Reserved on 29.10.2026
Delivered on 03.11.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 1974 of 2026
(Under Section 528 of B.N.S.S.)

Shiv Charan Singh Mehta And Anr .....Applicants

Versus

State Of Uttarakhand and Others .....Respondents

Presence:-

Mr. Saurabh Kumar Pandey and Jai Krishna Pandey, learned counsel for the applicants.

Mr. Pratiroop Pandey, learned A.G.A. for the State.

Mr. Suryakant Maithani and Mr. Kirti Sharan Agarwal, learned counsel for respondent no.3.

Per: Hon'ble Mr. Alok Mahra, J.

Present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS') has been filed seeking to quash the judgment and order dated 05.09.2026 passed by the learned Additional Sessions Judge, Nainital, in Criminal Revision No.17 of 2026, whereby the revision preferred by respondent no.3 was allowed and the order dated 08.06.2026 passed by the learned Assistant Collector First Class/Pargana Magistrate, Nainital, in proceedings under Section 164(1) of the BNSS was set aside. The applicants have further sought restoration of the order dated 08.06.2026 passed by the learned Executive Magistrate/Assistant Collector First Class/Pargana

Magistrate, Nainital.

2. Learned counsel for the applicants would submit that the dispute relates to possession over the property situated at Village Ranibagh, Chauhanpatta, Tehsil and District Nainital; that, Respondent no.3 claims rights over the disputed property on the basis of an alleged registered sale deed dated 08.07.1961; that, however, the mutation proceedings initiated on the basis of the said sale deed were rejected by the learned Tehsildar, Nainital, and the said order was subsequently affirmed by the appellate authority as well as the Board of Revenue. It is submitted that the applicants' names are duly reflected in the relevant revenue records and that, on the basis of the material placed before the learned Executive Magistrate, they were found to be in actual possession of the disputed property. However, the learned revisional court, while setting aside the order passed by the learned Executive Magistrate, has erroneously entered into the disputed question of title and to appreciate the police and revenue reports, as well as the physical features existing at the spot, including the boundary wall and tin shed constructed over the property.

3. Learned counsel would further submit that upon the demise of Mr. James George Gardiner in the year 1947,

the Hon'ble High Court of Judicature at Allahabad, in Testamentary Case No.13 of 1947, issued Letters of Administration in favour of the Administrator General of the United Provinces for administration of the estate; that, pursuant thereto, the Administrator General, acting under the authority conferred by the Hon'ble Allahabad High Court, executed a registered sale deed dated 08.07.1961 in favour of Late Sri Sardar Jaswant Singh, father of respondent no.3; that, subsequently, respondent no.3's father initiated mutation proceedings under Section 34 of the U.P. Land Revenue Act in the year 2005, which were registered as Case No.30 of 1572 for the year 2005-2006 before the learned Tehsildar, Nainital; that, after examining the relevant revenue records and the report submitted by the concerned Patwari, the learned Tehsildar found that the claim set up on the basis of the alleged sale deed could not be substantiated; that, in particular, it was observed that the old Khet Nos.95 to 104 mentioned in the alleged sale deed were not recorded in Khata No.1 and that the Khasra Nos.1153 to 1161, in which the purchaser was stated by the Patwari to be in possession, were different from the Khet numbers mentioned in the alleged sale deed; that, no cogent or corroborative material was produced to establish any

correlation between the old Khet numbers and the present Khasra numbers.

4. He would further submit that the learned Tehsildar also noticed that the original sale deed had not been produced before the revenue authority and that the attesting witnesses thereto had not been examined; that, it was also found that the name of the alleged vendor was not recorded in Khata No.1; that, in view of the aforesaid discrepancies and the absence of satisfactory evidence establishing the identity of the land allegedly transferred under the sale deed dated 08.07.1961, the learned Tehsildar declined to accept the claim for mutation; that, thus, the very foundation of the claim subsequently advanced by respondent no.3 remained unsubstantiated before the competent revenue authorities and rejected the same vide order dated 07.11.2007.

