



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 3996 of 2026

Som Shankar And Another

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Of Home
Lko. And Others

.....Respondent(s)

Counsel for Petitioner(s) : Akber Ahmad, Maria Fatima, Nadeem
Murtaza, Wali Nawaz Khan
Counsel for Respondent(s) : G.A.

Court No. - 9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE ZAFEER AHMAD, J.**

1. Heard Sri Gaurav Mehrotra, learned Senior Advocate assisted by Sri Akber Ahmad and Sri Nadeem Murtza, learned counsel for the petitioners and Sri V.K. Shahi, learned Additional Advocate General assisted by Sri S.N. Tilhari, learned AGA for all the respondents.

2. By means of this petition the petitioner has prayed following relief :

"(i) issue a writ, order or direction in the nature of Certiorari quashing the impugned notice, dated 18.04.2026, issued under section 168 BNSS by the respondent no. 3 to the petitioners. (Annexed as Annexure no. 1).

(ii) issue a writ, order or direction in the nature of mandamus directing the Respondents not to interfere in the peaceful possession, day-to-day functioning and affairs of AAIL including ingress and egress of its employees and official to and from the office of the AAIL situated at Sector-D, Sushant Golf City, Sultanpur Road, Lucknow.

3. Sri Gaurav Mehrotra, learned Senior Advocate has assailed the impugned notice mainly on the two grounds, at the admission stage, that there is statutory prescription under the BNSS, 2023 under second schedule circulating the formats of notices under section 522 of BNSS. The perusal thereof reveals that there are form numbers i.e. Form no. 1 to Form no. 58 indicating categorically that those formats have been issued / circulated under specific sections of BNSS. Escaping other form numbers we straightway come on Form no. 27 which has been issued u/s 166 BNSS under the title of 'Magistrates order prohibiting the doing of anything of Land or Water'. Thereafter the Form no. 28 which has been issued u/s 189 BNSS under the title 'Bond and Bail Bond on a

preliminary enquiry before a police officer'. The perusal thereof clearly reveals that after Form no. 27 which has been issued u/s 166 BNSS, Form no. 28 has been issued u/s 189 BNSS and there is no format prescribed under second schedule issuing notice u/s 168 BNSS. Therefore, Sri Gaurav Mehrotra has stated that when the intent of legislature is specific to circulate no form issuing notice u/s 168 of BNSS as to why and under which authority or law any Inspector-In-charge may issue notice u/s 168 BNSS, therefore, such notice is beyond jurisdiction.

4. Sri Gaurav Mehrotra has further submitted that the power of section 168 BNSS may very well be used by the competent police officer but the same power may be used within four corners of law. For the convenience section 168 BNSS reads as under:

"168. Police to prevent cognizable offences.

Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence."

5. As per section 168 BNSS every police officer may interpose for the purpose of preventing and, to the best of his ability, prevent the commission of any cognizable offence but in the garb of the aforesaid provision such police authority may not issue any order which is tantamount to injunction inasmuch as the power of injunction is vested with the competent court of law / authority. Therefore, Sri Mehrotra has drawn attention of this Court towards the impugned notice wherein vide para 2 the reason has been indicated as to why such notice has been issued and in para 3 the Inspector-In-charge has categorically directed that only the employees of APIL and AAIL (the company of the petitioners) would be permitted to come into the premises or no other unauthorized person would be permitted to enter into the premises of both the companies. Sri Mehrotra has stated that this notice does not say that the authorized person may enter into the premises but saying that the unauthorized person would not enter into the premises meaning thereby the factum of unauthorized person would be decided by the Inspector-In-charge. Therefore, Sri Mehrotra has stated that in the garb of the aforesaid notice the Inspector-In-charge may not restrain the persons whose presence is required in the company. Sri Mehrotra has also submitted that Lucknow is under the administrative control of commissionerate and before issuing such notice the Inspector-In-charge of Sushant Golf City must apprise the reason issuing notice u/s 168 BNSS to any jurisdictional Assistant / Deputy Commissioner.

