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IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 39 of 2026

Shri. Noberto Paulo Sebastiao Fernandes, 25 years of age, Son of late Shri. Jose Piedade Fernandes, Resident of House No.794, Vithaldas Waddo, Morjim, Pernem, Goa, Through his constituted Power of Attorney Holder, Mr. Neil Fernandes, 35 Years of age, Constituted vide the Power of Attorney dated 19/06/2019 bearing Registration No.5640, Resident of House No.794, Vithaldas Waddo, Morjim, Pernem, Goa

…PETITIONER

~ VERSUS ~

1. Shri. Pankaj Vithal Tari Volvoikar, Son of late Vithal Tari, 40 years of age,

2. Shri. Rohan Vital Tari Volvoikar, Son of late Vithal Tari,39 years of age, Both Residents of House No.492/2, Amrai, Savoi - Verem, Ponda, Goa.

3. The Police Inspector, Mandrem Police Station, Mandrem, Pernem, Goa.

4. The Public Prosecutor, High Court of Bombay at Goa, Porvorim, Goa.

…RESPONDENTS

APPEARANCES:

for the Petitioner.	***Mr. S. S. Kantak, Senior Advocate with Mr .Chirag Angle, Ms. Neha Kholkar Pai and Ms. Saicha Desai, Advocates.***
for the Respondent Nos.1 and 2.	***Mr. Nigel Costa Frias with Mr Shane Coutinho, Mr. Vishal Sawant and Ms. M. Fernandes, Advocates.***
for the Respondent Nos.3 and 4.	***Mr. Nikhil Vaze, Addl. Public Prosecutor.***

CORAM : AMIT S. JAMSANDEKAR, J.

Reserved on : 7th May 2026

Pronounced on : 15th June 2026

JUDGMENT

1. The Deputy Collector and Sub-Divisional Magistrate of Pernem, Goa, (***the Learned Magistrate***) exercised his jurisdiction under Section 164 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (***BNSS***) and, *inter alia*, held that the Petitioner is entitled to get the possession of House No.793 situated in survey No. 171 sub–division 6 of Village Morjim, Pernem, Goa. The Judgment and Order dated 7th April 2025 passed by the Learned Magistrate, came to be challenged by Respondent Nos. 1 and 2 (***the Respondents***) by filing a Revision Application under Section 438 of the BNSS before the Learned

Court of the District Judge–II and Additional Sessions Judge, Mapusa, Goa (***the Learned Judge***) in Criminal Revision Application No.47/2025. The Learned Judge exercised his jurisdiction under Section 438 of the BNSS and called for the record of the proceedings, and thereafter, on 20th August 2025 (***the Impugned Order***) quashed and set aside the Judgment and Order dated 7th April 2025 passed by the Learned Magistrate and consequently directed The Police Inspector Morjim Police Station to open the lock and hand over the possession of House No.793 to the Respondents. By the present petition, the Petitioner has challenged the impugned order of the Learned Judge.

2. Rule. The Rule is made returnable forthwith and heard finally by consent. Mr. Costa Frias waives service on behalf of Respondent Nos. 1 and 2. The service is also waived by Mr. Vaze on behalf of Respondent Nos. 3 and 4.

3. On 21st January 2025, the Petitioner filed a complaint before the Inspector, Mandrem Police Station, alleging that the Respondents forcefully trespassed into the subject property and harassed the Petitioner and his employees. On 23rd January 2025, the Petitioner also made a complaint before the Learned Magistrate alleging that

the Respondents committed acts of trespass and harassment. The property, which was made the subject of the complaints by the Petitioner, is identified and described in the complaints as 'VITHALDAS' bearing survey No. 171 sub-division 6 of Village Morjim, Pernem (***the said property***).

4. On 29th January 2025, the Sub Inspector of Mandrem Police Station sent a report to the Learned Magistrate and requested that powers under Section 164 of the BNSS be invoked.

5. On 29th January 2025, the Learned Magistrate issued a Notice to the Respondents under Section 164 of the BNSS. The Learned Magistrate called upon the Respondents to remain present before him on 10th February 2025 and to submit written statements of their respective claims in respect of the said property. After the notice, the Respondents appeared before the Learned Magistrate. The Petitioner as well as the Respondents filed their respective written statements before the Learned Magistrate.

6. The rival claims made by the Petitioner and the Respondents in their respective written statements are as follows:

i) The Petitioner has alleged that the Respondents have disturbed the Petitioner's settled possession of the said property. The claim of the Respondents pertaining to the Mundkarship of House No. 793 is false. The Petitioner has claimed that the Petitioner is the absolute owner of the said property, and therefore claims that he exercises absolute proprietary and possessory rights in respect of the said property and the structures owned and possessed by the Petitioner on the said property. The Petitioner has alleged that the grandmother of the Respondents, Smt. Satyawati Tari had claimed Mundkarship and had filed an application for registration of Mundkarship on 04.09.1978 in respect of another dwelling house in the property "UCHIT VELECHE MAD" bearing Survey No 130/17 of Village Morjim. That claim was accepted and granted by the order dated 18.08.1983 in Case No JM/MND/RGT/MOR. Therefore, the claim of the Mundkarship in respect of the structure bearing house No. 793 situated in Survey No. 171/6 of Village Morjim was with an ulterior motive to grab the said property of

the Petitioner. It is further complained that the Respondents cannot claim benefit under the Goa Daman and Diu Mundkars (Protection from Eviction) Act, 1975(***the Mundkar Act***) in respect of two separate dwelling houses.

ii) The Petitioner has alleged that the Respondents' claim to Mundkarship in respect of the structure bearing house No. 793, situated in Survey No. 171/6 of Village Morjim, has already been dismissed by the competent authority. The appeal against that decision has also been dismissed. There is an Appeal pending before the Administrative Tribunal under Section 24 of the Mundkar Act. It is alleged by the Petitioner that the Respondents are permanent residents of House No.429/2 of Savoi Verem, and it is evident from the Electoral Roll of 2014 of the Assembly Constituency of Priol, Goa. Therefore, it is alleged by the Petitioner that the Respondents were never in possession of the said property and/or the structure bearing House No. 793 standing on the said property. In this background, the Petitioner has claimed that the Petitioner is in exclusive

possession of the said property and the structures standing on the said property.

iii) The allegations and claims made by the Petitioner are denied by the Respondents. The Respondents have alleged that House No. 793 on the said property was constructed by his grandfather, late Savlaram Tari. The construction of House No. 793 was with the consent of the original landlord/Jose Piedade Fernandes, and since then, the Respondents' ancestors, and after their death, the Respondents have been residing therein and are in possession of the same. House No. 793 is also seen in the Government survey plan. The Respondents claim that after the death of his grandfather/Savlaram Tari, the Mundkarial right devolved on the grandmother of the Respondents and her son, Vithal Savlaram Tari. It is claimed that the grandmother filed an application for registration of Mundkarship in 1978. However, due to her illiteracy, the survey number of the property was incorrectly recorded as 130/17 instead of 171/6. The landlord did not appear in the proceedings and the grandmother of the Respondent was registered as a

Mundkar in respect of House No. 793 situated in Survey No. 130/17. The Respondents claimed that the mistake in the application filed by the grandmother is apparent because there is no house situated in Survey No. 130/17 of Village Morjim. Therefore, the House constructed by the Respondent's grandfather is House No. 793, which is standing on the said property. In this background Smt. Satyawati Tari filed an application for a declaration of Mundkarship in respect of House No.793 standing on the said property, which was dismissed by the Court of Mamlatdar, and the appeal filed by her was also dismissed by the Deputy Collector. The proceedings against the dismissal of the Appeal are pending before the Administrative Tribunal.

iv) The Respondents have alleged that the Petitioner, by using his financial and muscle power, has always attempted to dispossess the Respondents of House No. 793 standing on the said property. When such an attempt was made by the Petitioner in the year 2015, an FIR No. 177/15 was lodged against the Petitioner and

the possession of the Respondents was maintained. This incident was widely reported in the local newspapers. In support of the claim, the Respondents have filed documentary evidence to establish their possession of House No. 793 standing on the said property.

