



UPMT010033442026

In The Court of Sessions Judge, Mathura
Present- Vikas Kumar - I (H.J.S.)
Crl. Revision No. 201/2026

1. **Ajay Yadav @ Bobby Yadav S/o Chhotelal Yadav, R/o Golpada, P.S. Kotwali, District Mathura**

.....Revisionist/ 2nd Party

V/s

1. **State of U.P. through D.G.C. (Crl.), Mathura**
.....O.P.
2. **Sanjay Kumar Shastri S/o Ghanshyam Dharm Guru Manager Sindhiya Devsthan Trust, Pradan Karyalaya, Jay Vilas Palace, Gwalior**
3. **Pujari Nishant Dixit S/o Uday Dixit, R/o Vitthal Mandir Golpada, P.S. Kotwali, District Mathura**

.....O.Ps./ 1st Party

JUDGMENT

1. This Revision is preferred against the order dt. 17.04.2026 of the City Magistrate, Mathura passed U/s 165(1) B.N.S.S. in the proceeding U/s 164(1) B.N.S.S. in Case No. 633/2026 (Computerized Case No. D202601500000633) Sanjay Kumar Shastri & Ors. (hereinafter referred to as First Party) Vs. Ajay Yadav @ Bobby (hereinafter referred to as Second Party).

2. The record of the Court of City Magistrate, Mathura reveals that the report dated 31.03.2026 submitted by Inspector, P.S. Kotwali, District Mathura mainly with averments that an intense dispute regarding the possession of the property in question i.e. a temple of Viththal Bhagwan and Rukmini Mata situated at Golpada Mohalla of Chhatta Bazar, District Mathura, is existing between First Party and Second Party. That the said property is a part of Sindhiya Devsthan Trust, Radha Gopal Mandir, Gopeshwar Road, Vrindavan and its head office is situated at Jay Vilas Palace, Lashkar Gwalior. That in the premises of disputed property, about 11 rooms are constructed in which 2 rooms are reserved for serving the pilgrims. That some time ago, with permission of trust, Second Party Ajay along with a woman started living in the property in question and for vacating the said property, he has taken Rs. 1,00,000/- from the trust on 18.03.2025 but he is not vacating the said property and at present time, he is in possession of the said property and there is strong probability of affray and breach of peace between aforementioned both the parties regarding the possession of aforesaid property in question. In the above Report prayer was made to pass order U/s 164 B.N.S.S. to maintain the peace.

3. The City Magistrate, District Mathura on 01.04.2026, passed an order U/s 164(1) B.N.S.S. regarding actual possession and for the determination of genuine owner of disputed property. In order to aforesaid proceedings, the City Magistrate perused the Police Report dated 31.03.2026 and recorded the statement of First Party on 17.04.2026 in which prayer was made that there is considerable dispute between first party and second party regarding the possession of aforementioned disputed property, therefore, for the said property be attached. On being satisfied from the report of Police concerned and from the statement of First Party recorded on 17.04.2026, the City Magistrate passed impugned order dt. 17.04.2026 U/s 165(1) B.N.S.S., stating that till the completion of proceedings conducted U/s 164(1) B.N.S.S., attach the disputed property and it is also directed the In-charge Inspector P.S. Vrindavan to attach the disputed i.e. Rooms and custody of said disputed property be entrusted to an impartial person. Being aggrieved with this order U/s 165(1) B.N.S.S., the present revision is preferred.

4. While assailing the impugned order as contrary to provisions of Law and that it being passed without applying judicial mind, the revisionist side in the grounds of revision has mainly stated that the Revisionist/Second Party is in possession of the property in question which is situated at the first floor of Vithalnath Madangopal Temple, Golpada City, Mathura Water Rate No. 638, and he is also serving the Temple since long, whereas the owner of the above temple is Thakur Viththaalnath Madangopal Ji who is seated in the said temple and the above temple property belongs to the Thakur Ji. That the service, worship, offerings and Raag management of Thakurji seated in the said temple, was earlier done by Mohandas, who is the Sevayat of Thakurji and the said Mohandas handed over his service rights to his disciple Swaroop Narayan Sharma S/o Omkar Narayan Sharma and when the said Swaroop Narayan Sharma fell ill, he handed over the Sevayat rights to his disciple/Second Party/Revisionist, through an appointment letter dated 18.09.2000 executed by him and from that time, the revisionist started doing the service, worship and arrangements of Thakurji and after the death of the said Swaroop Narayan Sharma, the revisionist is in possession of the property in question. That the First Party's associate Ambika Prasad Baira interfered with the service rights of the revisionist in the property in question, regarding which a Civil Suit No. 254 of 2026 Ajay @ Bobi Vs. Ambika Prasad Baira was filed by the revisionist, which is pending in the Court of Civil Judge (J.D.), Mathura. That the above civil case was filed on 20.02.2026 and Ambika Prasad Baira with the conspiracy and through First Party, filed a case in the court of City Magistrate Mathura U/s 164(1) BNSS on fabricated grounds and by showing false possibility of breach of peace and on the basis of concerned police report, on 01.04.2026, an order U/s 164 B.N.S.S. was passed and issued notice to the Revisionist and fixed the date 08.04.2026 for hearing, whereas no

