HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 10016 of 2026

Rajendra Kumar Jaiswal

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s) : Amit Pratap Singh
Counsel for Respondent(s) : G.A., Pawnesh Tiwari, Somesh Tiwari

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Court No. - 78

HON'BLE SANDEEP JAIN, J.

1. Heard learned counsel for the petitioner and learned counsel for the respondent no.5.

2. The following order was passed by this Court on 07.10.2026, which is reproduced below:

"By order dated 19.05.2026, learned counsel for respondent Nos.5 and 6 were directed to file their counter affidavit within three weeks. Learned counsel for the respondents submits that the counter affidavit was filed in the Registry on 10.08.2026; however, the same is not available on record.

Office is directed to trace the aforesaid counter affidavit and place the same on record.

Learned counsel for respondent Nos.5 and 6 submits that they are tenants in the disputed property, which has fallen to the share of the petitioner in partition, and that they were inducted as tenants by the father of the petitioner. The said submission has been disputed by learned counsel for the petitioner, who submits that respondent Nos.5 and 6 are trespassers and have illegally encroached upon the property which, pursuant to partition, has fallen to the share of the petitioner.

Learned A.G.A. has also produced before the Court the instructions obtained by him in compliance with the order dated 04.05.2026. The said instructions specifically mention that, in compliance with the order dated 09.09.2025 passed in Contempt Petition No. 3161 of 2025, possession of the disputed property was handed over to the petitioner by erecting a partition wall and that respondent Nos.5 and 6 have no interference therein. The aforesaid position is contrary to the submission advanced by learned counsel for respondent Nos.5 and 6 that they are in lawful possession of the disputed property as tenants, having been inducted therein by the father of the petitioner.

In view of the rival submissions advanced by learned counsel for the parties and, particularly, having regard to the instructions produced by learned A.G.A. before the Court, it deems appropriate to direct respondent No.2, District Magistrate,

Kushinagar, to constitute an inquiry and disclose, how and in what manner respondent Nos.5 and 6 have come into possession of the disputed property, possession whereof, according to the instructions, had already been handed over to the petitioner, particularly when the said instructions disclose that respondent Nos.5 and 6 have no interference therein. It is also evident from the site plan annexed with the aforesaid instructions that no shop is shown to be existing in the portion of the disputed property which was handed over to the petitioner, whereas respondent Nos.5 and 6 claim to be running a shop in the said portion.

Accordingly, the District Magistrate, Kushinagar, is directed to constitute an inquiry into the aforesaid aspects and submit his personal affidavit before this Court, clearly disclosing the factual position, including as to how and in what circumstances respondent Nos.5 and 6 have come into possession of the disputed property and whether any shop exists in the said portion.

List this matter on 29.10.2026, as fresh."

3. In compliance with the order passed by this Court, the personal affidavit of respondent No. 2, the District Magistrate, Kushinagar, has been filed by learned AGA, which is taken on record.

4. The affidavit discloses that private respondent Nos. 5 and 6, namely, Virendra Sonthalia and Vinod Tulasyan, respectively, are in possession of the disputed shops in the capacity of tenants and are paying monthly rent at the rate of Rs. 12,500/- and Rs. 2,400/-, respectively.

5. The instant writ petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

"*(i) To issue a writ, order or direction in the nature of mandamus commanding respondent Nos. 2, 3 and 4, namely, the District Magistrate, Kushinagar; the Sub-Divisional Magistrate, Tehsil Padrauna, District Kushinagar; and the Station House Officer, Police Station Kotwali Padrauna, District Kushinagar, respectively, to entertain and decide the petitioner's application dated 13.01.2026, filed under Sections 164/165 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), expeditiously, preferably within a stipulated period.*

(ii) To issue a writ, order or direction commanding the respondent authorities to initiate appropriate proceedings under Sections 164/165 of the BNSS and ensure the protection of the petitioner's peaceful possession over the disputed property."

6. Learned counsel for the petitioner submits that the private respondent Nos. 5 and 6 are tenants in the disputed shops at monthly rents of Rs. 12,500/- and Rs. 2,400/-, respectively. He further submits that, as per the inquiry conducted by the District Magistrate, the aforesaid tenants claim to have been in possession of the disputed shops since 1972, whereas they have been paying rent only since 2026. Learned counsel further submits

that the respondents have not paid rent to the petitioner even for the month of August 2026. He, therefore, prays that this Court may direct the eviction of the aforesaid tenants from the disputed shops.

7. Per contra, learned counsel for private respondent No. 5 submits that the respondents were inducted as tenants in the disputed shops by the petitioner's father in 1972 and have been regularly paying rent for the demised shops since then. He, therefore, submits that the respondents cannot be evicted from the disputed shops except in accordance with law.

8. I have heard learned counsel for the parties and perused the record.

9. It is apparent from the record that proceedings concerning the disputed property under Sections 164/165 of the BNSS are pending before the competent court, and the instant writ petition has been filed seeking their expeditious disposal.

10. Having regard to the nature of the proceedings and the reliefs sought, this Court cannot direct the eviction of private respondent Nos. 5 and 6 from the disputed shops in the instant writ petition, as such relief falls beyond the scope of the present proceedings. The petitioner is at liberty to initiate appropriate proceedings for the eviction of the aforesaid tenants before the competent forum, in accordance with law.

11. In view of the aforesaid facts and circumstances, this Court deems it appropriate to direct respondent No. 3, the Sub-Divisional Magistrate, Tehsil Padrauna, District Kushinagar, to decide the pending proceedings concerning the disputed property under Sections 164/165 of the BNSS expeditiously, preferably within a period of three months from the date of production of a certified copy of this order, after affording an opportunity of hearing to the parties concerned and in accordance with law.

12. With the aforesaid observations and directions, the instant writ petition is ***disposed of***.

(Sandeep Jain,J.)

October 29, 2026
Mayank

Digitally signed by :-
MAYANK KUMAR SHARMA
High Court of Judicature at Allahabad