7. With these facts, the proceedings were heard by the Learned Magistrate under Section 164 of the BNSS, and he was pleased to hold that the Petitioner was in the actual position of the subject property and consequently passed directions by his order dated 7th April 2025.

8. By the Impugned Order, the Learned Judge was pleased to allow the Respondents' Revision Application, *inter alia*, on the grounds:

   i) that the Learned Magistrate proceeded without jurisdiction. The Learned Judge has followed the decisions of the Hon'ble Supreme Court on the interpretation of Section 164 of the BNSS and therefore has not followed the decision of the Division Bench of this Court in ***V. K. Rao. v. Chandappa Appa Devadiga,*** **[1974 SCC Online Bom. 147]**.

ii) that the Learned Magistrate has wrongly proceeded on the basis of the title of the Petitioner to the property when the scope of Section 164 is merely to decide the actual possession of the property as on the date of passing the preliminary order. The Petitioner failed to establish that the Petitioner was in the actual possession of the property and the record establishes that the Respondents were in the actual possession of the property etc.

iii) the Learned Magistrate ignored the evidence of the Respondents, which establishes that the Respondents were in actual possession of the property.

9. In the background of the above-mentioned facts, Mr. Kantak, the Learned Senior Counsel, submitted that the impugned order ought to be set aside on the following grounds:

i) Impugned Order suffers from patent perversity. It ignores the settled law laid down by the Division Bench of this Court in ***V.K. Rao v. Chandappa Appa Devadiga,*** **[1974 SCC Online Bom 147]**. A mere non-stating of grounds by the Learned Magistrate in the notice dated 29/01/2025 issued under Section 164 of the BNSS would not, by itself, vitiate the final order passed therein. Not a single Judgment has been produced on record by the Respondents to indicate any contrary view taken that

the non-stating of the grounds in the preliminary notice by itself vitiates the entire proceedings.

ii) The impugned order has erroneously recorded that the Judgments cited by the Respondents have laid down the law that the preliminary order under Section 145 (1) of the Criminal Procedure Code (***the Code***) mandatorily requires grounds and that non-stating of grounds vitiates the entire proceedings and the final order.

iii) The Petitioner submits that the judgment of ***Vishwanath Kashinath Virkar and others v. Nitinchand Keshavji Gala and others,*** **[1995 SCC OnLine Bom 142]** and ***Laxman Bhikaji Pawar v. Bahimkhan Balekhan Dalwai,*** **[1976 SCC Online Bom 95]** (cited by the Respondents) although dealing with the specific proposition of law whether the non-stating of grounds in a preliminary order would vitiate the final order and the proceedings therein, the Learned Judge has lost sight of the fact that the same were passed by a Single Bench of this Court. The Petitioner submits that in such circumstances, the judgments which have ignored the settled law laid down by the Division Bench in ***V.K. Rao*** (supra) would be *per incuriam*. In any event of the matter, the Judgment of ***V.K. Rao*** (supra), being passed by a Division Bench, would prevail over that of the Single

Bench. All other judgments cited by the Respondents of the Single Bench would thus be *per incuriam* in view of the law being settled by the Division Bench in ***V.K. Rao*** (supra).

iv) The notice issued by the Learned Magistrate under Section 164 of the BNSS fulfils the requirements of Section 164 (1) of the BNSS. Therefore, the notice should be construed as a preliminary order under Section 164 of the BNSS.

v) Therefore, it is submitted that in terms of the ratio of ***V.K. Rao*** *(supra)* it is trite law that the mere fact that a cyclostyle form was issued by the Magistrate in drawing a preliminary order will not by itself show that the Learned Magistrate had not applied his mind or has acted mechanically in passing a preliminary order.

vi) The Learned Judge appears to have lost sight of the distinction between *ratio decidendi* and *obiter dicta* and further that only the *ratio decidendi* in a judgment operates as a binding precedent.

vii) The mandate of Section 511 of the BNSS, 2023 clearly stipulates that a 'mere irregularity', if at all any, in passing the impugned judgment would by itself not be sufficient grounds to reverse the order, unless it is shown that there has been a failure of justice.

viii) Subject structure (House No.793) was duly identified before the Learned Magistrate, and therefore, the Respondents were well aware of the property in dispute.

ix) Evidence contemplated under Section 164 (4) of the BNSS, 2023 is of a summary nature and the parties themselves had chosen not to lead any evidence before the learned Magistrate.

x) The Learned Judge has committed a manifest and patent error in law in re-appreciating the documents/records in exercise of revisional powers under Section 438 of the BNSS. The Learned Judge appears to have lost sight of the ratio laid down in ***K. Ravi Vs. State of Tamil Nadu,*** **[2024 SCC Online SC 2283]**.

xi) In support of these submissions, Mr Kantak has cited the following Judgements: -

Dhaveethu Vs. The District Collector, Sivagangai District, Sivagangai & Ors. [2016 SCC OnLine Mad 17222], ***V.K. Rao Vs. Chandappa Appa Devadiga*****,** [1974 SCC OnLine Bom 147], ***Ajaib Singh Vs Amar Singh***, The Indian Law Reports (Punjab Series) Vol. XVII-(1), ***K. Ravi Vs. State of Tamil Nadu*****,** [2024 SCC OnLine SC 2283]**,** ***Romell Housing LLP & Anr Vs. Sameer Salim Shaikh & Ors*** [2025 SCC OnLine Bom 3184], ***Asset***

Reconstruction Company (India) Ltd. Vs. Inspector of Police & Ors [(2022) 8 SCC 238], ***Career Institute Educational Society Vs. Om Shree Thakurji Education Society*** [2023 LiveLaw (SC) 380], ***State of U.P & Anr Vs. Synthetics & Chemicals Ltd. & Anr*** [(1991) 4 SCC 139], ***Panjumal Hassomal Advani Vs. Harpal Singh Abnashi*** [1974 SCC OnLine Bom 84], ***Hyder Consulting (UK) Ltd Vs. Governor, State of Orissa,*** [(2015) 2 SCC 189]**,** ***Arnit Das Vs. State of Bihar,*** [(2000) 5 SCC 488], ***Regional Manager Vs. Pawan K. Dube,*** [(1976) 3 SCC 334], ***Pradeep Wodeyar Vs The State of Karnataka***, **[**Criminal Appeal No. 1288 of 2021, SC].

10. On the other hand, Mr. Costa Frias, the Learned Counsel, submitted that the jurisdiction exercised by the Learned Judge is fully justified under Section 438 of the BNSS. The order passed by the Learned Magistrate was arbitrary, perverse and without jurisdiction. In view of the fact that no preliminary order was passed by the Learned Magistrate under Section 164 of the BNSS was by itself a ground to set aside the order of the Learned Magistrate. The Learned Judge has rightly relied upon the decisions of the Hon'ble Supreme Court and held

that the final order under Section 164 of the BNSS was passed without jurisdiction. It is the submission of the Respondents that the 'Notice' issued by the Learned Magistrate on 29th January 2025 cannot be construed as a 'preliminary order' under Section 164 of the BNSS. The requirement of a preliminary order is the objective satisfaction with reasons. Therefore, it is submitted that the failure to pass a preliminary order under Section 164 BNSS vitiates the entire proceedings and the Learned Judge has taken the right approach, relying on the judgments of the Hon'ble Supreme Court. He further submitted that on the face of the order passed by the Learned Magistrate under Section 164 of the BNSS, it is clear that the only consideration given by the Learned Magistrate was that the Petitioner is the owner of the subject property. That ought not to have been the factor for deciding the proceedings under Section 164 of the BNSS. There were no factual findings about the actual possession of the property in the order passed by the Magistrate. In fact, the Magistrate did not conduct an inquiry about the issue of actual possession. It is submitted by Mr. Costa Frias that the judgment of the Division Bench of this Court in ***V. K. Rao*** (Supra) is not a good law in view of the