summons/notice was served to Revisionist and on 17.04.2026, recorded statement of First Party and on the same day, the impugned order U/s 165(1) B.N.S.S. has also been passed for attachment the disputed property without giving any opportunity for hearing the Revisionist. That thereafter, the concerned police suddenly came and tried to forcibly remove the Revisionist from the property in question, where he has been living with his family since long. That on enquiry, it came to the knowledge of revisionist that the above order dated 17.04.2026 was passed without any notice and without informing him, whereas the Civil Suit No. 254 of 2026, is pending before the Civil Court. In such a situation, order Sections 164 (1) and 165 (1) can not be passed without hearing the revisionist. It is further submitted that in the proceedings conducted U/s 164 (1) B.N.S.S., the revisionist was shown in the possession of disputed property with the consent of first party, whereas before the said proceedings, a notice was sent to the revisionist through registered post dated 10.09.2024 in which the revisionist was shown as a tenant at the rent of Rs. 1500/- per month, which are contradictory. That the revisionist has been in possession of property in question and serving Thakurji since the beginning. That the impugned order is passed illegally in the arbitrary manner without considering the real facts. On the above grounds, prayer is made that order dated 17.04.2026 passed U/s 165(1) B.N.S.S. be set aside.

5. Heard the Ld. Counsels of First Party & Second Party as well as Ld. D.G.C. (Crl.) and perused the record.

6. (i) The Ld. Counsel of Revisionist/Second party has mainly argued that the order passed U/s 165(1) B.N.S.S. by the City Magistrate, Mathura is contrary to the provisions of law. It is also argued that Revisionist is in possession of disputed property since long. That he is living in the said house with his family. Ld. Counsel also argued that there is no probability of breach of peace nor any emergent situation is existing. That it is well settled law that if the one party is in possession of disputed property since long, the City Magistrate cannot pass the order U/s 165(1) B.N.S.S. for attachment of the property in dispute. It is further argued that the reports Inspector of P.S. concerned was filed on the basis of which preliminary proceeding U/s 164(1) B.N.S.S. had been initiated and on 17.04.2026 without hearing Second party, on the basis of statement of First Party and above police report, Order U/s 165(1) B.N.S.S. for attachment of property in question has also been passed. There is nothing on record to show that any incident had occurred, which making it a case of emergency. Ld. Counsel has relied upon **Indu Tandon vs. State of U.P. Thru. Prin. Secy. Home Lko., 2026:AHC-LKO:23238**. The Ld. Counsel has prayed to allow Revision and set aside the impugned order.

(ii) Ld. Counsel for the First Party has vehemently opposed the above arguments and has mainly stated that the disputed property is a part of Trust belongs to First Party and the Second Party is living in the said property illegally and for vacating the said

property he has already taken Rs. 1,00,000/- from the First Party but he is not ready to vacate the said disputed house/property. It is further submitted that the revisionist used to abuse and threat the First Party regarding the possession of said property. Therefore, the proceedings drawn up by the police authorities on the basis of which the Ld. Magistrate has passed impugned order, which is according to law and it does not require any interference. It is further argued that the pendency of the civil proceeding does not bar jurisdiction of the Executive Magistrate for proceeding U/s 164 B.N.S.S. and consequential proceedings. On the basis of above grounds, prayer is made to dismiss the said revision.

(iii) Ld. D.G.C. (Crl.) while supporting the impugned order categorically stated that there was grave apprehension of breach of peace on spot due to dispute between Revisionist/Second Party and O.P. No.1/First Party on the question of possession of land in dispute and, therefore, the City Magistrate has passed impugned order which is as per law.