5. Learned counsel would further submit that, being aggrieved by the order dated 07.11.2007 passed by the learned Tehsildar, Nainital, Late Sardar Jaswant Singh preferred an appeal under Section 210 of the U.P. Land Revenue Act before the learned Assistant Collector First Class/Sub-Divisional Magistrate, Nainital, registered as Appeal No.52/01 of 2007-2008; that, the said appeal was

dismissed vide judgment and order dated 30.07.2013, affirming the findings recorded by the learned Tehsildar; that, the appellate authority also noticed that the name of the alleged vendor, namely, Mr. J.J. Gardiner, through the Administrator General, Allahabad, was not recorded in Khata No.1 and that the Khet Nos.95 to 104 mentioned in the alleged sale deed were not reflected in the relevant Khatauni; that, it was further observed that although the Patwari had reported the purchaser to be in possession over Khasra Nos.1153 to 1161, no satisfactory evidence had been produced to establish any correlation between those Khasra numbers and the Khet numbers mentioned in the sale deed; that, the appellate authority also took note of the claimant's own statement that the Khet numbers mentioned in the sale deed were old Malguzari numbers and that no corresponding Khasra numbers had been prepared in respect thereof; that, the appeal was dismissed and the order passed by the learned Tehsildar was affirmed.

6. Learned counsel would further submit that respondent no.3's father thereafter preferred Revision No.11 of 2013-13 before the learned Board of Revenue, Uttarakhand, challenging the orders passed by the learned Tehsildar and the appellate authority; that, the said revision

was also dismissed vide judgment and order dated 22.06.2019; that, thus, the orders passed by the revenue authorities rejecting the mutation claim based on the alleged sale deed dated 08.07.1961 attained finality. It is submitted that respondent no.3 has not obtained any declaration from a competent civil court establishing the identity of the land allegedly covered by the said sale deed or its correlation with the present Khasra numbers; that, even the original sale deed, which constitutes the foundation of his claim, has not been produced in the aforesaid revenue proceedings; that, on the other hand, the applicants purchased the property from persons whose names were duly recorded in the relevant revenue records and who, according to the applicants, had lawful right and interest in the property.

7. Learned counsel would further submit that, instead of availing an appropriate remedy before the competent civil court for adjudication of his alleged rights and title, respondent no.3 instituted WPCRL No.404 of 2026, titled *Baljeet Singh Vs. State of Uttarakhand*, before this Court, seeking, inter alia, a direction for mutation of his name in the revenue records and protection in respect of the disputed property; that, the aforesaid claim was raised despite the earlier orders passed by the competent revenue

authorities, whereby the claim for mutation based on the alleged sale deed had already been rejected and such orders had attained finality; that, in the aforesaid criminal writ petition, the Coordinate Bench of this Court directed the concerned Station House Officer to appear through video conferencing; that, pursuant thereto, the Station House Officer appeared and apprised the Court that respondent no.3 had failed to produce authentic documents in support of his claim over the disputed property; that, the police authorities also brought to the notice of the Court the apprehension of breach of peace arising out of the alleged interference with the applicants' possession; that, taking note of the circumstances and the fact that proceedings under Section 164 of the BNSS had already been initiated, the Coordinate Bench disposed of the criminal writ petition with a direction to the concerned Sub-Divisional Magistrate to afford proper opportunity of hearing to both parties while deciding the pending proceedings; that, the Station House Officer was also directed to remain in contact with respondent no.3 and to take appropriate steps in the event of any threat to his life or liberty.

