

Neutral Citation No. - 2025:AHC:124230

Reserved On: 10.04.2025

Delivered On: 28.07.2025

Court No. - 9

Case :- WRIT - C No. - 3837 of 2025

Petitioner :- Nirbhay Singh

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Kuldeep Singh, Pankaj Kumar Gupta

Counsel for Respondent :- C.S.C., Hari Narayan Singh

Hon'ble Manish Kumar Nigam, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. Pleadings have been exchanged.
3. This writ petition has been filed for the following reliefs:-

“(i) a writ, order or direction in the nature of certiorari to quash the impugned order dated 19-12-2022 passed by respondent no.3/ Sub Divisional Magistrate, Tehsil-Auraiya, District- Auraiya. (Annexure no. 1 to the writ petition).

(ii) a writ, order or direction in the nature of Mandamus commanding the Respondent No.1 constitute to an Enquiry Committee to determine the responsibility of the concerned officials and employees who are involved in illegal demolition of Petitioner's residential house/hut situated at Plot no.723 (reserved for Harijan Abadi) Village-Bhatpura Umari, Tehsil-Auraiya, District- Auraiya.

(iii) a writ, order or direction in the nature of Mandamus commanding the Respondent No.1 to initiate criminal proceeding as well as departmental proceeding against the concerned officials/employees involved in illegal demolition of Petitioner's residential house over the land reserved for Harijan Abadi bearing Plot no.723 (reserved for Harijan Abadi) Village-Bhatpura Umari, Tehsil-Auraiya, District-Auraiya.

(iv) a writ, order or direction in the nature of Mandamus commanding the Respondent No.1 to direct the concerned Respondent Authorities to pay compensation of Rs.10 Lakh to the Petitioner in pursuance to illegal demolition of his residential house/hut.

(v) a writ, order or direction in the nature of mandamus directing the Respondent not to interfere in the peaceful possession of petitioner over land in dispute bearing Plot no. 723 area 200 square meters situated at Village-Bhatpura Umari, Tehsil-Auraiya, District- Auraiya.”

4. Brief facts of the case are that Mauja Bhatpura, Village-Umari is a backward village of Tehsil and District- Auraiya. Since before the independence, Scheduled Castes population of the said village resided on the land of Gaon Sabha. During consolidation operations, the land bearing Plot No. 723 area 0.0810 was reserved for Scheduled Castes population. The petitioner is a poor farmer and belongs to Scheduled Caste. The ancestors of the petitioner are occupying the land for many years and after the death of predecessor in interest, the petitioner is in occupation of the said land and has built a small hut along with animal shade over the land in dispute. Owing to political rivalry with the Pradhan, the Pradhan and its associates tried to demolish the house of the petitioner over the land in dispute. The petitioner moved an application for demarcation of Plot No. 723 Harizan Abadi. The Lekhpal after inspection submitted a report that demarcation is not possible as there are many constructions existing over the land in dispute. One Ram Kumar started interfering with the possession of the petitioner over the constructions of the petitioner situated at Plot No. 723. The petitioner filed a civil suit being Original Suit No. 283 of 2022 (Nirbhay Singh Vs. Ram Kumar and others) for permanent injunction and the said suit is pending. It has been further stated in the writ petition that a complaint was made that the son of the petitioner is trying to encroach the property in dispute by raising illegal constructions. On the said complaint, an order dated 19.12.2022 was passed by the concerned Sub Divisional Magistrate directing the S.H.O. to remove the illegal encroachment. This order dated 19.12.2022 is

impugned in the present writ petition, which has been filed on 01.02.2025. It has also been stated in the writ petition that constructions of the petitioner were removed in compliance of order dated 19.12.2022 with the help of the police and a First Information Report was lodged against the son of the petitioner in this regard. Thereafter, the son of the petitioner submitted various representation to the highest officials and complained about forceful removal of constructions of the petitioner by the authorities without adopting any procedure of law, but no action was taken. An application was moved by the petitioner before the Scheduled Castes Commission, New Delhi. On the complaint made by the petitioner, an inquiry was conducted by the District Magistrate through S.D.M. and thereafter, a report was submitted by the District Magistrate, Auraiya to the Scheduled Castes Commission that the petitioner, his son and brother were trying to encroach upon the public land which has been removed with the help of police force.