6. In support of his contention, at the admission stage, Sri Mehrotra has placed reliance on the decision of Division Bench of High Court of Bombay reported in ***2015 SCC Online Bom 9049 (Shashikant Bhurya***

Kokani vs. State of Maharashtra & Ors.) referring para 9,10 and 11 which reads as under :

"9. It is the contention of petitioner that respondent no. 3 has no authority and jurisdiction to issue notice under section 149 of Code of Criminal Procedure and respondent no. 3 is not justified in withholding the representations dated 11th August, 2007 and 23rd November, 2014.

10. The question which is posed before us is in respect of jurisdiction of respondent no. 3 to issue notice which is in reality an injunction restraining the petitioner from cultivating his agricultural lands thereby affecting the civil rights of the parties.

11. Section 149 of Criminal Procedure Code empowers every police officer to interpose for the purpose of preventing and, to the best of his ability, prevent the commission of any cognizable offence. Otherwise also, according to us, section 149 Cr.P. Code does not vest Police Officer in the exercise of jurisdiction under section 149 Cr.P.C. to issue blanket order of injunction prohibiting any party from entering into the agricultural land. In our considered opinion, respondent No. 3 would not have issued impugned notice injecting the petitioner, more so when the appeals are pending adjudication. We are of the opinion that impugned notice (Annexure -F) issued by respondent No. 3 is unsustainable in law."

7. In the aforesaid paragraphs the Bombay High Court considered the provision of section 149 Cr.P.C. which is para-materia of section 168 BNSS. To buttress the aforesaid argument Sri Mehrotra, learned Senior Advocate has also referred the decision of Bombay High Court, Nagpur Bench in **Criminal Writ Petition No. 152 of 2024 (Dharm Singh Ramsingh Bayas vs. State of Maharashtra through P.S.O., Police Stateion Shivaji Nagar, Khamgaon, Tq. and Distt. Buldhana)** dated 4.12.2024 referring para 9 thereof. For the convenience, at this stage, he referred para 9 wherein one decision of the Bombay High Court in re: **M/s. Rai Udyog Limited vs. State** has been considered and para 7(11)(12)(13), para 8 in re: **M/s. Rai Udyog (supra)** as well as para 11 in re: **Dharm Singh Ramsingh Bayas** has been referred which reads as under:

"9. If we peruse the notice issued in exercise of powers under Section 149 of the Cr.P.C., it cannot be inferred therefrom that the statutory powers referred to therein can be exercised for the purpose of putting an embargo on the rights of a party, who claims to be owner of the property in relation to which the civil dispute is pending.

Rightly so, our attention is invited to the Division Bench Judgment in the matter of **Kamran Ishtiyak Ahmed Khan** and also **M/s. Rai Udyog Limited Vs. State**, delivered in **Criminal Writ Petition No.622/2021**, decided on 27.7.2022.

10. The relevant observations in the said judgments read as under :

"7. In this regard, reliance was placed by the petitioner on the judgment of this Court dated 27.07.2022 in *M/s. Rai Udyog Limited Vs. State*, passed in Criminal Writ Petition No.622/2021 wherein the provision of Section 149 of the Code were examined and an order similar to the one passed in the present matter was dealt with in the following terms :-

"10] A perusal of the above quoted provision, would show that a Police Officer is expected to interpose only for the purpose of preventing commission of a cognizable offence and that he can take appropriate steps in that regard. The question is, whether the Police Officer, while exercising power under Section 149 of the Cr.P.C., can issue a restraintment order or an order akin to an injunction against a party. Reliance in this regard is placed on behalf of the petitioner on judgment and order dated 27.03.2015, passed by a Division Bench of this Court in the case of *Shashikant Bhurya Kokani Vs. The State of Maharashtra & Ors.* reported in 2015(2) BomCR (Cri) 701. While considering the scope of the aforementioned provision, in the said judgment, it was held as follows:

"11. Section 149 of Criminal Procedure Code empowers every police officer to interpose for the purpose of preventing and, to the best of his ability, prevent the commission of any cognizable offence. Otherwise also, according to us, section 149 Cr.P.Code does not vest police officer in the exercise of jurisdiction under Section 149 Cr.P.C. to issue blanket order of injunction prohibiting any party from entering into the agricultural land. In our considered opinion, Respondent No.3 would not have issued impugned notice injecting the petitioner, more so when the appeals are pending adjudication.

We are of the opinion that impugned notice (Annexure-F) issued by Respondent No.3 is unsustainable in law."