8. He would further submit that notices in the proceedings under Section 164 of the BNSS were duly

served upon both parties; that, the applicants appeared before the learned Executive Magistrate; however, respondent no.3 did not initially appear and failed to submit his objections/reply despite service of notice; that, consequently, vide order dated 16.04.2026, the opportunity granted to respondent no.3 to file his objections/reply was closed; that, despite having knowledge of the proceedings and the directions issued by this Court, respondent no.3 allegedly failed to appear on several subsequent dates, namely, 30.04.2026, 08.05.2026, 15.05.2026 and 22.05.2026; that, thereafter, respondent no.3 entered appearance through counsel and moved an application seeking recall of the said order; that, subsequently, the Coordinate Bench of this Court, vide order dated 27.04.2026, directed the learned Executive Magistrate/Sub-Divisional Magistrate to afford due opportunity of hearing to both parties.

9. Learned counsel would further submit that, during the pendency of the proceedings under Section 164 of the BNSS, the learned Executive Magistrate called for reports from the concerned police and revenue authorities regarding the disputed property and the respective claims of the parties; that, pursuant thereto, the learned Tehsildar,

Nainital, obtained a report from the concerned Revenue Inspector and forwarded the same to the learned Executive Magistrate. The report contained the relevant revenue entries and the names of the persons recorded in respect of the disputed land; that, the applicants also placed documentary evidence on record, including the orders passed by the learned Tehsildar, the appellate authority and the Board of Revenue, together with the relevant Khatauni. He would further submit that after considering the police report, the revenue report, the relevant revenue entries and the previous orders passed by the competent revenue authorities, the learned Assistant Collector First Class/Pargana Magistrate, Nainital, passed the order dated 08.06.2026. The learned Magistrate took note of the fact that the name of respondent no.3 was not recorded in the relevant Khatauni, whereas the revenue records reflected the names of the persons through whom the applicants claimed their rights; that, the learned Magistrate also considered the earlier revenue proceedings, the material concerning the physical condition of the property and the apprehension of breach of peace arising out of the competing claims and alleged interference with possession; that, upon consideration of the material available on record, the learned

Magistrate passed an appropriate preventive order to protect the existing possession and prevent any situation likely to disturb public peace.

10. Learned counsel would further submit that respondent no.3, being aggrieved by the order dated 08.06.2026, preferred a criminal revision before the learned Additional Sessions Judge, Nainital and along with the revision, respondent no.3 also moved an application seeking that the revision be heard along with Civil Appeal No.13 of 2025, however, the learned revisional court declined the said request after noticing that the parties to the civil appeal and the criminal revision were not the same; that, respondent no.3 has consistently relied upon the judgment passed in the civil suit instituted by Smt. Pushpa Katoch, as though the same conclusively establishes his rights over the disputed property, despite the fact that the said judgment is itself under challenge in Civil Appeal No.13 of 2025 and is pending consideration before the competent appellate court; that, the conduct of respondent no.3 demonstrates that he has repeatedly sought to assert his alleged rights over the disputed property on the basis of documents whose identity and correlation with the present land have not been established before any competent forum. It is submitted that

the revenue authorities have specifically recorded that the name of the alleged vendor was not reflected in the relevant Khatauni and that the old Khet numbers mentioned in the alleged sale deed could not be correlated with the present Khasra numbers. Despite the aforesaid findings, respondent no.3 has continued to rely upon the same document without obtaining any declaration from the competent civil court regarding his alleged right, title or interest in the disputed property.

11. Learned counsel would further submit that the learned revisional court has committed a manifest error of law and fact in allowing the revision and setting aside the order dated 08.06.2026 passed by the learned Assistant Collector First Class/Pargana Magistrate, Nainital; that, the learned revisional court failed to properly appreciate the material available on record, including the reports submitted by the police and revenue authorities, the relevant Khatauni entries, the physical features existing at the spot, including the boundary wall and tin shed, and the previous orders passed by the competent revenue authorities. Instead of examining the matter from the limited perspective of actual possession and the apprehension of breach of peace, the learned revisional court proceeded to attach undue

importance to the competing claims of title raised by the parties. It is further submitted that proceedings under Section 164 of the BNSS are preventive and summary in nature and the Executive Magistrate is primarily required to determine which party was in actual possession of the disputed property at the relevant point of time, in order to prevent breach of peace; that, the question of title or ultimate entitlement to possession is beyond the scope of such proceedings and is required to be adjudicated by the competent civil court; that, the mere existence of a dispute regarding title cannot render the jurisdiction under Section 164 of the BNSS ineffective or nugatory.