subsequent judgment of the Supreme Court and the plain language of the provisions of Section 164 of the BNSS. Once the proceedings lack jurisdiction, the entire proceedings stand vitiated. He further submitted that ***V. K. Rao*** (Supra) cannot be binding on this Court, and what is binding on this Court is the decision of the Hon'ble Supreme Court. Further, it is submitted that provisions of Section 511 of the BNSS would not be applicable because non issuance of a preliminary order is not merely irregularity. In any case, it is submitted on behalf of the Respondents that the Learned Judge has rightly decided the issue of the actual possession of the property as on the date of issuance of the notice by the Learned Magistrate. He submitted that this is the exercise which the Learned Magistrate ought to have done; however, he failed to do so. The finding of the Learned Magistrate that the parties chose not to lead evidence is contrary to the record and factually wrong. Therefore, the Learned Judge, after calling for and verifying the record, has rightly held that it is wrong. The Learned Judge was justified in calling for and looking into the record of the matter under Section 438 of the BNSS and has rightly held that the Learned Magistrate has not considered the evidence produced

by the Respondents on record to clearly establish that the Respondents were in the actual possession of the property. Therefore, it is submitted that the Impugned Order cannot be interfered with on any grounds as sought to be argued on behalf of the Petitioner.

11. In support of these submissions Mr. Costa Frias has cited the following Judgements:

R. H. Bhutani Vs. Miss Mani J. Desai & Ors [1968 SCC OnLine SC 5], ***Laxman Bhikaji Pawar & Ors Vs. Bhimkhan Balekhan Dalwai & Ors*** [1976 SCC OnLine Bom 95], ***Mathuralal Vs. Bhanwarlal & Anr*** [(1979) 4 SCC 665], ***Rajpati Vs. Bachan & Anr*** [(1980) 4 SCC 116], ***Vishwanath Kashinath Virkar & Ors Vs. Nitinchand Keshavji Gala & Ors*** [1995 SCC OnLine Bom 142], ***Surya Dev Rai Vs. Ram Chander Rai & Ors*** [2003 6 SCC 675], ***Shanti Kumar Panda Vs. Shakuntala Devi*** [(2004) 1 SCC 438], ***Kalyani Packaging Industry Vs. UOI & Anr*** [(2004) 6 SCC 719], ***Shalini Shyam Shetty & Anr Vs. Rajendra Shankar Patil*** [(2010) 8 SCC 329], ***Amrishchandra Agarwal Vs. State of Maharashtra & Anr*** (Criminal Application No.936 of 2023), ***Ambrosia***

Fernandes Vs. State of Goa & Ors (Criminal Writ Petition No.44 of 2025).

12. I have heard Mr. Kantak and Mr. Costa Frias at length and have perused the record and have considered the written submissions filed by the Petitioner and the Respondents. To decide the rival contentions, I have framed the following questions for consideration.

i) Whether the absence of a preliminary order under Section 164 (1) of the BNSS would affect the very jurisdiction of the Executive Magistrate to exercise powers under Section 164 and therefore would vitiate the entire proceedings initiated and concluded under Section 164 of the BNSS?

ii) Whether a mere 'notice' sent by the Executive Magistrate under Section 164 (1) stating merely that '*I am satisfied that there exists a dispute likely to cause breach of public peace and tranquility and disturbance of communal harmony in the locality concerning the property'*, would be a 'preliminary order' under the provisions of Section 164 (1) of the BNSS?

iii) Whether the non issuance of a preliminary order is a mere irregularity and/or error and therefore by virtue of the provisions of Section 511 of the BNSS

the final order passed by the Learned Magistrate cannot be reversed or altered by a Court?

iv) Whether in the facts and circumstances of this case, the Learned Judge was justified in exercising jurisdiction under Section 438 of the BNSS?

13. Chapter IX of the BNSS contains provisions in respect of the Maintenance of public order and tranquility. The Chapter is divided into four parts. Part A.- has provisions to deal with the unlawful assemblies. Part B.- has provisions to deal with public nuisances. Part C.- has provisions to deal with urgent cases of nuisance or apprehended danger and Part D.- contains provisions to deal with the disputes as to immovable property.

14. Section 164 is in Part D of Chapter XI of the BNSS (the corresponding Section 145 of the Code), which reads as follows:

> *164.* ***Procedure where dispute concerning land or water is likely to cause breach of peace—****(1) Whenever an Executive Magistrate is* ***satisfied from a report of a police officer or upon other information*** *that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction,* ***he shall make an order in writing, stating the grounds of his being so satisfied,*** *and requiring the parties concerned in such dispute to attend his Court in person or by an advocate on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.*

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) ***A copy of the order shall be served*** *in the manner provided by this Sanhita for the service of summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.*

(4) The Magistrate shall, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, ***at the date of the order made by him under sub-section (1), in possession of the subject of dispute****:*

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and ***before the date of his order under sub-section (1)****, he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).*

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case ***the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.***

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject of dispute, he shall issue an order declaring such party to be entitled to possession thereof

until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed;

(b) the order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under Section 126.

(emphasis supplied)

15. Section 164 specifically provides a mechanism by which the proceedings relating to a dispute likely to cause a breach of the peace concerning any land, water or boundaries thereof are regulated. The provisions of Section 145 of the Code (164 of

the BNSS) are interpreted by the Hon'ble Supreme Court, and the object of the Section and the proceeding under Section, its scope and the manner in which the proceedings are regulated are explained by the Hon'ble Supreme Court in **R.H. Bhutani Vs Miss Mani J. Desai & Ors., [1968 SCC OnLine SC 5]** has interpreted the provisions of Section 145 of the Code and held that:

> *8. The object of Section 145,* ***no doubt, is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined a competent court****. The section requires that the Magistrate* ***must be satisfied*** *before initiating proceedings that a dispute, regarding an immoveable property exists and that such dispute is likely to cause breach of peace.* ***But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under sub-section (1) and thereafter to make an enquiry under sub-section (4) and pass a final order under sub-section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist.*** *The enquiry under Section 145* ***is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties.*** *Under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the*

enquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in that case the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the Magistrate would then proceed to make his final order directing the dispossessor to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. ***This is broadly the scheme of Section 145.***

9.The satisfaction under sub-section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. ***No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction****. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed.* ***The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.***

10. The question is whether the preliminary order passed by the Magistrate was in breach of Section 145(1), that is, in the absence of either of the two conditions precedent. One of the grounds on which the High Court interfered was that the Magistrate failed to record in his preliminary order the reasons for his satisfaction. ***The section, no doubt, requires him to record reasons.*** *The Magistrate has expressed his satisfaction on the* ***basis of the facts set out in the application before him and after he had examined the appellant***

> ***on oath.*** *That means that those facts were prima facie sufficient and were the reasons leading to his satisfaction.*
>
> (emphasis supplied)

16. Thus, the Hon'ble Supreme Court clearly held that the Magistrate is required to pass a preliminary order recording his satisfaction about the existence of a dispute. Thereafter, in ***Mathuralal Vs Bhanwarlal & Ors.,*** **[(1979) 4 SCC 665]**, Section 145 (1) has been further interpreted by the Hon'ble Supreme Court after comparing the provisions of the Code of 1898 before it was amended in 1955, the Code of 1898 after the amendment of 1955 and the Code of 1973. The Supreme Court has held that:

