has no option and in compliance of the order passed by the Additional Commissioner, has issued notice dated 25.03.2024 to the petitioner. It has been further stated that in view of these facts on 03.04.2024 the property in dispute was got vacated from the petitioner with consent of the petitioner in presence of joint team of revenue as well as police force in presence of the villagers. Copy of the spot memo dated 03.04.2024 is annexed as Annexure No. P.A. 4 to the personal affidavit and the same is quoted as under:-

“स्पॉट मेमो

आज दिनांक 03/04/2024 को ग्राम- तहवरपुर परगना व तहसील-निजामाबाद जनपद-आजमगढ़ के निवासी साधु पुल्ल सूचित द्वारा दिये गये शिकायती प्रार्थना-पल के निस्तारण में पक्ष-विपक्ष को श्रीमान् उपजिलाधिकारी महोदय द्वारा नोटिस जारी कर उभय पक्षों को सुना गया। जिसके क्रम में विपक्षी फूलमती पत्नी गोविन्द द्वारा आवेदक की दुकान स्थित गाता से 0-860 मि रकबा 14 कड़ी पर अवैध रूप से कब्जा पाया गया। कब्जे के सम्बन्ध में कब्जेधारी कोई साक्ष्य प्रस्तुत नहीं कर पाई। उक्त के बावत् फूलमती पत्नी गोविन्द को मकान दुकान खाली करने हेतु एक सप्ताह का समय दिया गया। किन्तु समय सीमा बीत जाने के उपरांत भी कब्जा नहीं खाली किया गया। अतएव आज दिनांक

03/04/2024 को राजस्व व पुलिस बल की संयुक्त टीम के सहयोग से श्रीमान् नायब तहसीलदार की अध्यक्षता में खाली कराकर अविदक को दे दिया गया। मौके पर अगल बगल व ग्राम के उपस्थित सम्भ्रांत व्यक्तियों के हस्ताक्षर / नि० अ० कराया गया।

03-04-2024.

ले ० म ० - टिकापुर”

8. It has also been stated that because of illegal possession of the petitioner on the plot in dispute there was an apprehension of riot and for avoiding the same and to maintain law and order, with the peaceful consent of the petitioner her illegal possession was vacated by the revenue team in pursuance of the notice issued by respondent No. 3 in compliance of orders passed by Additional Commissioner. The stand taken by respondent No. 3 is in paragraph Nos. 4 to 14 of the personal affidavit and the aforesaid paragraphs are quoted as under:-

“4. That, the petitioner is not recorded owner of the plot no. 860 area 14 Kari situated in Village Tahbarpur, District Azamgarh as per revenue record of fasli year 1426-1431 nor she has submitted any documentary evidence regarding the registered deed of the plot in dispute before the respondent as alleged. In pursuance of the orders dated 01.04.2021 and 03.02.2022 passed by the Additional Commissioner, (Judicial), Azamgarh Division, Azamgarh. For kind perusal of this Hon'ble Court a true photocopy of the katauni of fasli year 1426-1431 is being filed herewith and marked as Annexure No.P.A.-01 to this affidavit.

5. That, it is noteworthy that the respondent nos. 5 and 6 having the transferable rights of gata no. 860 area 0.044 hect. wherein, they are co owner of the property in dispute and their shares is 14 Kari and on that area they have constructed 2 rooms house wherein, the

writ petitioner has occupied one illegally and running her shop as alleged by the respondent nos. 5 and 6 and regarding its respondent no. 5 have made the application on 01.04.2021 and 03.02.2022 before the Additional Commissioner, Azamgarh Division, Azamgarh for vacating the house illegally occupied by the husband of the petitioner namely Govind son of Hori. For kind perusal of this Hon'ble Court a true photocopy of the application dated 01.04.2021 and 03.02.2022 are being collectively filed herewith and marked ANNEXURE NO.P.A. 02 to this affidavit.

6. That, in pursuance of the aforesaid applications made by the respondent no. 5 the Commissioner, had passed the order on 01.04.2021 and 03.02.2022 respectively in Jan Sunwai and passed the order and directing to the deponent/respondent no.3 Sub Divisional Magistrate, Nizamabad, District Azamgarh as well as Circle officer, Tahbpur, District Azamgarh to make an enquiry regarding the illegal possession of one Govind son of Hori of the house of the applicant/ respondent no. 5 and after the spot inspection with the fact as alleged by the respondent no. 5 was found to be correct and on consent and Vancestor of petitioner the proceeding for vacating of the house in dispute was to be initiated according with the law. For kind perusal of this Hon'ble Court a true photocopy of the orders dated 01.04.2021 03.02.2022 are being collectively and filed herewith and marked as ANNEXURE NO.P.A. 03 to this affidavit.

7. That, in pursuance of the aforesaid direction passed by the Commissioner, Azamgarh Division, Azamgarh the deponent/ respondent no. 3 had no option except to comply the order of his higher authority Commissioner, Azamgarh Division, Azamgarh.

8. That, the deponent after spot inspection alongwith circle officer on the house in dispute situated at gata no. 860 area 14 Kari was found illegally encroached by the petitioner husband namely Govind son of Hori as neither the petitioner husband had submitted any documentary evidence regarding purchasing of the plot in dispute from the respondent nos. 4 and 5 of Rs. 3500/- from the fore father of the respondents namely Chandrabali nor any registered deed were produced by the husband of the petitioner or by the petitioner as alleged and as per record the respondent nos. 5 and 6 were owner of honorarium dispute.

9. That, it is allged by the petitioner that her husband namely Govind had purchased 14 Kari area of the plot no. 860 in year 1988 from the owner of the plot in dispute namely Chandrabali by paying Rs. 3500/- but unfortunately the Chandrabali was died and registry could not be executed which is not based on record.

10. That, after the spot inspection by the revenue SIO team it was found that Chandrabali had one real brother namely Suchit and Chandrabali was issue less and after his death, the share of the Chandrabali of plot in dispute was came in favour of his brother Suchit and after death of Suchit his son namely Sadhu and Dadhivar name were record in revenue record without any objection of the petitioner husband. As such from the record the respondent nos. 5 and 6 were found to be owner of the plot in dispute which is evident from the record.

11. That, on account of the above aforesaid facts the respondent no. 3/deponent had no option except in compliance of the order of the Commissioner, Azamgarh Division, Azamgarh had issued the notice dated

25.03.2024 in good faith without any intention of any law and jurisdiction vested in him.