12. Learned counsel would further submit that the learned revisional court failed to appreciate the effect of the earlier revenue proceedings initiated by the father of respondent no.3 on the basis of the very same alleged sale deed dated 08.07.1961; that, the learned Tehsildar, Nainital, had specifically found that the old Khet Nos.95 to 104 mentioned in the sale deed could not be correlated with the present Khasra numbers and that the name of the alleged vendor was not recorded in the relevant Khatauni; that, the said findings were affirmed by the appellate authority and the Board of Revenue; that, thus, the dispute concerning the

identity of the land allegedly transferred under the sale deed was not a mere objection raised by the applicants but had already been examined in the earlier revenue proceedings; that, the learned revisional court ought to have considered these circumstances while examining the material relating to possession.

13. Learned counsel would further submit that the original sale deed dated 08.07.1961, upon which respondent no.3 bases his claim, has not been produced before the competent authorities in the proceedings initiated since the year 2005; that, more importantly, the identity of the land allegedly covered by the said document has not been established with reference to the present Khasra number; that, the learned revisional court also failed to consider the report of the Tehsildar dated 21.04.2026, which disclosed the relevant revenue entries and recorded that the name of respondent no.3 was not reflected in the concerned Khatauni, whereas the names of the persons through whom the applicants claimed their rights were recorded therein. It is submitted that the learned Executive Magistrate did not pass the order dated 08.06.2026 merely on the basis of the revenue entries but considered the police report, revenue report, previous revenue orders, physical features of the

property and the circumstances indicating the apprehension of breach of peace; that, the learned revisional court, therefore, ought to have examined the cumulative effect of the aforesaid material instead of considering the competing claims of title in isolation.

14. Learned counsel would further submit that the proceedings under Section 164 of the BNSS were initiated on account of a genuine and subsisting apprehension of breach of peace arising out of the alleged interference with the applicants' possession; that, the existence of the boundary wall and tin shed over the disputed property, as reflected in the police report, was a relevant circumstance for determining the actual physical condition of the property; that, the learned revisional court failed to properly appreciate the said objective material and instead placed undue reliance upon the claim of respondent no.3; that, the police report, the revenue report, the existing constructions and the conduct of the parties were all relevant considerations for determining the question of possession and the likelihood of breach of peace.

15. Learned counsel would further submit that even where the parties raise competing claims regarding title, the same cannot, by itself, constitute a ground for declining to

exercise preventive jurisdiction under Section 164 of the BNSS; that, the statutory scheme also contemplates a situation where the Magistrate is unable to determine which party was in actual possession and provides for appropriate measures, including attachment under Section 165 of the BNSS, in accordance with law. It is submitted that the learned revisional court failed to appreciate that the civil proceedings relied upon by respondent no.3 did not conclusively adjudicate the rights of the applicants over the property in question; that, the learned revisional court itself noticed that the parties to Civil Appeal No.13 of 2025 and the criminal revision were not the same; that, consequently, the said civil proceedings could not have been treated as determinative of the question of possession arising in the present proceedings.

16. Learned counsel would further submit that the learned revisional court has exercised its revisional jurisdiction in an erroneous manner by substituting its own appreciation of the disputed facts without properly demonstrating any perversity, illegality or jurisdictional error in the order passed by the learned Executive Magistrate; that, the impugned judgment suffers from non-consideration of material evidence, misapplication of the

statutory test under Section 164 of the BNSS and an erroneous conflation of the questions of title and actual possession. It is submitted that the applicants are not seeking any adjudication of their title in the present proceedings and reserve their right to establish the same before the competent civil court; that, their limited submission is that the existing circumstances relating to actual possession could not have been displaced merely on the basis of a disputed document of the year 1961, the identity of the land covered by which has not been established.