> ***4. Quite obviously, Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace because of a dispute concerning any land or water or their boundaries.*** *If Section 146 is torn out of its setting and read independently of Section 145, it is capable of being construed to mean that once an attachment is effected in any of the three situations mentioned therein, the dispute can only be resolved by a competent court and not by the Magistrate effecting the attachment.* ***But Section 146 cannot be so separated from Section 145. It can only be read in the context of Section 145. Contextual construction must surely prevail over isolationist***

construction. Otherwise, it may mislead. *That is one of the first principles of construction. Let us therefore look at Section 145 and consider Section 146 in that context.* ***Section 145 contemplates, first, the satisfaction of the Magistrate that a dispute likely to cause a breach of the peace exists concerning any land or water or their boundaries, and, next, the issuance of an order, known to lawyers practising in the criminal courts as a preliminary order, stating the grounds of his satisfaction and requiring the parties concerned to attend his Court and to put in written statements of their respective claims as regards the fact of actual possession of the subject of dispute. A preliminary order is considered so basic to a proceeding under Section 145 that a failure to draw up a preliminary order has been held by several High Courts to vitiate all the subsequent proceedings. It is by making a preliminary order that the Magistrate assumes jurisdiction to proceed under Sections 145 and 146.*** *In fact, the first of the situations in which an attachment may be effected under Section 146 of the 1973 Code has to be "at any time after making the order under sub-section (1) of Section 145" while the other two situations have, necessarily, to be at the final stage of the proceeding initiated by the preliminary order.* ***Now, the preliminary order is required to enjoin the parties not only to appear before the Magistrate on a specified date but also to put in their written statements. Sub-section (3) of Section 145 prescribes the mode of service of the preliminary order on the parties.*** *Sub-section (4) casts a duty on the Magistrate to peruse the written statements of the*

parties, to receive the evidence adduced by them, to take further evidence if necessary and, if possible, to decide which of the parties was in possession on the date of the preliminary order. If the Magistrate decides that one of the parties was in possession he is to make a final order in the manner provided by sub-section (6). Provision for the two situations where the Magistrate is unable to decide which of the parties was in possession or where he is of the view that neither of them was in possession is made in Section 146 under which he may attach the subject of dispute until the determination of the rights of parties by a competent court. ***The scheme of Sections 145 and 146 is that the Magistrate, on being satisfied about the existence of a dispute likely to cause a breach of the peace, issues a preliminary order stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements.*** *Then he proceeds to peruse the statements, to receive and to take evidence and to decide which of the parties was in possession on the date of the preliminary order. On the other hand if he is unable to decide who was in such possession or if he is of the view that none of the parties was in such possession he may say so. If he decides that one of the parties was in possession, he declares the possession of such party. In the other two situations he attaches the property.* ***Thus a proceeding begun with a preliminary order must be followed up by an enquiry and end with the Magistrate deciding in one of three ways and making consequential orders. There is no half way house, there is no question of stopping in the middle and leaving the parties to go to the civil court.*** *Proceeding may however be stopped at any time if one or other of the parties satisfies the Magistrate that there has never been or there is no longer any dispute likely to*

cause a breach of the peace. If there is no dispute likely to cause a breach of the peace, the foundation for the jurisdiction of the Magistrate disappears. The Magistrate then cancels the preliminary order. This is provided by Section 145 sub-section

(5). Except for the reason that there is no dispute likely to cause a breach of the peace and as provided by Section 145(5), a proceeding initiated by a preliminary order under Section 145(1) must run its full course. Now, in a case of emergency, a Magistrate may attach the property, at any time after making the preliminary order. This is the first of the situations provided in Section 146(1) in which an attachment may be effected. There is no express stipulation in. Section 146 that the jurisdiction of the Magistrate ends with the attachment. Nor is it implied. Far from it. The obligation to proceed with the enquiry as prescribed by Section 145 sub-section (4) is against any such implication. Suppose a Magistrate draws up a preliminary order under Section 145(1) and immediately follows it up with an attachment under Section 146(1), the whole exercise of stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements becomes futile if he is to have no further jurisdiction in the matter. And yet he cannot make an order of attachment under Section 146(1) on the ground of emergency without first making a preliminary order in the manner prescribed by Section 145(1). There is no reason why we should adopt a construction which will lead to such inevitable contradictions. We mentioned a little earlier that the only provision for stopping the proceeding and cancelling the preliminary order is to be found in Section 145(5) and it can only be on the ground that there is no longer any dispute likely to cause a breach of the peace. An emergency is the basis

> *of attachment under the first limb of Section 146(1) and if there is an emergency, none can say that there is no dispute likely to cause a breach of the peace .*
>
> (emphasis supplied)

17. Further, in 1980, the Hon'ble Supreme Court once again considered the provisions of Section 145 of the Code in the case of ***Rajpati Vs Bachan &Ors.*** **[(1980) 4 SCC 116]**. In that case, the Magistrate proceeded with the inquiry under Section 145 of the Code after passing a preliminary order recording reasons for his satisfaction. However, it was alleged that there was no clear finding by the Magistrate in the final order passed under Section 145 of the Code. The Hon'ble Supreme Court relied on the decision in ***R. H. Bhutani*** (supra) and held that a finding regarding the existence of a breach of peace is not necessary at the stage when the final order is passed, nor is there any provision in the Code requiring such a finding in the final order. This was held after observing that once a preliminary order is drawn up by the Magistrate setting out reasons for holding that a breach of the peace exists, it is not necessary that such breach of peace should continue at every stage of the proceedings. The Supreme Court further held that it is well settled that under Section 145 of the Code, it is for the Magistrate to be

satisfied regarding the existence of a breach of the peace, and once such satisfaction is recorded in a preliminary order, the High Court, in revision, cannot go into the sufficiency or otherwise of the material on the basis of which such satisfaction is founded. This was held by the Supreme Court on the basis of the ratio in the case of ***R. H. Bhutani*** (supra).

18. Therefore, it is clear that only by making a preliminary order recording his satisfaction in writing, the Magistrate assumes jurisdiction to proceed under Sections 145 and 146 of the Code. The language of Section 164 of the BNSS is identical, and therefore, the ratio of the judgments of the Hon'ble Supreme Court will also apply to the provisions of Section 164 of the BNSS.

19. To overcome this, Mr. Kantak cited ***Ajaib Singh Vs Amar Singh***, reported in The Indian Law Reports (Punjab Series) Vol. XVII-(1). In this judgment the Division Bench of Punjab & Haryana High Court has taken a view in the year 1963 that once the Magistrate is satisfied on the basis of the information received by him, he seized of jurisdiction, and the further question as to whether he passes a formal order under sub

section (1) of Section 145 of the Code or gets the same published as required by sub section (3) of the Section are matters relating to the mode of procedure. The Magistrate, having become seized of the jurisdiction, cannot be divested of the same because in the exercise of that jurisdiction, he does not pass an order in conformity with law. His jurisdiction does not depend upon the correctness or otherwise of the order made by him. A court has jurisdiction to pass a right order as well as a wrong order, and defects in an order would only go to show that the order is erroneous and not in conformity with the law, but it would not make the order as one without jurisdiction. It is further held that there is an essential difference between lack of jurisdiction and irregular exercise of jurisdiction and the two cannot be equated with each other or treated on the same footing. Procedural mistakes do not affect the jurisdiction of the Court, unless the matter is "something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural Justice". This judgment cannot be of any assistance to the Petitioner because the ratio of this judgment interpreting the provisions of Section 145 of the Code is impliedly overruled by subsequent three judgments of

the Hon'ble Supreme Court in ***R. H. Bhutani***, ***Mathuralal*** and ***Rajpati*** (supra).