12. That, 03.04.2024 on consequence of the order dated 01.04.2021 and 03.02.2022 passed by the Commissioner, Azamgarh Division, Azamgarh having found the illegal possession of the husband of the petitioner on the gata no. 860 of area 14 Kari which was illegally encroached by him without having any documentary evidence of her ownership/title of the plot in dispute, same was vacated by the petitioner/husband of the petitioner with their own consent in presence of the joint team of the revenue as well as police force in presence of the aforesaid Gram Sabha villagers. For kind perusal of this Hon'ble Court a true photocopy of the Spot memo dated 03.04.2024 is being filed herewith and marked as Annexure No.P.A.-4 to this affidavit.

13. That, since the aforesaid area was vacated by the petitioner herself on 03.04.2024 with her consent as admitted that she is in illegal possession in house in dispute in presence of the villagers and same was handed over by her to the respondent nos. 5 and 6 but the petitioner canceling this facts after vacating the plot in dispute. The petitioner has been filed Civil Suit No. 313 of 2024 (Phoolmati Vs. Ramchandra and others), on 15.03.2024 before the Civil judge (J.D.) Azamgarh raising aforesaid grievances as raised in the writ petition which is still pending as admitted by the petitioner herself in writ petition. As such the grievances of the petitioner is sub judice before the competent court hence the writ petition was not maintainable in eyes of law.

14. That, it is noteworthy that since on account of the illegal possession of the petitioner on the plot in dispute there

was an apprehension to commit the riot between the parties. On account of which avoiding the apprehension and maintaining the law and order as remain peaceful on the consent of the petitioner her illegal encroachment vacated by was the revenue team in pursuance rsuance of the aforesaid notice issued by the deponent/respondent no. 3. In good faith of compliance of the order of Commissioner. However, if any error or omission is found to be committed without due process of law by the deponent as found by this Hon'ble Court that was done in the good faith and in compliance of the order of the his higher authority as stated above without any mela fide intention against the petitioner as alleged and in obedience of the order passed by the higher authority Commissioner, Azamgarh Division, Azamgarh.”

9. In response to the personal affidavit filed by respondent No. 3, a counter affidavit has been filed by the petitioner wherein she has reiterated the averments made in the writ petition and has categorically denied that the petitioner has vacated the house in dispute by herself on 03.04.2024.

10. In the meantime, a counter affidavit has been filed on behalf of respondent Nos. 4, 5 and 6 along with stay vacation application to which a rejoinder affidavit has been filed by counsel for the petitioner. Apart from denying the claim of the petitioner in the counter affidavit and claiming their right to the property in dispute, the answering respondents have stated in paragraph No. 5 of the counter affidavit that respondent No. 5 Sadhu has given one room to the petitioner for running shop of green vegetables in the year 2014. In paragraph No. 6, it has also been stated by the answering respondents

that the petitioner is in unauthorized occupant of the shop in dispute without paying rent to respondent No. 5. In the counter affidavit, the respondents have admitted the pendency of the civil suit filed by the petitioner. In paragraph No. 12 of the counter affidavit, it has been stated “petitioner not vacated the room/ shop in dispute therefore, the petitioner was dispossessed by the Revenue Authorities on 03.04.2024.” In paragraph No. 12, “dispossessed by the revenue authority” has been scored off and in its place “vacated the room herself” has been written by pen and initials has also been put over the same.

11. In the rejoinder affidavit, the petitioner reiterated its claim and has denied the claim of the answering respondents. She has also denied that she has vacated the premises on own and rather it has been stated that the petitioner was dispossessed by the revenue authorities.

12. From the perusal of the case as has been brought before this Court by means of the affidavits, it is admitted position that petitioner is in possession over the property in dispute and a civil suit is pending between the rival parties. As per the petitioner, the petitioner is in possession since 1988 whereas as per the respondents, the petitioner has been put in possession as tenant by respondent No. 5 in the year 2014.

13. Be that as it may, this fact is crystal clear that the petitioner is in settled possession over the property in dispute and a civil litigation is also pending before the Civil Judge, Junior Division, which is admitted to both the parties.

14. Learned counsel for the petitioners submitted that once there is title

dispute as to the property in dispute and the matter is pending before the civil court, respondent No. 3 has no jurisdiction to interfere with the possession of the petitioner by means of a administrative order without having any force of law. In this regard the petitioner has relied upon judgment of this Court dated 04.09.2015 passed in **Writ C No. 50033 of 2015 (Jitendra Bahadur Singh Vs. State of U.P. and 5 others)**, wherein Division Bench of this Court has passed the following order:-

“Heard learned counsel for the parties and perused the record.

This Court has repeatedly held that the police and administrative authority must not interfere in inter se dispute between the two private parties in respect of immovable properties.

We have been informed that a Government Order has also been issued for the same purpose. It appears that the Sub-Divisional Magistrate, Mariahu, District Jaunpur has no respect to the orders of the Court or to the Government Order. He has issued the order for delivery of possession under the order impugned and thereafter he has issued another order for possession to be delivered and a report be submitted for compliance thereof.

We, therefore, direct that the Principal Secretary, Revenue to take disciplinary action against the officer concerned and to ensure that in future, no such order are issued. No leniency is to be shown.

A copy of this order may be forwarded to the respondent no.1 by the Standing Counsel. within a week from today and the action taken report be submitted before this Court positively by 18.9.2015.

Put up on 18.9.2015.”

15. Learned counsel for the petitioner further relied upon judgment of this Court in case of **Devmani Vs. State of U.P. and 6 others in Writ C No. 17017 of 2018 decided on 06.12.2018** wherein this Court has held as under:-

“In addition to above, we find that the Sub Divisional Magistrate being an administrative Officer has no power to issue any injunction order against any private person to interfere in the possession of the other person. In case an application was filed before the Sub Divisional Magistrate in respect of the property dispute, the appropriate course open to him was ask to the parties to approach the appropriate Court to resolve their dispute. The Sub Divisional Magistrate has assumed the jurisdiction of a Civil/Revenue Court and has passed the restrain order. To our repeated query to the learned counsel for the petitioner to point out the authority of law under which the Sub Divisional Magistrate has passed the order but he failed to point out any provision of the law which cloth the administrative officer to pass the injunction order.