17. Learned counsel would further submit that the police report specifically referred to the physical features existing over the disputed property, including the boundary wall and tin shed, and the material placed before the learned Executive Magistrate indicated that the applicants were in actual physical possession thereof; that, the learned revisional court failed to examine the aforesaid material in its proper perspective; that, the existence of such constructions, coupled with the police and revenue reports, constituted relevant contemporaneous material for determining the actual state of possession and the apprehension of breach of peace; that, the failure of the

learned revisional court to consider these material circumstances renders the impugned judgment unsustainable in law.

19. In support of his submissions, learned counsel for the applicants has placed reliance upon the judgment of the Hon'ble Supreme Court in *Ranbir Singh Vs. Dalbir Singh and Others*, reported in (2002) 3 SCC 700, wherein the Hon'ble Apex Court, while considering the scope of proceedings Section 145 of Cr.P.C. (corresponds to Section 164 of B.N.S.S.), has held that the Court dealing with such proceedings is primarily concerned with the question of actual possession of the disputed property on the date of the preliminary order and, where applicable, dispossession within two months prior thereto and the Court is not required to adjudicate upon the title to the property or the ultimate right to possession. It was further observed that the validity of the preliminary order and the order of attachment must be examined within the limited scope of the preventive proceedings and that questions relating to title and civil rights are matters for determination by the competent civil court.

20. Learned counsel for the applicants has also placed reliance upon the judgment of the Hon'ble Supreme

Court in *Shanti Kumar Panda Vs. Shakuntala Devi*, reported in (2004) 1 SCC 438, wherein the Hon'ble Apex Court has observed that an order passed by the Executive Magistrate under Section 145 Cr.P.C. does not operate as a final adjudication of the rights of the parties and does not bind the competent civil court. Such an order is temporary in nature and remains operative subject to adjudication by the competent civil court. The Hon'ble Apex Court, while referring to the judgment in *Bhinka & Others Vs. Charan Singh*, AIR 1959 SC 960, reiterated that proceedings under Section 145 Cr.P.C. are intended to prevent breach of peace and that the Magistrate does not determine the title or ultimate right to possession of the disputed property.

21. Per contra, learned counsel for respondent no.3 would vehemently oppose the submissions advanced by learned counsel for the applicants and submit that respondent no.3 is an 80-year-old senior citizen who is facing threats to his life and apprehension of forcible dispossession at the hands of the applicants; that, the applicants are relying upon a purported sale deed executed during the pendency of civil proceedings and are attempting to interfere with the possession of respondent no.3; that, the registered sale deed dated 08.07.1961 was executed by the

Administrator General, acting under the authority conferred by the Hon'ble Allahabad High Court, in favour of Late Sri Sardar Jaswant Singh, father of respondent no.3; that, on the basis of the said registered sale deed, the name of his father was also mutated in the municipal records, as the property was situated within the municipal limits of Haldwani-Kathgodam; that, the sale deed specifically defined the boundaries of the property and, after the demise of his father, respondent no.3 continued in peaceful and physical possession thereof.

22. Learned counsel appearing for respondent no.3 would further submit that the mutation application was rejected by the learned Tehsildar vide order dated 07.11.2007 because the old Malguzari field numbers mentioned in the sale deed could not be directly correlated with the new settlement Khasra numbers and the name of the vendor was not reflected in the relevant Khatauni; that, the said order was affirmed by the appellate authority and the revision was dismissed by the Board of Revenue, however, the revenue authorities did not adjudicate upon the title of respondent no.3 and the question of ownership and identity of the property was left open for determination by the competent civil court. It is further submitted that

respondent no.3 has remained in actual and continuous possession of the disputed property, upon which he has constructed a residential house and boundary wall.