20. Mr. Kantak further supported his submissions by citing a Division Bench Judgement of this Court in **V. K. Rao Vs. Chandappa Appa Devadiga**, **[1974 SCC On Line Bom 147]**. In **V. K. Rao** the Division Bench, after referring to various judgments, held that the requirement of Section 145 of the Code is directory and not mandatory. In the facts of that case (as noted in paragraph 3 of the judgment), there was, in fact, a preliminary order drawn by the Magistrate. However, it was argued that the preliminary order is a cyclostyled order and therefore does not satisfy the requirements of Section 145 (1) of the Code. With that factual background, the Division Bench has taken a view that in the absence of the preliminary order, the proceedings shall not be vitiated. The relevant findings of the Division Bench are as follows:

> *13.* ***The mere use of word "shall" does not make the provisions mandatory. In fact, there are a number of provisions in the Code of Criminal Procedure where word "shall" is used and yet those provisions are directory and not mandatory. In my view, the question whether this provision is mandatory or directory does not depend upon the word "shall" but upon the purpose and the object for which this provision has been made.*** *In these proceedings the Magistrate has to pass an order on his subjective satisfaction as to the*

existence of a dispute regarding immovable property which is likely to cause a breach of the peace. It is for the purpose of indicating that the Magistrate had material before him and that he applied his mind to the facts of the case that the provision for stating of grounds seems to have been made. ***The stating of the grounds by the Magistrate in the preliminary order is also for the purpose of indicating to the parties against whom the order has been drawn that the Magistrate has been satisfied about the existence of the dispute. It is not to the grounds stated by the Magistrate to which the parties are called upon to reply or show cause.*** *The parties are called upon by the Magistrate "to put in written Statements of their respective claims as respect the fact of actual possession of the subject of dispute." It may be that in a given case the Magistrate may act on an application filed by a party but in most of the cases, he acts on the basis of a report filed by the police. He, therefore, calls upon all the parties who claim to be in possession to file their written-statements. These written-statements are not in reply to the grounds stated by the Magistrate nor are they in reply to the claims made by one of the parties before the Magistrate but they are claims of each of the parties showing how he was in possession on the date of the dispute. What the Magistrate does is to call upon the parties to file their claims regarding actual possession.* ***Therefore, giving of the grounds in the order itself has practically no impact on the proceedings that follow. It is true that under sub-s. (5) of s. 145 of the Code of Criminal Procedure any party required to attend or any other person interested can show that no such dispute as aforesaid exists or existed and in that case the Magistrate has to cancel the said order, but this provision also does not support the contention that the grounds are absolutely necessary ingredients of the preliminary order.*** *The party or interested person can show that there was no dispute even if the grounds are not mentioned in the preliminary order. It is also true that in s. 147 of the Code of Criminal Procedure the words used are:*

"Whenever any District Magistrate, … is satisfied, … he may make an order in writing stating the grounds of his being so satisfied…"

14.It was argued that in s. 145 of the Code of Criminal Procedure the words used are "Magistrate shall pass such order" and it showed that the provisions in s. 145 regarding the stating of the grounds are mandatory and those in s. 147 are directory. ***It is not possible to accept this contention because the words used in s. 145 of the Code of Criminal Procedure are "the Magistrate shall make the order." It does not further say that the Magistrate shall state the grounds. If at all the discretion is granted to the Magistrate, in s. 147 the discretion is not regarding the stating of the grounds but that discretion has been granted in the matter of drawing the order. I am, therefore, of the opinion that the use of the word "shall" in s. 145 and "may" in s. 147 are of very little assistance in construing whether the provisions regarding the stating of the grounds are mandatory or directory. Sub-section (4) of s. 145 of the Code of Criminal Procedure shows what matters the Magistrate has to take into consideration while passing the final order.*** *I have already stated that the parties have to make a statement regarding actual possession and the Magistrate has also to decide who was in actual possession on the basis of the documents and the affidavits that are filed by the parties. This enquiry, therefore, has practically no relevance to the grounds which the Magistrate has to state in his preliminary order. The enquiry has to be concluded as far as may be practical within a period of two months. I have already stated that these are summary proceedings and the case has to be disposed of by the Magistrate on the basis of the documents and affidavits filed by the parties. The procedure regarding the matter of enquiry has been amended and provision for recording of the evidence has been deleted and the parties have been given right to adduce evidence by affidavits in order to shorten the procedure. The emphasis is on the speedy disposal of such disputes.* ***All this clearly leads me to conclude that the provisions regarding the stating of the grounds are directory and not mandatory****.*

*15.***Even if the provisions regarding stating of the grounds are mandatory, non-compliance by**

> ***the Magistrate of those provisions does not in any way vitiate the final order in absence of proof of prejudice suffered by the parties against whom the order is made.*** *I have already stated that the parties are required to file statements not in reply to the grounds stated by the Magistrate in the preliminary order but they have to file statements and affidavits in support of their claim to the actual possession. Therefore, there is very little scope of prejudice in subsequent proceeding even if the Magistrate does not state the grounds in the preliminary order.* ***It is well-settled that the non-compliance even of mandatory provisions by the trial Judge does not in absence of prejudice vitiate the final order****. (See W. Slaney v. State of M.P.[8])*
>
> (emphasis supplied)

21. The Division Bench in ***V. K. Rao*** has referred the judgment of the Supreme Court in ***R. H. Bhutani*** (supra) and interpreted it to mean that:

> *24.****It is true that the Supreme Court has observed that the section requires that the Magistrate has to state in writing the grounds for his satisfaction. If the Supreme Court has, in fact, held as is urged by the petitioner that the provision is mandatory, then the order of the Magistrate would be bad because the Magistrate had not stated the grounds in writing. In my opinion, the Supreme Court has held that there should be something in the order to indicate that the Magistrate had grounds to pass the order. If that material was before him when he passed the order then the grounds may not necessarily be stated in writing by the Magistrate as those facts were the grounds themselves. The fact that the Supreme Court has observed that the application along with the examination of the applicant were the reasons (grounds), clearly indicates that the Supreme Court has held that the provision regarding stating of the grounds in writing in the order***

> ***was not mandatory. In my opinion, what the Supreme Court seems to have held is that there should be sufficient compliance of provisions of the sub-s. (1) and there should be something to show that there were grounds before the Magistrate when he passed the preliminary order***.
>
> (emphasis supplied)

22. Mr. Kantak also relied upon a Full Bench judgment of the Madras High Court (Madurai Bench) in ***A. Dhaveethu Vs. The District Collector, Sivagangai District, Sivagangai & Ors.***, reported in **[2016 SCC OnLine Mad 17222]**. He submitted that the issue is concluded by the said Full Bench judgment. The questions of law considered by the Full Bench, *inter alia*, were: (i) whether the absence of a preliminary order under sub-section (1) of Section 145 of the Code would affect the very jurisdiction of the Executive Magistrate to proceed further and pass a final order under Section 145; and (ii) whether failure to pass a preliminary order under Section 145(1) is a mere irregularity or an illegality affecting the very jurisdiction of the Magistrate.

23. In the said judgment, the Full Bench of Madras High Court has considered various judgments of the High Courts as well as of the Supreme Court, including ***Rajapati*** (supra), ***R. H. Bhutani*** (supra),

and ***Mathuralal*** (supra). Upon such consideration, the Full Bench held that:-

> *63. In the light of the above discussion, we answer the questions posed by the learned Judge as follows:—*
>
> *"1. Though the Executive Magistrate is required to pass a preliminary order under Section 145(1), the absence of the same will not vitiate his final order under Section 145(4) of the Code.*
>
> *2. The failure of an Executive Magistrate to pass a preliminary order under Section 145(1) of the Code is a mere irregularity and will not affect his jurisdiction.*
>
> *3. Considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, no prejudice will be caused to parties.*
>
> *4. The aggrieved parties are empowered to move the very same Authority for reviewing his decision or in its absence, move the competent civil court for an appropriate relief either regarding the title or regarding the right to possession. In rare cases, they can move this Court for a judicial review either under Section 397 of the Code or under Article 226/227 of The Constitution".*

24. Mr. Kantak's submission is solely based on the Division bench judgment in ***V. K. Rao*** (supra) and ***Ajaib Singh*** (supra). On this basis, Mr. Kantak submitted that the issues raised by the Respondents are no longer *res integra*. He further submitted that the judgment of the Division Bench in ***V. K. Rao*** and ***Ajaib Singh*** (supra) and full bench in ***A. Dhaveethu*** are binding on this Court.