The experience reveals that the Sub Divisional Magistrates are passing such type of order in a large number of cases. We find that the orders passed by the Administrative Officer interfering in the matter of property dispute where title dispute is involved are wholly without jurisdiction. An administrative officer cannot direct the Police to help a party in title dispute.”

16. In case of **Vijai Vs. State of U.P. and 6 others in Writ C No. 20102 of 2022 decided on 11.08.2022**, this Court has held as under in paragraph Nos. 26, 27, 28, 29, 30:-

“26. In our Constitution, there is clear separation of judicial and executive powers. The civil disputes are to be decided by the Civil Court and unsuccessful litigant has a right to file an appeal. The Administrative Officials cannot enter into any such dispute in exercise of the power conferred on them under the provisions of Cr.P.C. and the Revenue Code to fill in the gap and pass executive orders which explicitly belongs to the realms of Civil Court or the revenue court respectively. The due process of law has to be followed in all respect and the executive authorities are not supposed to usurp the the power bestowed on the civil / revenue courts as it would not only be exercise of excessive jurisdiction not permissible under law but would also lead to overlapping jurisdiction which is against the tenets of the basic structure of our Constitution.

27. The present case is a glaring example of encroaching and over reaching the realm of the Civil Court on the part of the respondent-authorities. Although the respondent no. 2 has taken a stand that he was not aware of the pendency of the civil appeal, but the action of the respondent no. 2 even after submission of the reports by the revenue officials does not seem convincing to this Court from any angle. The authorities concerned ought not to have exercised administrative power for entering into the disputed property and issue order for delivery of possession etc against one or the other party. This primarily should be left to the competent court of civil jurisdiction.

28. The very issuance of advisory by the Government of UP dated 3.8.2022 vide No. 1291/EK-2022/9-RA-9 pursuant to the Government order dated 16.10.2015 is evident of the fact that even the Government of UP is not oblivious to the exercise of excessive administrative powers

by the execution in civil dispute relating to immovable properties between private individuals. It is high time that the said advisory acts like yet another reminder to all the executive authorities to desist from taking any action in a dispute relating to immovable properties of private persons and especially when the matter is pending in a civil court as in the present case.

29. Having noted the effort of the Government of UP in issuing the aforesaid advisory, this Court further expects that the Government should also prescribe consequential effect against the erring officers and provide for remedial steps by framing high level committee of senior officers at the Government level, which should include the Revenue Secretary so that not only accountability can be fixed but a redressal forum be available to the victims and this Court is not flooded with similar kinds of litigations in future.

30. For all above reasons, we are inclined to allow this writ petition. This court without expressing any view on the merits of the dispute pending before the competent courts and in the peculiar facts and circumstances of the present case directs the District Magistrate, Ghazipur and the SDM, Tehsil - Kasimabad, District - Ghazipur to ensure that the parties are restored possession as was existed prior to 11.6.2022 in order to bring them to their original position. Needless to say that such arrangement shall be subject to the outcome of the civil appeal and other litigations pending between the petitioner and respondent no. 7. We clarify that we have not expressed anything on the merit of the contention of the parties, which may be permissible to the parties as per law and as such we did not find any reason to issue notice to respondent no. 7 before passing this order.”

17. In case of **Mohammad Aijaz Vs. State of U.P. and 3 others in Writ C No. 19053 of 2022 on 27.07.2022** following order was passed:-

“Sri Ashwani Kumar Pathak, learned Advocate has put in appearance on behalf of the respondent no.4.

The petitioner herein is aggrieved by the order dated 25.06.2022 passed by the Additional District Magistrate (City), Gorakhpur whereby on an application moved by the respondent no.4, direction has been issued to the Lekhpal to make inquiry so that no illegal construction would be raised by the petitioner herein. The order impugned also noted that the matter is pending before the court.

It is argued by Sri Anoop Trivedi, learned Senior Counsel assisted by Sri Nitin Chandra Mishra, learned counsel for the petitioner that the petitioner herein is raising construction after getting a map sanctioned from the concerned development authority. Moreover, from the application moved by the respondent no.4 on 25.06.2022 itself, it was clear that the matter related to the property in question was pending before the Civil Court.

In the said scenario, there was no occasion for the respondent no.3 i.e. the Additional District Magistrate, Gorakhpur, District Gorakhpur to enter into the dispute. The proper course of action for the respondent no.3 was to relegate the applicant i.e. the respondent no.4 herein to approach the Civil Court.

Considering these submissions, having perused the application moved by the respondent no.4 and the order passed by the Additional District Magistrate (City), Gorakhpur thereon, we find substance in the submissions of the learned Senior Counsel for the petitioner.

We are facing influx of such writ petitions in this Court adding to our docket, where the administrative authorities are passing orders casually in private disputes relating to immovable properties and passing orders in favour of one or the other parties even where the disputes are pending before the competent court of law.

By the orders dated 30.06.2022 in Writ-C No.-17951 of 2022 (Shree Energy Developers Pvt. Ltd. Vs. State of U.P. and 6 others) and 20.07.2022 in Writ-C No.-20102 of 2022 (Vijai Vs. State Of U.P. And 6 Others), we had directed the Principal Secretary, Government of U.P., Lucknow and the Principal Secretary (Revenue), Government of U.P., Lucknow; respectively, to issue necessary instructions to the administrative authorities and to take remedial measures to curb this tendency. We have also directed the Principal Secretary (Revenue), Government of U.P., Lucknow to initiate disciplinary action against the erring officials.

Noticing the aforesaid orders, we direct the learned Standing Counsel to seek instructions from the Principal Secretary (Revenue), Government of U.P., Lucknow to intimate as to whether any remedial steps have been by him to curb such an approach of the administrative officials working under his administration and jurisdiction. Written instruction be placed before the Court on the next date fixed.

Let the Principal Secretary, Government of U.P., Lucknow shall also file his response to bring before the Court the steps taken by him to restrain the administrative authorities from causally entering into any private dispute relating to the immoveable property on the application of one or the other warring faction on one or other pretext.

This order be intimated to the Principal Secretary, Government of U.P.,

Lucknow, by the learned Chief Standing Counsel within 24 hours.

Let this matter be posted in the additional cause list on 11.08.2022.

On the next date, the affidavit of the Principal Secretary, Government of U.P., Lucknow shall be filed in compliance of this order.