23. Learned counsel for respondent no.3 would further submit that Smt. Pushpa Katoch instituted Original Civil Suit No.93 of 2007 against respondent no.3 before the Court of Civil Judge (Senior Division), Nainital, seeking, inter alia, permanent injunction and cancellation of the registered sale deed dated 08.07.1961; that, The said suit was dismissed by the learned Civil Judge (Senior Division), Nainital, vide judgment and decree dated 26.09.2024; that, the civil court found that the plaintiff had failed to establish her title, possession or entitlement to the relief claimed and also considered the defence set up by respondent no.3 on the basis of the registered sale deed dated 08.07.1961; that, aggrieved by the said judgment and decree, Smt. Pushpa Katoch preferred Civil Appeal No.13 of 2025, which is pending consideration before the competent appellate court; that, the applicants, despite being aware of the aforesaid civil proceedings, have relied upon a purported sale deed executed in their favour by the sisters and legal heirs of the deceased sisters of Smt. Pushpa Katoch, who had no lawful right or authority to transfer the disputed property; that, the

applicants are attempting to dispossess respondent no.3 on the basis of the said sale deed and are seeking to take advantage of the pending civil dispute.

24. Learned counsel would further submit that, since 05.02.2026, the applicants, accompanied by approximately 15 to 20 persons, have allegedly been attempting to forcibly encroach upon the property of respondent no.3; that, the said persons were armed with weapons and had threatened respondent no.3 with forcible dispossession; that, in this regard, a neighbour and friend of respondent no.3 also made a call to the emergency helpline 112; that, respondent no.3 repeatedly approached the concerned police station and submitted written complaints seeking protection and registration of an FIR. He also submitted representations before the Senior Superintendent of Police and the District Magistrate, Nainital, requesting appropriate protection to his life and property, however, no effective action was taken on his complaints. He would further submit that the civil court, vide judgment and decree dated 26.09.2024, had already dismissed the suit instituted by Smt. Pushpa Katoch, and the applicants cannot claim any superior right merely on the basis of the alleged subsequent sale deed. Learned counsel would, therefore, submit that the learned revisional court

has rightly considered the material available on record and allowed the revision preferred by respondent no.3.

25. Heard learned counsel for the parties and perused the material available on record.

26. The controversy involved in the present application primarily concerns the legality and correctness of the order passed by the learned revisional court in setting aside the preventive order passed by the learned Assistant Collector First Class/Pargana Magistrate, Nainital, in proceedings under Section 164(1) of the BNSS. Before examining the rival submissions, it would be appropriate to observe that proceedings under Section 164 of the BNSS are preventive in nature and are intended to prevent a breach of peace arising out of disputes concerning land or water. The jurisdiction exercised by the Executive Magistrate in such proceedings is summary in nature and is confined to determining the question of actual possession in accordance with the statutory parameters. The Magistrate is not required to adjudicate upon the title or the ultimate right of possession of the parties, which falls within the exclusive domain of the competent civil court.

27. A perusal of the record would reveal that the dispute between the parties is not of recent origin and

respondent no.3 traces his claim to the registered sale deed dated 08.07.1961, allegedly executed in favour of his father, Late Sri Sardar Jaswant Singh. It further appears that mutation proceedings were initiated on the basis of the said sale deed before the learned Tehsildar, Nainital, and the claim was rejected vide order dated 07.11.2007. The said order was subsequently affirmed by the appellate authority vide order dated 30.07.2013 and the revision preferred before the Board of Revenue was also dismissed. The material placed before this Court indicates that the revenue authorities had raised specific doubts regarding the correlation between the old Khet numbers mentioned in the alleged sale deed and the present Khasra numbers.

28. The principal question, therefore, which required consideration by the learned Executive Magistrate was whether the applicants or respondent no.3 were in actual possession of the disputed property on the relevant date, or whether the circumstances attracted any of the other statutory contingencies contemplated under Sections 164 and 165 of the BNSS. For this limited purpose, the police report, revenue report, relevant revenue entries, physical features existing at the spot and the conduct of the parties were all relevant circumstances requiring consideration.