7. The present revision raises an important question as to whether the learned City Magistrate was legally justified in exercising the extraordinary jurisdiction U/s 165(1) BNSS with the initiation of proceedings under Section 164(1) BNSS, without affording the Revisionists an opportunity to adduce evidence regarding their possession and without recording objective reasons establishing the existence of an emergency as contemplated under the statute.

8. It will be relevant to first go through with the provision of Section 164(1) and 165(1) B.N.S.S.:

Section 164 BNSS contemplates initiation of preventive proceedings whenever an Executive Magistrate is satisfied that a dispute concerning land or water is likely to occasion breach of peace. The object of the provision is preventive and not adjudicatory. The Magistrate is required to call upon the parties to file their written statements and adduce documentary and oral evidence regarding actual possession. It is only after considering such evidence that the Magistrate is required to record his satisfaction regarding possession as on the date of the preliminary order. Thus, the opportunity of leading evidence is not an empty formality but a mandatory safeguard incorporated by the legislature.

Section 165(1) BNSS, corresponding to Section 146 Cr.P.C., confers an extraordinary power of attachment. Such power can be exercised only where the Magistrate considers the case to be one of **emergency**, or where he finds that none of the parties was in possession, or where, after conducting the inquiry contemplated under Section 164 BNSS, he is unable to satisfy himself as to which party was in possession. Being an exceptional power affecting possessory rights, the statutory conditions precedent must exist and must be reflected by cogent reasons recorded in the order itself.

9. The record shows that the order dt. 01.04.2026 U/s 164(1) B.N.S.S. has been passed by concerned Magistrate on the basis of Police Report dt. 31.03.2026. In the said report, it was mentioned that Revisionist has been living in the said disputed property i.e. Room etc. since long and he is also residing presently in the said room. Since, an intense dispute exists between Revisionist and First Party regarding the possession of said property and there is strong possibility of breach of peace, it is prayed that an order for the maintaining of peace be passed in the matter.

The record further reveals that the concerned Magistrate itself had not made inspection on-site whereas in the said report of P.S. concerned, it was mentioned that

an intense dispute exist between Revisionist and First Party regarding the property in dispute i.e. residential Room situated in the premises of Viththal Bhagwan Temple at Golpada Mohalla of Chhatta Bazar, District Mathura and prayed that order for maintaining peace be passed in matter. However, the order U/s 164(1) B.N.S.S. was passed on 01.04.2026 by fixing 08.04.2026 for producing the evidence but no service was effected on Second Party. The record further demonstrates that no proper opportunity whatsoever was afforded to the Revisionist to produce possession-related documents or oral evidence etc. before passing the impugned order dated 17.04.2026 for attachment of the disputed property. There is no justification in the impugned order or on record that if there was intense dispute existed between First Party and Second Party and there was also a strong possibility to breach of peace or emergent situation then as to why the concerned Magistrate itself did not inspect the disputed site. The record also shows that the matter was not considered of such nature by concerned authorities which requires immediate consideration by the Magistrate and it also shows that authorities did not consider the matter of emergent nature to act upon instantly. That the impugned order was passed only on the basis of apprehension of breach of peace between the parties, which shows that authorities did not consider the matter of emergent nature.

10. Now coming to analyse the order U/s 165(1) B.N.S.S. i.e. impugned order, it is observed that the City Magistrate proceeded to pass the said order on the basis of Police Report 31.03.2026. It is also noteworthy that the impugned order merely reproduces that an "emergency situation" existed and that there was a "strong possibility of breach of peace". Beyond these bald observations, the order discloses no objective material, no reasons and no exceptional circumstance demonstrating why the case deserved immediate attachment without giving property opportunity to Second Party for recording evidence. The satisfaction recorded by the Magistrate is, therefore, nothing more than a mere conclusion unsupported by reasons.

If the Magistrate genuinely entertained the opinion that immediate attachment had become indispensable, nothing prevented him from making such further inquiry as the facts demanded, including a local inspection of the disputed property, if considered necessary. The absence of any such exercise reinforces the conclusion that the Magistrate mechanically acted upon the police report.