By the next date fixed, the administrative authorities are restrained from entering into the property-in-question in any manner."

18. Learned counsel for the petitioner further relied upon a Government order dated 01.12.2014 issued by the Chief Secretary, Government of Uttar Pradesh, which is quoted as under:-

"संख्या-491रिट / छ:-पु-3-2014-2(94)पी /2014

प्रेषक,

आलोक रंजन,

मुख्य सचिव,

उत्तर प्रदेश शासन

सेवा में,

समस्त जिला मैजिस्ट्रेट, उ०प्र०,

समस्त वरिष्ठ पुलिस अधीक्षक / पुलिस अधीक्षक,
उ०प्र०।

गृह (पुलिस) अनुभाग-3

लखनऊ : दिनांक : 01 दिसम्बर, 2014

विषय :- निजी पक्षों (*private parties*) के मध्य अचल सम्पत्ति विवाद से संबंधित प्रकरणों पर प्रशासनिक अधिकारियों द्वारा विधि अनुसार कार्यवाही किये जाने के सम्बन्ध में महोदय,

यह संज्ञान में आया है कि निजी पक्षों (*private parties*) के मध्य अचल सम्पत्ति के विवादों के कतिपय प्रकरणों, जो सम्बन्धित न्यायालय में लम्बित हैं / विचाराधीन थे तथा जिनमें न्यायालय द्वारा अंतरिम आदेश पारित है, में प्रशासनिक एवं पुलिस अधिकारियों द्वारा अपने क्षेत्राधिकार के परे जाकर आदेश पारित कर दिया गया है तथा कब्जा हस्तान्तरण भी कर दिया गया है। इस प्रकार से निर्णय लिये जाने पर मा० उच्च न्यायालय द्वारा अत्यन्त रोष व्यक्त किया गया है। इस सम्बन्ध में मा० न्यायालय ने रिट याचिका संख्या

- 43827 / 2014 सईद खान बनाम् उ०प्र० राज्य व 03 अन्य (जनपद बरेली) के प्रकरण. में दिनांक 3-11-2014 को निम्नवत् आवेश पारित किया है :

Additional City Magistrate in his Affidavit has referred to the Government Orders dated 15.5.2012, 30.4.2013 and 7.6.2014 as the source of power for entering into the dispute between two private persons in respect of immovable property and in interpreting the interim order passed by the Civil Court.

Prima facie, we are of the opinion that such reading of the Government Order by the Additional City Magistrate is wholly perverse. A Government Order deals with the removal of difficulties of citizens of this country, which they face in the matter of getting their work done in various government Organizations/Departments of Uttar Pradesh. These Government Orders do not authorize any authority of the state to enter into any private dispute of two persons.

Learned Standing Counsel is directed to obtain instructions from Chief Secretary, Government of U.P., as to whether the Additional City Magistrate in the garb of Government Orders referred to above is permitted to enter into private disputes during the "Janata Darshan" etc. or not."

2- इसके अतिरिक्त एक अन्य रिट याचिका संख्या- 55049 / 2014 गौरव यादव बनाम् कमिश्नर, कानपुर भण्डल एवं 04 अन्य के प्रकरण में भी मा० न्यायालय द्वारा दिनांक 14-10-2014 को इसी प्रकार रोष प्रकट किया गया है।

3- जन समस्याओं का निराकरण शासन की सर्वोच्च प्राथमिकता है, जिसके लिए समय-समय पर दिशा-निर्देश भी निर्गत किये गये हैं। इस सम्बन्ध में यह स्पष्ट किया जाता है कि निजी व्यक्तियों के मध्य अचल सम्पत्ति के विवाद सम्बन्धी प्रकरण, जो दीवानी न्यायालय मा० उच्च न्यायालय अथवा अन्य न्यायालयों में लम्बित हैं या जिनमें मा० न्यायालय द्वारा अंतरिम आदेश पारित हैं, में प्रशासनिक एवं पुलिस अधिकारियों द्वारा विधि अनुसार ही कार्यवाही की जायेगी और क्षेत्राधिकार से परे कोई आवेश नहीं दिया

जायेगा। दीवानी प्रकृति के प्रकरणों में अधिकारिता युक्त न्यायालय ही आदेश पारित करने में सक्षम है।

4- स्पष्ट किया जाता है कि ऐसे प्रकरणों में शांति व्यवस्था बनाये रखने का दायित्व प्रशासनिक एवं पुलिस अधिकारियों पर ही है। यह भी स्पष्ट किया जाता है कि न्यायालय के आदेशों का सम्यक् अनुपालन कराना सुनिश्चित किया जाय, किन्तु सरकारी / सार्वजनिक सम्पत्ति पर अवैध कब्जा, अतिक्रमण या उसका दुरुपयोग कदापि नहीं होने दिया जायेगा। यह सुनिश्चित करने का दायित्व प्रशासनिक एवं पुलिस अधिकारियों व अन्य विभागीय अधिकारियों का होगा।

5- उक्त आदेशों का कड़ाई से अनुपालन सुनिश्चित किया जाय।"

Learned counsel for the petitioner further relied upon another order dated 16.09.2015 has been issued by the Chief Secretary, Government of Uttar Pradesh in this regard and the same is quoted as under:-

"प्रेषक,

सुरेश चन्द्रा,
प्रमुख सचिव,
उ०प्र०शासन।

सेवा में,

1. समस्त मण्डलायुक्त,
उत्तर प्रदेश।
 2. समस्त जिला मजिस्ट्रेट / कलेक्टर,
उत्तर प्रदेश।
- राजस्व अनुभाग-9

लखनऊ: दिनांक 16 सितम्बर, 2015

विषय: रिट याचिका (सी) संख्या 50033 आफ 2015 जितेन्द्र बहादुर सिंह बनाम उ०प्र० राज्य व अन्य में मा० उच्च न्यायालय, उ०प्र० इलाहाबाद द्वारा पारित आदेश दिनांक 04.09.2015 के अनुपालन के संबंध में।

महोदय,

मा० उच्च न्यायालय द्वारा रिट याचिका संख्या- 50033 आफ 2015 जितेन्द्र बहादुर सिंह बनाम राज्य व अन्य में दिनांक 04.09.2015 को निम्न आदेश पारित किये गये हैं:-

"*Heard learned counsel for the parties and perused the record. This Court*

has repeatedly held that the police and administrative authority must not interfere in inter se dispute between the two private parties in respect of immovable properties.