25. I have carefully considered all the judgments cited by Mr. Kantak. Undoubtedly, the Division Bench in ***V. K. Rao*** (supra) has held that the provision of Section 145(1) of the Code is directory and not mandatory. The Division Bench has also considered the judgment of the Supreme Court in ***R. H. Bhutani*** (supra) and provided its interpretation. Further, the Division Bench of Punjab & Haryana High Court in ***Ajaib Singh*** (supra) has also held that once the Magistrate is satisfied of the information received by him, he is seized of the jurisdiction and he cannot be divested of the jurisdiction because he does not pass an order in conformity of law. However, in view of the judgment of the Hon'ble Supreme Court ***R. H. Bhutani, Mathuralal and Rajapati*** (supra), the judgments of the Division Bench in ***V. K. Rao*** and ***Ajaib Singh*** (supra) are impliedly overruled, and therefore, are not binding on this Court. In ***A. Dhaveethu*** (supra), the Full Bench of the Madras High Court has referred to the judgments of the Supreme Court in ***R. H. Bhutani*** and in ***Mathuralal*** (supra). However, there are no findings given by the Full Bench in ***A. Dhaveethu*** (supra) as to why the judgments of the Supreme Court in ***R. H. Bhutani*** and in ***Mathuralal*** (supra) are not binding and should not be followed,

even though these judgments are binding on the Full Bench of the High Court.

26. In **Mathuralal** (supra) the Hon'ble Supreme Court has explained the scheme of Sections 145 and 146 of the Code and it is held that a preliminary order is considered so basic to a proceeding under Section 145 of the Code that a failure to draw up a preliminary order has been held by several High Courts to vitiate all the subsequent proceedings. It is by making a preliminary order that the Magistrate assumes jurisdiction to proceed under Sections 145 and 146. Therefore, the jurisdiction of the Magistrate under Section 145 of the Code is entirely dependent on his objective satisfaction as recorded in writing in a preliminary order. The entire procedure, as stipulated under Sections 145 and 146, begins, gets regulated and is concluded only on the basis of a preliminary order. Therefore, a preliminary order in writing, recording the satisfaction of the Magistrate, is a *sine qua non*. I cannot ignore the judgment of the Hon'ble Supreme Court in ***Mathuralal*** (supra), which judgment is subsequent to the judgments of the Division Bench in ***V. K. Rao*** and ***Ajaib Singh*** (supra) and prior to that of the Full Bench of the Madras High Court in ***A. Dhaveethu*** (supra).

27. Reading the provisions of Section 145 of the Code and Section 164 of the BNSS, which is identical to Section 164 of the Code along with the judgments of the Hon'ble Supreme Court in ***R. H. Bhutani***, ***Mathuralal*** and ***Rajapati*** (supra), makes it clear that a preliminary order is so basic that the Magistrate assumes jurisdiction only after passing a preliminary order.

28. Plain language used in Section 164 requires the Magistrate to make an order in writing, stating the grounds of his satisfaction about the existence of a dispute which is likely to cause a breach of peace concerning any land or water or the boundaries thereof. This is the same order, a copy of which is required to be served under Section 164 (3) of the BNSS upon such person or persons in accordance with the provisions of the BNSS, requiring them, *inter alia*, to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. Thereafter, the Magistrate determines the possession of the subject dispute as on the date on which he makes an order under Section 164 (1) of the BNSS. Importantly, Section 164 (5) of the BNSS makes a provision by which a party so required to attend the proceedings as ordered by the Magistrate or any other interested person is not precluded

from showing that no such dispute 'as aforesaid' exists. In such a case, Section 164 (5) of the BNSS requires that the Magistrate shall cancel the order, and all further proceedings shall be stayed. Subject to such cancellation of the order under Section 164 (5) of the BNSS, the order passed by the Magistrate under Section 164 (1) of the BNSS becomes final. The dispute, 'as aforesaid' referred in Section 164 (5) of the BNSS is the dispute in respect of which the Magistrate is satisfied, and such satisfaction is recorded in writing by stating the grounds in the order passed by him under Section 164 (1) of the BNSS. If there is no mandatory requirement to pass a preliminary order under Section 164 (1) of the BNSS, then what is that which will be communicated by the Magistrate under Section 164 (3) of the BNSS and what is that which will be answered by a party to whom a copy of the order is served, who will file a written statement? If a preliminary order is not mandatory, then what will be the subject matter of cancellation or the subject matter of finality under Section 164 (5) of the BNSS? The only answer to these questions is a 'preliminary order' under Section 164 (1) of the BNSS. Therefore, the plain language of Section 164 makes such an order mandatory rather than directory. Further, a preliminary order ought to record the objective satisfaction in writing by stating the grounds

so that a party to whom a copy is served will be in a position to file a written statement in respect of the objective satisfaction recorded by the Magistrate in a preliminary order on the basis of information received by him or as stated in the complaint filed before him.

29. The reason for the written order with recording the objective satisfaction is that a person served with a preliminary order under Section 164 (3) of the BNSS must be informed of the specific grounds based on the information, which, according to the Magistrate, are likely to result in a breach of peace. Importantly, because the Magistrate must determine possession of the property in question as on the date of the preliminary order, that property must be clearly identified in the preliminary order. The jurisdiction conferred upon the Magistrate is to ensure that the person in possession on the date of a preliminary order continues in possession until evicted in accordance with due process of law. The Magistrate decides the possession of the property and that power conferred by Section 164 of the BNSS/145 of the Code is very wide. Therefore, it ought to originate from the mandatory requirements and procedures stipulated by the provisions of the Statute, and in no other way.

30. The language of Section 164 is distinctly different than other Sections of Chapter XI. The words ***"he shall make an order in writing, stating the grounds of his being so satisfied"*** are specifically used only in Section 164 of Chapter XI. If the provisions of Section 164 of the BNSS/145 of the Code were to be treated as directory, it would effectively require reading down the words ***"he shall make an order in writing, stating the grounds of his being so satisfied"*** from Section 164 (1) of the BNSS. This route of interpretation cannot be adopted because it is a settled principle of law that each word of a Statute must be read and given meaning.

31. The power conferred under Section 164 of the BNSS is very wide, and if the language of the Section is treated as directory, it may result in the confirmation of power, which may be exercised arbitrarily, and every Magistrate may evolve a different procedure under the Section if the provisions of the Section are treated as directory. Under Section 164 of the BNSS, the Magistrate deals with possession of property; hence, a preliminary order is not merely procedural, but it is mandatory.

32. Therefore, an order under Section 164 (1) of the BNSS cannot be mechanical, and a cyclostyled order cannot be issued by the Magistrate. That is the reason the Hon'ble Supreme Court, while considering the scheme of Sections 145 and 146 of the Code, has held in ***Mathuralal*** (supra) that a preliminary order is so basic that the Magistrate assumes jurisdiction only after a preliminary order is passed under Section 145 (1) of the Code. Therefore, the requirement to issue a preliminary order under Section 164 of the BNSS/145(1) of the Code is mandatory, not directory.

33. There are several decisions of this Court, including in ***Ambarishchandra Agarwal vs. State of Maharashtra and anr***, [2014 SCC OnLine Bom 1548] and ***Vishwanath Kashinath Virkar and others vs. Nitinchand Keshavji Gala and others***, [1995 SCC OnLine Bom 142], wherein a consistent view has been taken by a Single Judge of this Court that it is essential for the Magistrate to be satisfied and the satisfaction should be in writing, either from a police report or from other information, that there is a likelihood of a breach of the peace. Where a Magistrate fails to record in a preliminary order the reasons or grounds of his satisfaction, such an order cannot be sustained. Failure to record such satisfaction

vitiates the entire proceedings. If the Magistrate does not record reasons for passing a preliminary order, the order is patently illegal. Thus, the drawing up of a preliminary order is a *sine qua non* for initiating action under Section 164 (1) of the BNSS, and Section 164 (1) is a mandatory provision and not directory. The view taken by the Single judges of this Court is in conformity with the judgments of the Hon'ble Supreme Court in ***R. H. Bhutani*** (supra) and in ***Mathuralal*** (supra).