5. In the counter affidavit, the stand taken by the respondents is that a complaint was received by the respondents that the petitioner along with his son and brother were trying to encroach upon the public land i.e. Arazi No. 722 and in compliance of the order dated 19.12.2022, the said encroachment was removed. The long standing possession as claimed by the petitioner has been denied by the respondents in their counter affidavit. Petitioner filed rejoinder affidavit denying the averments made in the counter affidavit filed by the respondents.

6. It has been contended by counsel for the petitioner that petitioner being in possession over the land in dispute could not have been evicted without recourse to law by means of an administrative order (impugned in the present petition) passed by the respondent. The respondent-authorities should have initiated legal proceedings for eviction of the petitioner in case, the possession of the petitioner was unauthorized. Learned counsel for the petitioner has relied upon judgment of the Supreme Court in case of **Samir Sobhan Sanyal Vs. Tracks Trade Private Ltd.** reported in

1996 0 SC 784 and also the judgment of Supreme Court in case of **Zulfiquar Haider and another Vs. State of Uttar Pradesh and others** passed in **Civil Appeal No. 4590 of 2025**.

7. *Per contra*, learned Standing Counsel has submitted that it is wrong to say that the petitioner was in possession over the land in dispute as a matter of fact, the petitioner was trying to take illegal possession over the land in dispute by raising constructions thereupon and thereafter, he has rightly been evicted from the land in dispute.

8. It is true that person in settled possession cannot be dispossessed except in accordance with law. This question has been elaborately dealt with by the Supreme Court in **Rame Gowda Vs. M. Varadappa Naidu and another** reported in **2004 1 SCC 769**. The Supreme Court has held that in order to protect the possession, person must be in settled peaceful possession. Paragraph Nos. 8, 9 and 10 of the judgment in case of Rame Gowda (*supra*) is quoted as under:-

“ 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.”

9. The judgment in case of Samir Sobhan Sanyal Vs. Tracks Trade Private Ltd. (supra) is not applicable to the facts of the present case as the said judgment was given in petition arising from Order 21 Rule 98 and 99 of C.P.C and the judgment in case of Zulfiquar Haider and another Vs. State of Uttar Pradesh and others (supra) is also not applicable as the petition in the aforesaid judgment was arising where the demolition was carried out in pursuance of proceedings under Section 27 of the Uttar Pradesh Urban Planning and Development Act, 1973.

10. After hearing both the parties this Court is of the opinion that from the perusal of the averments made in the writ petition, counter affidavit and rejoinder affidavit, it is apparent that the petitioner is claiming that his long standing constructions have been removed by the authorities without adopting any procedure of law in compliance of order dated 19.12.2022 passed by the S.D.M., which fact has been specifically denied by the respondents and it has been stated by the respondents that petitioner and his family members were trying to encroach upon the public utility land, rasta which was stopped by the respondent authorities and the illegal encroachment made by the petitioner were removed in the year 2022. This fact has also come in the report submitted by the District Magistrate to the Scheduled Castes Commission. It is also pertinent to mention that though, the constructions of the petitioner as alleged by the petitioner have been removed in the year 2022, the petitioner has approached this Court after a lapse of more than two years by filing this petition. It is also pertinent to

mention that the petitioner has also filed a suit which is pending before the civil court. The disputed questions of facts that whether the petitioner was in settled peaceful possession over the land in dispute as stated by the petitioner or was trying to encroach upon the land in dispute by raising construction as stated by the respondents are involved in the present writ petition and the same cannot be decided in exercise of powers under Article 226 of the Constitution of India.

11. Therefore, I am of the view that no relief can be granted and the writ petition is liable to be dismissed. However, this dismissal of the writ petition will not preclude the petitioner to establish his claim before the competent court of law by filing his suit against the respondent authorities.

Order Date: 28.07.2025

Nitika Sri.

(Manish Kumar Nigam,J.)