We have been informed that a Government Order has also been issued for the same purpose. It appears that the Sub-Divisional Magistrate, Mariahu, District Jaunpur has no respect to the orders of the Court or to the Government Order. He has issued the order for delivery of possession under the order impugned and thereafter he has issued another order for possession to be delivered and a report be submitted for compliance thereof.

We, therefore, direct that the Principal Secretary, Revenue to take disciplinary action against the officer concerned and to ensure that in future, no such order are issued. No leniency is to be shown.

A copy of this order may be forwarded to the respondent no.1 by the Standing Counsel. within a week from today and the action taken report be submitted before this Court positively by 18.9.2015."

2- उल्लेखनीय है कि पूर्व में मुख्य सचिव, उ०प्र० शासन, गृह (पुलिस) अनुभाग-3 के शासनादेश संख्या-491 रिट छः-पु-3-2014-2(94) पी/2014, दिनांक 01.12.2014 द्वारा इस विषय पर पूर्व में विस्तृत निर्देश प्रसारित किये गये हैं। ऐसा प्रतीत हो रहा है कि उक्त निर्देशों का पालन नहीं किया जा रहा है।

3- इस संबंध में मुझे यह कहने का निदेश हुआ है कि मा० उच्च न्यायालय के आदेश दिनांक 04.09.2015 का अक्षरशः अनुपालन करते हुए यह सुनिश्चित किया जाय कि निजी पक्षकारों के मध्य अचल सम्पत्ति के ऐसे प्रकरणों जिनमें वाद सक्षम न्यायालय में विचाराधीन है अथवा जिनमें मा० न्यायालयों द्वारा अन्तरिम आदेश पारित किये गये हों, में प्रकीर्ण प्रार्थनापत्रों पर प्रशासनिक आदेश पारित न किये जाय। यदि भविष्य में ऐसा कोई प्रकरण शासन के संज्ञान में आता है तो इसे अत्यन्त गम्भीरता से लिया जायेगा तथा इसके लिए दोषी अधिकारियों के विरुद्ध कठोर दण्डात्मक कार्यवाही की जायेगी।

भवदीय,

(सुरेश चन्द्रा चन्द्रा)
प्रमुख सचिव ।

संख्या- 10-650(1)/एक-9-15-रा-9,

तद्दिनांकित,

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1- प्रमुख सचिव, गृह विभाग, उ०प्र० शासन को इस अनुरोध के साथ प्रेषित कि मा० न्यायालय के उक्त आदेशों के अनुपालन में पुलिस अधिकारियों को निर्देश जारी करने का कष्ट करें।

2- प्रमुख सचिव, प्रशासनिक सुधार विभाग, उ०प्र० शासन।

3- आयुक्त एवं सचिव राजस्व परिषद, उ०प्र० लखनऊ,

4- गार्ड फाइला।

आज्ञा से,
ह० अपठनीय
(जय प्रकाश सगर)
विशेष सचिव ।"

Learned counsel for the petitioner also relied upon another Government Order Dated 03.08.2022 has been issued by the Chief Secretary, Government of U.P. and which is quoted as under:-

"प्रेषक,

सुधीर गर्ग,
प्रमुख सचिव,
उ०प्र० शासन।

सेवा में,

1- समस्त मण्डलायुक्त,
उत्तर प्रदेश।
2- समस्त जिला मजिस्ट्रेट / कलेक्टर,
उत्तर प्रदेश।

राजस्व अनुभाग-9

लखनऊ:

दिनांक: ०3 अगस्त, 2022

विषय: मा० उच्च न्यायालय इलाहाबाद में योजित रिट सी० सं०-20102/2022, विजय बनाम उ०प्र० राज्य व 06 अन्य (जनपद गाजीपुर) में पारित आदेश दिनांक 20.07. 2022 एवं रिट सी० सं०-19053/2022, मो० एजाज बनाम उ०प्र० राज्य

व 03 अन्य (जनपद गोरखपुर) में पारित आदेश दिनांक 27.07.2022 के अनुपालन के सम्बन्ध में।

महोदय,

कृपया पूर्व में निर्गत राजस्व अनुभाग-9 के शासनादेश सं०-डब्ल्यू-650/एक-9-2015-रा-9, दिनांक 16.09.2015 का संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से निर्देश दिये गये थे कि मा० उच्च न्यायालय इलाहाबाद में योजित रिट याचिका सं०-50033/2015, जितेन्द्र बहादुर सिंह बनाम उ०प्र० राज्य व अन्य में पारित आदेश दिनांक 04.09.2015 का अक्षरशः अनुपालन कराते हुए यह सुनिश्चित किया जाय कि निजी पक्षकारों के मध्य अचल सम्पत्ति के ऐसे प्रकरणों जिनमें वाद सक्षम न्यायालय में विचाराधीन है अथवा जिनमें मा० न्यायालयों द्वारा अन्तरिम आदेश पारित किये गये हों, में प्रकीर्ण प्रार्थनापत्रों पर प्रशासनिक आदेश पारित न किये जाय।

2- उल्लेखनीय है कि पूर्व में मुख्य सचिव, उत्तर प्रदेश शासन गृह (पुलिस) अनुभाग-3 के शासनादेश सं०-491 रिट/छः-पु-3-2014-2(94)पी/2014, दिनांक 01.12.2014 द्वारा इस विषय पर विस्तृत निर्देश प्रसारित किये गये हैं।

3- शासन के संज्ञान में आया है कि उक्त निर्देशों का कड़ाई से अनुपालन नहीं किया जा रहा है, जिससे मा० न्यायालयों में विभिन्न याचिकाएं योजित हो रही है तथा शासन को असहज स्थिति का सामना करना पड़ रहा है। इस सम्बन्ध में अवगत कराना है कि मा० उच्च न्यायालय इलाहाबाद में योजित रिट सी० सं०-20102/2022, विजय बनाम उ०प्र० राज्य व 06 अन्य में मा० न्यायालय द्वारा पारित आदेश दिनांक 20.07.2022 सुसंगत अंश निम्नवत है:-

The District Magistrate, Ghazipur and Sub Divisional Magistrate, Kasimabad, Ghazipur are hereby called upon to file their personal affidavits to explain as to how they had entered into the dispute between the private persons relating to the immovable property, that too during the pendency of the proceeding between the parties before the Civil Court. Looking to above, the Principal Secretary (Revenue), Government of U.P., Lucknow is further directed to take action against the erring officers by initiating disciplinary proceedings against them.