34. Therefore, I reject the submission of Mr. Kantak that this Court should ignore the judgments of the Hon'ble Supreme Court in ***R. H. Bhutani*** and ***Mathuralal*** (supra) and merely follow the interpretation provided of it in ***V. K. Rao*** and ***A. Dhaveethu*** (supra). Not only the judgments of the Hon'ble Supreme Court, but even the plain text of Section 145 of the Code and 164 of the BNSS make it clear that the Magistrate shall make an order in writing stating the grounds of his satisfaction in the preliminary order. The interpretation of Section 145(1) by the Division Benches in ***V. K. Rao*** and ***Ajaib Singh*** (supra) is materially different and contrary to the judgments of the Hon'ble Supreme Court in ***R. H. Bhutani***, ***Mathuralal*** and ***Rajapati*** (supra). However, as rightly pointed out

by Mr. Costa Frias, in view of the subsequent judgment of the Hon'ble Supreme Court in ***Mathuralal*** (supra), this Court is bound by the law laid down therein, which impliedly overruled the view taken in ***V. K. Rao*** and ***Ajaib Singh*** (supra). Mr. Kantak has no answer to the subsequent judgment of the Supreme Court in ***Mathuralal*** (supra), except the judgment of the Full Bench of the Madras High Court in ***A. Dhaveethu*** (supra), which is contrary to the view taken by the Hon'ble Supreme Court in ***R. H. Bhutani***, ***Mathuralal*** and ***Rajapati***(supra).

35. In view of the above, it is clear that:

i) The Magistrate must pass a preliminary order under Section 164 (1) of the BNSS;

ii) A preliminary order must record the reasons for the Magistrate's satisfaction regarding the existence of the dispute;

iii) Such satisfaction must be objective;

iv) A preliminary order cannot be passed mechanically or in a cyclostyled manner; and

v) The jurisdiction of the Magistrate depends upon a preliminary order, and in its absence, he cannot assume jurisdiction.

36. Mr. Kantak's alternate argument is that even if it is accepted that a preliminary order is *sine qua non* for the proceedings under Section

164 of the BNSS/145 of the Code and that the jurisdiction of the Magistrate is dependent on issuance of a preliminary order, in a case where the proceedings are conducted without a preliminary order, then those proceedings are not vitiated as held in ***V. K. Rao*** (supra) and mere procedural irregularity does not affect the jurisdiction of the Magistrate as held in ***Ajaib Singh*** (supra). According to Mr. Kantak, the Supreme Court has merely held in ***Mathuralal*** (supra) that the Magistrate assumes jurisdiction only after a preliminary order. However, Mr. Kantak Submits that, if the proceedings continue without a preliminary order, the Supreme Court has not addressed the consequences of such proceedings. According to Mr. Kantak, that aspect is only covered by the Division Bench judgments in ***V. K. Rao*** and ***Ajaib Singh*** (supra), and therefore, ***V. K. Rao*** and ***Ajaib Singh*** (supra) on that issue of consequences of the proceedings proceed without a preliminary order are binding on this Court.

37. It is a settled principle of law that any order passed by a court without jurisdiction would be *coram non judice*, a nullity, and ordinarily should not be given effect to. If the initial action is not in consonance with the law, all subsequent and consequential

proceedings would fall through for the reason that illegality strikes at the root of the order. Therefore, I do not agree even with this alternate argument of Mr. Kantak. Once it is held by the Hon'ble Supreme Court that the Magistrate's jurisdiction is founded on a preliminary order, any proceedings initiated and concluded without such jurisdiction are bad in law and stand vitiated. In view thereof, I reject the alternate submission of Mr. Kantak that this aspect of the matter is covered by ***V. K. Rao*** (supra) and ***Ajaib Singh*** (supra).

38. However, Mr. Kantak submitted that in the present case, a preliminary order was in fact passed by the Learned Magistrate on 29.01.2025, and therefore the objection raised by Mr. Costa Frias is not relevant. He contended that although the communication dated 29.01.2025 is titled as a 'notice' under Section 164 of the BNSS, it in substance constitutes a preliminary order.

39. I am unable to accept this submission. There is a clear distinction between a 'notice' and a 'preliminary order'. A preliminary order, as contemplated under Section 164 of the BNSS, must be founded on information received by the Magistrate or on a police report. It must relate to an alleged breach of peace concerning land, water, or their boundaries. Upon receipt of such information, the Magistrate is

mandated to make an order in writing by stating the reasons for his satisfaction about the dispute. The written order is stipulated by the Section so that it would reflect the grounds of objective satisfaction of the Magistrate, because the written statement is filed by the concerned person on the basis of a preliminary order. It cannot be a mere intimation by way of notice, stating only that the Magistrate is satisfied on the basis of a complaint or police report. In the absence of reasons of objective satisfaction in a preliminary order, it cannot be construed as a preliminary order. Therefore, a 'notice' to appear before the Magistrate cannot be a 'preliminary order' as stipulated by Section 164 of the BNSS.

40. In the present case, the notice issued by the learned Magistrate is based solely on a complaint dated 23.1.2025 filed by the Petitioner. Although a police report was filed by the Sub-Inspector of Police, Mandrem, on 29.1.2025, the Learned Magistrate chose to issue a notice only on the basis of the complaint dated 23.1.2025. Therefore, according to the Magistrate, the dispute, likely to cause breach of public peace and public tranquility and disturbance of communal harmony, was solely on the basis of a complaint dated 23.1.2025 filed by the Petitioner. In this notice, there is only one

sentence which reads '*I am satisfied that there exists a dispute likely to cause breach of public peace and tranquility and disturbance of communal harmony in the locality concerning the property bearing survey no. 171/6 at Morjim, Pernem, Goa.*'. There are no reasons, there are no particulars, there are no grounds of satisfaction, the property is identified as 171/6, and thereafter the Respondents are called upon to attend the Court on 10.2.2025. The contents of the notice dated 29.01.2025 can certainly not be that of a preliminary order as contemplated under Section 164 of the BNSS, and therefore, I reject the argument of Mr. Kantak that there is a preliminary order in the present case.

41. Mr. Kantak's next submission is that, assuming there is no preliminary order drawn by the Learned Magistrate, then it is a mere irregularity and/or an error and not illegality, and therefore, by virtue of the provisions of Section 511 of the BNSS, such an irregularity can be cured because in this case the Respondents did not raise the issue of jurisdiction in the revision memo, although it was argued by the Respondents. Further, Mr. Kantak submitted that the provisions of Section 511 of the BNSS would apply to this case because there is no failure of justice. The provisions of Section 511 of the BNSS read as follows:

> ***"511. Finding or sentence where reversible by reason of error, omission or irregularity—****(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Sanhita, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.*
>
> *(2) In determining whether any error, omission or irregularity in any proceeding under this Sanhita, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."*

42. Section 511 of the BNSS is part of Chapter XXXVII of the BNSS, which deals with irregular proceedings and the consequences thereof. The provisions of Section 511 are made subject to the provisions of earlier Sections in Chapter XXXVII of the BNSS, which includes Sections 506 and 507.

"506- <u>Irregularities which do not vitiate proceedings</u> *-----If any Magistrate not empowered by law to do any of the following things, namely:—*

(a) to issue a search-warrant under Section 97;

(b) to order, under Section 174, the police to investigate an offence;

(c) to hold an inquest under Section 196;

(d) to issue process under Section 207, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 210;

(f) to make over a case under sub-section (2) of Section 212;

(g) to tender a pardon under Section 343;

(h) to recall a case and try it himself under Section 450; or

(i) to sell property under Section 504 or Section 505, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

<u>507 Irregularities which vitiate proceedings —</u> *If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—*

(a) attaches and sells property under Section 85;

(b) issues a search-warrant for a document, parcel or other things in the custody of a postal authority;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order for maintenance;

(h) makes an order under Section 152 as to a local nuisance;

(i) prohibits, under Section 162, the repetition or continuance of a public nuisance;

(j) makes an order under Part C or Part D of Chapter XI;

(k) takes cognizance of an offence under clause (c) of sub-section (1) of Section 210;

(l) tries an offender;

(m) tries an offender summarily;
(n) passes a sentence, under Section 364, on proceedings recorded by another Magistrate;
(o) decides an appeal;
(p) calls, under Section 438, for proceedings; or
(q) revises an order passed under Section 491, his proceedings shall be void."