11] We are of the opinion that even if there was apprehension of a law and order situation being created at the spot in question, while exercising power under Section 149 of the Cr.C.P., the Police Officer (respondent No.1 herein) did not have the power or authority to issue a virtual injunction order against the petitioner - Company, which was undertaking construction on a piece of land. If any party sought to raise a dispute as regards the authority of the petitioner - Company to proceed with construction on the said piece of land, such a party would obviously have to knock the doors of the competent Civil Court to obtain urgent order of injunction. In fact, as noted above, the individuals who sought to intervene in the present petition, had filed Writ Petition No.2027/2022, before this Court and they had themselves proposed to file a civil suit for enforcement of the alleged easementary rights, in the backdrop of which, the writ petition stood disposed of.

12] It is significant that in Section 149 of the Cr.P.C., quoted above, the word "interpose" is used, in the context of a Police Officer preventing commission of any cognizable offence. In Cambridge Dictionary, interpose is defined by stating "to put

something between two things". In Collins Dictionary, interpose means "to intervene or step in". As per Marriam-Webster Dictionary, interpose means "to be or come between" and in Oxford Learner's Dictionary, interpose means "to place somebody or something between two people or things".

13] Applying the aforesaid meanings given to the word "interpose", in Section 149 of the Cr.P.C., a Police Officer is required to come between people or things to prevent commission of any cognizable offence. In the present case, even if the Police Officer apprehended commission of a cognizable offence, he was required to come in between persons and while doing so, ensuring that lawful activity was assisted and unlawful activities were prevented. The petitioner -

Company carrying out development activity/construction lawfully could not have been restrained merely because some people gathered with the threat of committing cognizable offence. On the contrary, the Police Officer was expected to take appropriate steps by interposing and ensuring that lawlessness and unlawful activity was prevented. Those claiming any right to restrain the petitioner -Company from carrying out its development/construction activity ought to approach the competent Civil Court for obtaining appropriate orders of restraint, in accordance with law. Instead, the respondent No.1 - Police Officer in the present case asked the petitioner - Company to do so."

8. Applying the ratio laid down in the above judgment to the facts of the present case, there is clear overreach demonstrated in the passing of the impugned order, which virtually restrains the petitioners from dealing with their own property and carrying out any construction thereupon; the order operates as an injunction upon the petitioners, which is impermissible under the said provisions. Consequently, we hold that the impugned order dated 22.02.2023 is in excess of the powers vested in the authority under Section 149 of the Code and accordingly quash and set aside the same."

11. In this background, we are of the view that the notice impugned dated 13th January, 2024 can be said to be contrary to the scheme of Section 149 of the Cr.P.C. as the authority who has issued the said notice cannot be said to be armed or clothed with the powers to put an embargo on the right of the petitioner for the cause which is cited in the notice."

8. Sri Mehrotra has stated that if any notice is issued u/s 149 Cr.P.C. or 168 BNSS restraining any person including company which is already a juristic person to do or not to do anything would be tantamount to injunction and such power is not vested with the Inspector-In-charge of any police station.

9. Replying the aforesaid contention of Sri Gaurav Mehrotra, Sri S.N. Tilhari, learned AGA has however, tried to justify the impugned notice

u/s 168 BNSS by submitting that the specific reason has been indicated in para no. 2 of the notice, therefore, instead of restraining the employees of the company, the Inspector-In-charge has categorically indicated that the employees of the company may enter into the premises but no unauthorized person may enter into the premises of the company. However, he may seek specific instructions on the point as to whether the issue in question has been placed before the competent Assistant / Deputy / Joint Commissioner of the Police and as to whether such notice could have been issued under the law by the Inspector-In-charge so he may be given some short time to file short counter affidavit / counter affidavit.

10. The matter requires consideration.

11. Let the counter affidavit be filed within two weeks and if the copy of the counter affidavit is provided to Sri Gaurav Mehrotra, learned Senior Advocate or to his assisting counsel he may file rejoinder affidavit within a period of one week.

12. List in the week commencing 18.5.2026 as fresh. This matter may be taken up after fresh cases.

13. Till the next date of listing the effect and implementation of the impugned notice dated 18.4.2026 (Annexure no. 1) shall remain stayed.

(Zafeer Ahmad,J.) (Rajesh Singh Chauhan,J.)

April 29, 2026

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