मा० उच्च न्यायालय इलाहाबाद में योजित एक अन्य याचिका रिट सी० सं०-19053/2022, मो० एजाज बनाम

उ०प्र० राज्य व 03 अन्य में मा० न्यायालय द्वारा पारित आदेश दिनांक 27.07.2022 सुसंगत अंश निम्नवत है:-

Let the Principal Secretary, Government of U.P., Lucknow shall also file his response to bring before the Court the steps taken by him to restrain the administrative authorities from causally entering into any private dispute relating to the immoveable property on the application of one or the other warring faction on one or other pretext.

4- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि प्रश्नगत रिट याचिकाओं में पारित मा० न्यायालय के आदेश दिनांक 20.07.2022 तथा 27.07.2022 का अक्षरशः अनुपालन सुनिश्चित किया जाय। किन्हीं निजी पक्षकारों के मध्य अचल सम्पत्ति के ऐसे प्रकरणों जिनमें वाद सक्षम न्यायालय में विचाराधीन है अथवा जिनमें मा० न्यायालयों द्वारा अन्तरिम आदेश पारित किये गये हों, में प्रकीर्ण प्रार्थनापत्रों पर प्रशासनिक आदेश पारित न किये जाय और न ही प्रशासनिक आधार पर प्रकरणों में कोई हस्तक्षेप किया जाय। यदि भविष्य में ऐसा कोई प्रकरण शासन के संज्ञान में आता है तो इसे अत्यन्त गंभीरता से लिया जायेगा एवं इसके लिए दोषी अधिकारियों के विरुद्ध कठोर दण्डात्मक कार्यवाही की जायेगी। उपरोक्त निर्देशों का कड़ाई से अनुपालन सुनिश्चित किया जाय।

उक्त के अतिरिक्त यह भी कहने का निदेश हुआ है कि किसी सक्षम न्यायालय में वाद विचाराधीन न होने की दशा में यदि कानून व्यवस्था के आलोक में कहीं हस्तक्षेप करने की आवश्यकता पड़ रही हो तो उ०प्र० राजस्व संहिता-2006, दण्ड प्रक्रिया संहिता-1973 एवं अन्य सम्बन्धित संगत अधिनियमों, विनियमों आदि द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए ही मर्यादित / संयमित हस्तक्षेप किया जाय।

भवदीय,

ह० अपठनीय

(सुधीर गर्ग) प्रमुख सचिव ।

संख्या- (1)/एक-9-2022-रा-9 एवं दिनांक

तदैव।

प्रतिलिपि निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1- अपर मुख्य सचिव, गृह विभाग, उ०प्र० शासन को इस अनुरोध के साथ प्रेषित कि मा० न्यायालय के उक्त आदेशों के अनुपालन में पुलिस अधिकारियों को निर्देश जारी करने का कष्ट करें।

2- प्रमुख सचिव, प्रशासनिक सुधार विभाग, उ०प्र० शासना 3- आयुक्त एवं सचिव, राजस्व परिषद उ०प्र०, लखनऊ।

4- जिलाधिकारी गोरखपुर एवं गाजीपुर।

5- गार्ड फाइला

आज्ञा से,

(महेन्द्र सिंह)

विशेष सचिव ।"

19. Learned counsel for the petitioner further submitted that admittedly, the petitioner was in possession over the property in dispute and a civil litigation was pending before the competent civil court and by means of administrative orders and by sheer use of force, the petitioner was dispossessed by the administrative authorities at the behest of private respondents, which is not sustainable.

20. Learned counsel for the State submitted that it is correct that the order impugned was passed by respondent No. 3 in his administrative capacity but the possession was handed over by the petitioner with his consent and therefore, it cannot be said that the petitioner was dispossessed because of the orders passed by administrative authorities, particularly, respondent No. 3 as she herself has surrendered the possession.

21. This fact has been seriously controverted by the petitioner that she never gave consent or handed over possession with her consent. It has further contended that the possession was forcefully taken by the revenue authorities with the help of police as well as private respondents. In this regard, the petitioner has referred to the possession memo dated 03.04.2024 which has been filed by respondent No. 3 along with his personal affidavit.

22. From the perusal of the possession memo which is quoted above, there is no mention in the aforesaid memo that the petitioner handed over possession with her consent, rather it mentions that with the help of revenue and police force in the presence of Naib Tehsildar, the premises in dispute was got vacated and was given to the applicant (respondents). There is no mention in the memo of possession that the possession was handed over by the petitioner with her consent.

23. Learned counsel for the petitioner further submitted that on an application moved by respondent No. 5-Sadhu dated 07.03.2024, which has been filed by respondent No. 5 along with his counter affidavit, Sub Divisional Magistrate passed an order dated 07.03.2024 directing the Naib Tehsildar, S.H.O., Revenue Inspector and Lekhpal to vacate the property in dispute and to comply with earlier orders. The aforesaid application has been annexed by the answering respondents as Annexure No. C.A.3 to the counter affidavit over which the order dated 07.03.2024 has been endorsed. **Respondent No. 3 in his personal affidavit has not disclosed this order dated 07.03.2024 and has deliberately concealed the same.**

24. Learned Standing Counsel further contended that aforesaid action was taken by respondent No. 3 in compliance of the orders passed by Additional Commissioner and for maintenance of law and order which might be disturbed because of illegal occupation of the petitioner and in rebuttal to the same, learned counsel for the petitioner contended that there was no threat of any riot and there was no law and order situation because of the possession of the petitioner.

It has been further contended by learned counsel for the petitioner that no proceedings under the Cr.P.C. were undertaken by respondent No. 3 for maintenance of law and order and the respondent cannot take shelter to the law and order situation in order to save himself from the illegal action taken by him by dispossessing the petitioner without recourse to law and that too without drawing any proceedings civil or criminal against the petitioner.

25. Learned counsel appearing for the private respondents submitted that petitioner being tenant, she was not paying rent, therefore, was an unauthorized occupant of the premises in dispute and was liable to be dispossessed and no illegality has been committed by the respondents to get the possession from the petitioner, who is an illegal occupant. It has also been contended by learned counsel appearing for the private respondents that the suit filed by the petitioner is of no consequence as the petitioner is an illegal occupant without any title to the property.