29. Perusal of the record reveals that the learned Executive Magistrate had called for reports from the concerned police and revenue authorities and had also taken into consideration the relevant revenue records as well as the earlier proceedings initiated by the father of respondent no. 3. The police report specifically referred to the construction of a boundary wall, a tin shed within the boundary wall and the installation of a gate by the applicants. Further, the report of the Tehsildar dated 21.04.2026 contained the relevant revenue entries indicating the names of the persons recorded in respect of the land in question. These materials were relevant and material for determining the actual state of possession over the disputed property. It is evident that the learned Executive Magistrate had duly considered these relevant materials before recording a finding that the applicants were in possession of the disputed property on the date of initiation of proceedings under Section 164 of the BNSS.

30. The Hon'ble Supreme Court in *Ranbir Singh Vs. Dalbir Singh and Others*, reported in (2002) 3 SCC 700, has clearly explained that, while dealing with proceedings under Section 145 Cr.P.C., the Court is primarily concerned with the question of actual possession and is not required to

enter into questions relating to title or the ultimate right to possession. The aforesaid principle is equally relevant while examining proceedings under the corresponding provision of Section 164 of the BNSS. Similarly, in *Shanti Kumar Panda Vs. Shakuntala Devi*, reported in (2004) 1 SCC 438, the Hon'ble Supreme Court has reiterated that an order passed by the Executive Magistrate in preventive proceedings is temporary in nature and does not bind the competent civil court, which remains free to adjudicate the rights of the parties in accordance with law.

31. In view of the aforesaid legal position, the learned Revisional Court was required to examine whether the learned Executive Magistrate had duly considered the relevant material on record pertaining to the actual possession of the parties over the disputed property and whether the order passed by him suffered from any illegality, perversity or material irregularity warranting interference in revisional jurisdiction. However, while observing that the applicants had constructed a boundary wall and a tin shed over the disputed property and that their names were also recorded in the revenue records, the learned Revisional Court proceeded to record a perverse finding that the learned Executive Magistrate had failed to record any finding

regarding the possession of the applicants. Such a finding is contrary to the material available on record. The learned Revisional Court was, therefore, required to examine the entire material, including the police report, revenue report and the physical features existing at the spot, in its entirety and cumulatively, instead of allowing the disputed question of title to overshadow the relevant consideration of actual possession. Consequently, the approach adopted by the learned Revisional Court suffers from material illegality and perversity.

32. The learned revisional court, despite recording a categorical finding that the applicants had constructed a boundary wall, tin shed and gate over the disputed property, thereby acknowledging their actual possession, erroneously set aside the order dated 08.06.2026 passed by the learned Assistant Collector First Class/Pargana Magistrate, Nainital, on the ground that such constructions were raised without sanction from the competent authority. The revisional court also acknowledged that the applicants' names were recorded in the revenue records. However, the absence of sanction for raising a boundary wall, by itself, could not be a ground for interference, subject to applicable statutory restrictions. Moreover, proceedings under Section 164 of the B.N.S.S. are

confined to determining actual possession and do not involve adjudication of title. By examining the sale deed and revenue records from the standpoint of title, the learned revisional court exceeded the scope of the proceedings. Consequently, the impugned order suffers from an error of law and cannot be sustained.

33. Accordingly, in view of the aforesaid discussion and observations, the present C-528 application is allowed. The judgment and order dated 05.09.2026 passed by the learned Additional Sessions Judge, Nainital, in Criminal Revision No.17 of 2026 is hereby set aside, and the order dated 08.06.2026 passed by the learned Assistant Collector First Class/Pargana Magistrate, Nainital, is upheld.

34. It is further directed that the applicants shall be entitled to possession on the property in question unless and until they are evicted therefrom in accordance with due process of law. The respondents are restrained from interfering with or disturbing the applicants' peaceful possession over the said property.

(ALOK MAHRA,J.)
03.11.2026

Mamta