11. The police report and impugned order also acknowledge the fact that Revisionist is living in the disputed property and he is in possession of it, therefore, possession of disputed property i.e. two rooms, is with the Revisionist, whether it is legal or not, is not for the Magistrate to decide. Regarding the fact of possession of property in question, Police Report clearly shows that Revisionist is residing in the said disputed property since long and First Party has also admitted that Revisionist is residing in the property in question and for vacating the said property, First Party

given him rupees one lakh on 18.03.2025. The said act also clearly indicates that the Revisionist is in possession of disputed property since long. That it is also noteworthy that a Civil Suit is pending before the Civil Court, Mathura regarding the actual possession of the disputed property.

The record clearly demonstrates that a notice dated 10.09.2024 was sent to Revisionist Ajay Yadav @ Bobby Yadav S/o Chhotelal Yadav, R/o Gali Golpada, Chhatta Bazar, Mathura, who is living as a tenant and he is in possession of two rooms since long, in which one room is situated at Ground Floor and second room is situated at First Floor. That both the rooms are the part of Property No. 638 Shri Viththal Mandir Golpada, Chhatta Bazar, Tehsil and District Mathura.

Regarding the notice dated 10.09.2024, the first party neither denied before the trial Court nor this Court.

12. In the above context, this Court has relied upon **Ashok Kumar v. State of Uttarakhand, (2013) 3 SCC 366**, in which Hon'ble Supreme Court held that:

Para 14: "a case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency."

It is also held that on the basis of a mere case of apprehension of breach of peace, the concerned Magistrate is not competent to pass an order of attachment under Section 165(1) B.N.S.S. unless a case of emergency exists and satisfaction to that effect is recorded. Hon'ble Court further held that order must be reasoned and speaking.

Similarly in **Indu Tandon vs. State of U.P. Thru. Prin. Secy. Home Lko., 2026:AHC-LKO:23238**, Hon'ble Court held that:

"The proceedings under Section 145 Cr. P.C. cannot be initiated e.g. if one party admits the other party's possession on the property in dispute then in these circumstances the Magistrate should not initiate proceedings under Section 145, Cr. P.C. the question of possession is not in dispute but the Magistrate finds that there is danger of the breach of the peace then the proper course is to take action under Section 107, 116, Cr. P.C. Thus, what is necessary to give jurisdiction to the Magistrate to act under Section 145, Cr. P.C. is the fact that there must be a dispute in respect of actual possession of the property in dispute. Similarly, if the claim is vague or if from the perusal of the application for initiation of proceedings under Section 145, Cr. P.C. it is proved that there is no dispute in respect of possession or if it appears that one party is in possession of the property in dispute from a very long time then in these circumstances the Magistrate has no jurisdiction to initiate the proceedings under Section 145, Cr. P.C."

1. Upon considering the legal propositions as propounded by the Hon'ble Supreme Court and Hon'ble High Court, this Court is of considered opinion that in the present case, the reports of concerned Police clearly indicate that Revisionist is residing in the disputed property and he is in possession of it since long and the first party has also admitted the said facts, therefore, it can be said that the Revisionist is in the possession of said property. In such situation, in **Ashok Kumar Case (Supra)**, Hon'ble Court held that if one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency and before passing the an order U/s 146 Cr.P.C., the Magistrate must explain the circumstances why he thinks it to be a case emergency and to infer a situation of

emergency there must be a material on record but the impugned order shows that no explanation or reason was recorded by the Magistrate which lead to this case to the extent of emergency.

This Court is also observed the fact that except police report, first party has also admitted the fact that Revisionist is residing in the said disputed property and he is in possession of it. In **Indu Tadon (supra) case**, Hon'ble Court held that "if one party admits the other party's possession on the property in dispute then in these circumstances, the Magistrate should not initiate proceedings U/s 145 Cr.P.C. and if it appears that one party is in possession of the property in dispute from a very long time then in these circumstances the Magistrate has no jurisdiction to initiate the proceedings U/s 145 Cr.P.C."

13. In view of above discussion, the Revision is liable to be allowed and accordingly the impugned order dt. 17.04.2026 passed by the City Magistrate, District Mathura is liable to be set aside.

ORDER

The Revision is allowed and impugned order is set aside.

A copy of this judgement & order along with record of trial Court be transmitted to the Court concerned.

The concerned record be consigned as per law.

Dated: 31.07.2026

(Vikas Kumar - I)
Sessions Judge, Mathura
I.D. No. UP 1910

This Judgement signed, dated and pronounced by me, in open Court today.

Dated: 31.07.2026

(Vikas Kumar - I)
Sessions Judge, Mathura
I.D. No. UP 1910

Virendra Tripathi
Steno