26. The aforesaid contention of learned counsel for the private respondent is wholly misconceived. The Supreme Court in case of **Rame Gowda (Dead) By Lrs. Vs. M. Varadappa Naidu (Dead) By Lrs. and another** reported in **(2004) 1 SCC 769** held occupant in settled possession cannot be dispossessed without recourse to law. It has been held that in India, persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court. A person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. The law will come to the aid of a person in

peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force.

Paragraph Nos. 4, 5, 6, 7, 8, 9, 10 of the judgment in case of Rame Gowda (supra) are quoted as under:-

"4. It is contended by the learned counsel for the defendant-appellant that the suit filed by the plaintiff was based on his title. The suit itself was defective inasmuch as declaration of title was not sought for though it was in dispute. Next, it is submitted that if the suit is based on title and if the plaintiff failed in proving his title, the suit ought to have been dismissed without regard to the fact that the plaintiff was in possession and whether the defendant had succeeded in proving his title or not. We find no merit in both these submissions so made and with force.

5. Salmond states in *Jurisprudence (Twelfth Edition)*,

"few relationships are as vital to man as that of possession, and we may expect any system of law, however primitive, to provide rules for its protection. Law must provide for the safeguarding of possession. Human nature being what it is, men are tempted to prefer their own selfish and immediate interests to the wide and long-term interests of society in general. But since an attack on a man's possession is an attack on something which may be essential to him, it becomes almost tantamount to an

assault on the man himself; and the possessor may well be stirred to defend himself with force. The result is violence, chaos and disorder." (at pp. 265, 266).

*"In English Law possession is a good title of right against anyone who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law." (Salmond, *ibid*, pp. 294-295) "Legal remedies thus appointed for the protection of possession even against ownership are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary. In the modern and medieval civil law the distinction is expressed by the contrasted terms *petitorium* (a proprietary suit) and *possessorium* (a possessory suit)." (Salmond, *ibid*, p.295)*

6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In *Midnapur Zamindary Co. Ltd. Vs. Kumar Naresh Narayan Roy and Ors.* 1924 PC 144, Sir John Edge summed up the Indian

law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya Vs. Anil Panjwani* (2003) 7 SCC 350. In-between, to quote a few out of severals, in *Lallu Yeshwant Singh (dead) by his legal representative Vs. Rao Jagdish Singh and others* (1968) 2 SCR 203, this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The court quoted with approval the law as stated by a Full Bench of Allahabad High Court in *Yar Mohammad Vs. Lakshmi Das* (AIR 1959 All. 1,4), "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause."

In the oft-quoted case of *Nair Service Society Ltd. Vs. K.C. Alexander and Ors.* (1968) 3 SCR 163, this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The court quoted *Loft's maxim* 'Possessio contra omnes valet praeter eur cui ius sit possessionis (He that

hath possession hath right against all but him that hath the very right)' and said, (AIR p. 1175, para 20)

"A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time".

In *M.C. Chockalingam and Ors. Vs. V. Manickavasagam and Ors.* (1974) 1 SCC 48, this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale (dead) by his Lrs. Vs. Mrs. Shobha Venkat Rao* (1989) 4 SCC 131, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In *Nagar Palika, Jind Vs. Jagat Singh, Advocate* (1995) 3 SCC 426, this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser

is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. *It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case*

(supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner;

and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

10. In the cases of Munshi Ram and Ors.(supra) and Puran Singh and Ors. (supra), the Court has approved the statement of law made in Horam Vs. Rex AIR 1949 Allahabad 564, wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter, may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property.”

27. In case of **Gulab Devi Vs. State of U.P. (Allahabad; reported in 2007 (2) All LJ 220**, the Division Bench of this Court has held that Executive Magistrate cannot decide the civil rights of the parties by passing executive orders. By the impugned order, the petitioner has been dispossessed from the disputed property, which cannot be legally done by the Sub Divisional Magistrate concerned. Since the civil suit is pending before the competent court, therefore, both the parties have right to get suitable interim orders for the management, preservation or protection of the property in dispute. Paragraph Nos. 4, 4A, 5, 6, 7 and 8 of the judgment in case of Smt. Gulab Devi (supra) is quoted as under:-

“4. The impugned order Annexure-1 to the writ petition has been passed by the Sub-Divisional Magistrate, Barsana district Mathura in his executive capacity. The learned counsel for the petitioner has argued that in the worse case this order can be presumed to have been passed under Section 145, Criminal Procedure Code but we do not agree with this contention. Nowhere the law provides for passing such order in the executive capacity, even if for a moment, it is presumed that this order has been passed under Section 145/146, Criminal Procedure Code even then it is illegal because the prescribed procedure was not followed and the petitioner was not given opportunity to be heard. Moreover, by the impugned order the petitioner has been dispossessed from the disputed property which cannot be legally done by the Sub Divisional Magistrate concerned. During the argument also, learned Counsels for the respondent No. 4 admitted the legal position and termed this order to be illegal.

4A. *Since the Civil Suit is pending before the competent Court, there fore, both the parties have right to get suitable interim orders for the management, preservation and protection of the property in dispute. The Civil Court is also empowered to decide the dispute in respect to the possession also, for this purpose the parties can approach the said Court.*

5. *The learned counsel for the respondent No. 4 has contended that there was serious dispute between the parties regarding possession, Pooja and Rajbhog etc. of the temple and police had submitted such report that there was apprehension of breach of peace, therefore, the learned Sub Divisional Magistrate, Chhata Mahura has passed the impugned order. But this argument has no legs to stand. For the apprehension of breach of peace, the Executive Magistrate/Police is empowered to proceed under Section 107, Criminal Procedure Code or in the worse case under Section 145, Criminal Procedure Code .*

6. *In the case of **Jilubhai Nanbhai Khachar v. State of Gujarat, AIR 1995 Supreme Court 142**, the Hon'ble Apex Court has opined that the State Government cannot while taking recourse to the executive power of the State under Article 162 of the Constitution of India, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order.*

7. *In the case of **Ved Prakash v. State of U.P, 2006 (2) JTC 177**, the Division Bench of this Court has also clearly held that the Executive Magistrate cannot decide the civil rights of the parties by passing executive order. In the said case Sub Divisional Magistrate, Charra, district Aligarh had passed order allowing the Opp. Parties of The petitioner that case to*

raise construction on the disputed land with the help of the police.

8. *In view of above, we are of the opinion that the impugned order is wholly illegal and if it is allowed to continue this will seriously affect the civil rights of the parties, therefore, this writ petition is allowed and the impugned order passed by respondent No. 2, Sub Divisional Magistrate, Chhata, Mathura is set aside. If the parties are so advised, they may move the Civil Court concerned for getting suitable order in the matter."*

28. The Constitutional Bench of the Supreme Court in case of **Bishan Das and others Vs. The State of U.P. and others; AIR 1961 SC 1570**, had deprecated the State action to divest a citizen from his or her property without adopting due course of law, to quote:

"13.... It is enough to say that they are bona fide in possession of the constructions in question and could not be removed except under authority of law. The respondents clearly violated their fundamental rights by depriving them of possession of the dharmasala by executive orders. Those orders must be quashed and the respondents must now be restrained from interfering with the petitioners in the management of the dharmasala, temple and shops. A writ will now issue accordingly.

14..... *As pointed out by this Court in **Wazir Chand v. The State of Himachal Pradesh (1)**, the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In **Ram Prasad Narayan Sahi v. The State of Bihar (2)** this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his*

fellow subjects and visits him with a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only. The reasons given for this extraordinary action are, to quote what we said in Sahi's case (supra), remarkable for their disturbing implications."

29. *Learned counsel for the petitioner invited attention of the Court to the report submitted by the Lekhpal dated 10.06.2022 annexed as Annexure No. 2 to the writ petition wherein it has been mentioned by the Lekhpal that, because of personal dispute, the application for possession has been moved, on which no action can be taken at the Tehsil level and the applicant has been informed to file a suit for eviction as per law and to get the possession vacated at Tehsil level will not be accordance with law.*

30. *From the respective arguments of the counsel for the parties, the factual background and the law laid down by the Supreme Court as well as this Court, it is clear that petitioner was in possession over the house/shop in question and has been dispossessed in pursuance of order passed by respondent No. 3 by the revenue team and there is no material on record except an averment in the affidavit that the possession was handed over by the petitioner herself. Rather from the possession memo, it is apparent that the possession was taken by the joint revenue and police team. Respondent No. 3 has also concealed the order dated 07.03.2024 which has been filed by the private respondents along with their counter*

affidavit from this Court as the same has not been mentioned in the personal affidavit. Respondent No. 3 has no authority in law to interfere with the possession of the petitioner at the behest of respondent Nos. 4 to 6. There is admittedly, a civil dispute pending before the competent civil court. Even the Tehsildar has reported that it will not be proper for the revenue authorities to interfere. Respondent No. 3 acted against the settled law of the land, the Government Orders issued by the State Government prohibiting the executive authorities from interfering with the private disputes between the parties, especially, where the suits are pending before the competent court.

31. In my view, respondent No. 3 has violated the law of land as laid down by the Apex Court as well as this Court and has also violated the Government Orders dated 01.12.2014, 16.09.2015, 03.08.2022 issued by the State Government and has deliberately interfered with the rights of the petitioner. Before referring this matter to the Chief Secretary, Government of Uttar Pradesh for taking action against the respondent No. 3 in view of the Government Orders dated 01.12.2014, 16.09.2015, 03.08.2022 as well as law laid down by the Apex Court and also this Court, it will be proper that he may be given a last opportunity to explain his conduct before this Court.

32. Respondent No. 3 is directed to be present before this Court on 26.11.2024 and explain why matter be not referred to the Chief Secretary, Government of Uttar Pradesh for taking action in accordance with law referred above for interfering with the rights of the petitioner and violating the orders passed by State Government referred above.

33. So far as submission of learned Standing Counsel that respondent No. 3 acted in compliance of order passed by Additional Commissioner and Additional Commissioner has not been made party in the present petition, the petitioner is directed to implead the Additional Commissioner (Administration) Azamgarh Mandal, Azamgarh, who has passed the order dated 01.04.2021 and Additional Commissioner (Judicial) who has passed the order dated 03.02.2022 as party respondent.

34. The newly impleaded respondent Nos. 7 and 8 shall also file their personal affidavit explaining how such orders were passed by them by the next date fixed.

35. Since the petitioner has been illegally dispossessed, the respondents are directed to restore the possession of the petitioner over the shop/ house in dispute within a period of ten days from today.

36. Learned Standing Counsel is directed to communicate this order to respondent No. 3 as well as respondent Nos. 7 and 8 for necessary compliance.

37. Office to supply a copy of this order free of cost to learned Standing Counsel for necessary compliance.

38. List this case as fresh on 26.11.2024 at Serial No.1.

(2024) 11 ILRA 508
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.11.2024

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

First Appeal No. 122 of 2023

Dinesh Verma @ Dinesh **...Appellant**
Versus
Smt. Malti Verma @ Malti Devi
...Respondent

Counsel for the Appellant:
Mohd. Yasin

Counsel for the Respondent:
Rakesh Kumar, Arun Kumar

(A) Family Law - Divorce proceedings - Hindu Marriage Act, 1955 - Sections 13 - grounds for divorce, Section 19 (1) - Appeals, Section 28 - Code of Civil Procedure, 1908 - Section 11 - Res Judicata, Order II Rule 2 - Suit to include the whole claim, Domestic Violence Act, 2005 - Section 12 - relief sought by the aggrieved woman - Principle of res judicata - A fresh and subsequent cause of action permits filing a second matrimonial case even when an earlier case was dismissed on similar grounds - Second matrimonial case is not barred if it is based on a new cause of action.(Para - 16,17)

(B) Word or Phrases - Cause of action - a bundle of facts constituting the right of a party which he or she has to establish in order to obtain a relief from a Court - same has to be tested on the anvil of evidence led by the parties.(Para 16)

First matrimonial suit was by appellant - for dissolution of marriage with respondent - dissolved on the ground of desertion - Appellant filed second divorce petition - after first petition was dismissed - second case alleged subsequent acts of cruelty by respondent - based on a subsequent and fresh cause of action - issue - maintainability of second divorce petition - applicability of principle of res judicata. (Paras 3, 9, 10,16)