43. Chapter XXXVII of the BNSS has divided the irregularities which do not vitiate the proceedings by listing them in Section 506 and the irregularities which vitiate the proceedings by listing them in Section 507 of the BNSS. The provisions of Section 164, which are in Chapter XI (Part D) of the BNSS, are not a part of the list provided in Section 506 of the BNSS. Therefore, the acts of irregularities or errors of the Magistrate under Section 164 of the BNSS cannot be saved by virtue of the provisions of Section 506 of the BNSS. On the contrary, the list of irregularities covered by Section 507 (j) specifically includes "***makes an order under Part C or Part D of Chapter XI***". Therefore, by clear provision of Section 507 (j) of the BNSS, if any Magistrate, not being empowered by law in this behalf, makes an order under Part C or D of Chapter XI, then the entire proceedings are vitiated. Importantly, the provisions of Section 507 (j) only cover Parts C and D of Chapter XI, and specifically, it does not cover Parts A and B of Chapter XI. The very

purpose of the provisions of Section 507 (j) of the BNSS is to ensure that the provisions of Part C and D of Chapter XI are complied with in their entirety and as stipulated by the Sections of Part C and D of Chapter XI of the BNSS. Further, the provisions of Section 511 are not applicable to the orders that are passed without jurisdiction because the provisions of Section 511 only cover the order and findings of 'a court of competent jurisdiction'. Exercising jurisdiction without following the procedure as stipulated by Section 164 of the BNSS by itself is illegal and not irregular. That is why Section 507 (j) of the BNSS specifically covers the order under Section 164 of the BNSS. Additionally, because Section 507 (j) covers the order under Section 164, the provisions of Section 164 are mandatory and not directory. When the proceedings are conducted without following the mandatory provision, the Magistrate cannot assume jurisdiction and therefore, it is not a mere irregularity, but an illegality. Therefore, I reject Mr. Kantak's argument based on Section 511 of BNSS that the findings and order of the Learned Magistrate are covered by Section 511 of the BNSS. In fact, by virtue of the provisions of Section 507 (j) of the BNSS, the entire proceedings conducted by the Learned Magistrate are vitiated. Even on this aspect, in view of the judgments of the

Hon'ble Supreme Court in ***R. K. Bhutani*** , ***Mathuralal*** and ***Rajapati*** (supra), that the Magistrate assumes jurisdiction only after a preliminary order. Therefore, the judgment of the Division Bench of the Punjab and Haryana High Court in ***Ajaib Singh*** (supra) is not of any assistance to the Petitioner. In ***Ajaib Singh*** (supra) the view is taken that the order passed by the Magistrate without a preliminary order is a mere irregularity and therefore the provisions of Section 537 of the Code (511 of the BNSS) would cure the irregularities in the proceedings. Accordingly, the Division Bench interpreted the word 'empowered' used in Section 530 of the Code (507 of the BNSS). This view cannot be considered in view of the subsequent judgments of the Hon'ble Supreme Court in ***R. K. Bhutani, Mathuralal*** and ***Rajapati*** (supra).

44. Mr. Kantak also cited judgments on the law of precedents to submit that the view taken in ***V.K. Rao*** (supra) by the Division Bench of this Court and the interpretation of ***R. K. Bhutani*** (supra) is binding on this Court. The judgments cited on behalf of the Petitioner on the subject cannot be of any assistance to the Petitioner because the judgments of the Hon'ble Supreme Court are binding on this Court. Therefore, I completely agree with the

approach taken by the learned Judge in following the judgments of the Supreme Court and not that of the Division Bench in ***V. K. Rao*** (supra).

45. The impugned judgment is passed by the Learned Judge in a revision application filed by the Respondents under Section 438 of the BNSS. Mr. Kantak, on the basis of ***K. Ravi v/s State of Tamil Nadu,*** [2024 SCC Online SC 2283], submitted that the Learned Judge has wrongly exercised jurisdiction under Section 438 of the BNSS by appreciating the evidence on record.

46. In ***K. Ravi*** (supra), the Hon'ble Supreme Court has interpreted the scope of Section 397 of the Code (438 of the BNSS) by following its earlier judgment in ***Amit Kapoor Vs. Ramesh Chander,*** [(2012) 9 SCC 460] and has held that :

> *"9. At this juncture, it would be apt to refer to the observations made by this Court in Amit Kapoor v. Ramesh Chander 1, explaining the scope of Section 397 Cr. P.C. It was held that—*
>
> > *"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent*

defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in
accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

> *10. Thus, the scope of interference and exercise of jurisdiction under Section 397 Cr. P.C. is extremely limited. Apart from the fact that subsection 2 of Section 397 prohibits the Court from exercising the powers of Revision, even the powers under sub-section 1 thereof should be exercised very sparingly and only where the decision under challenge is grossly erroneous, or there is non-compliance of the provisions of law, or the finding recorded by the trial court is based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely by framing the charge. The Court exercising Revisional Jurisdiction under Section 397 should be extremely circumspect in interfering with the order framing the charge, and could not have interfered with the order passed by the Trial Court dismissing the application for modification of the charge under Section 216 Cr. P.C., which order otherwise would fall in the category of an interlocutory order."*

47. In the present case, the Learned Judge has exercised his jurisdiction under Section 438 of the BNSS and has called for the record of the proceedings from the Learned Magistrate. The Learned Judge has not only passed the impugned order on the basis that there is no preliminary order as mandated by Section 164 of the BNSS, but has also decided the revision application by considering the facts of the case. Once, on the basis of the law laid down by the Hon'ble

Supreme Court in ***Mathuralal*** (supra), the Learned Judge came to the conclusion that the order was passed without jurisdiction in view of the fact that there was no preliminary order passed by the Magistrate, then the Learned Judge was justified in deciding the matter even on facts in revision application for the purpose of setting right a patent defect and an error on facts as well as law.

48. It is well-settled law that the jurisdiction of the Magistrate under Section 164 of the BNSS is limited to deciding the actual possession of the disputed property as on the date of a preliminary order. The order passed by the Magistrate under Section 164 is temporary in nature and subject to the determination of rights and title by a competent court. The Magistrate cannot decide the title of the property in dispute. Therefore, in the present matter, the Learned Magistrate, under Section 164 of the BNSS, was required only to decide the actual possession of the said disputed property as on 29th January 2025.

49. The order passed by the Learned Magistrate on 7th April 2025 clearly shows that the Learned Magistrate has not decided the actual possession of the said property by appreciating the evidence before him or by conducting an inquiry, and has not followed the

mandatory requirements of Section 164 of the BNSS. Therefore, the Learned Judge has justified interference in the order dated 7th April 2025 passed by the Learned Magistrate by exercising his jurisdiction in the revision proceedings on facts and in law.

50. The record clearly indicates the patent errors in law and on the facts in the order dated 7th April 2025, passed by the Learned Magistrate, which are as follows:

i) The Learned Magistrate has proceeded by recording that both parties have chosen not to lead any evidence in the matter. This is factually wrong. The Learned Judge, after reviewing the record, has held that no such statement was made by the Respondents in the proceedings. The Roznama maintained in the proceedings does not disclose any such statement and the matter was never posted for evidence. Further, the Roznama does not disclose that the preliminary order under Section 164 was ever passed. Even the Learned Magistrate proceeded merely on the basis of the Notice issued on 29th January 2025. Therefore, the entire approach of the Learned Magistrate to decide the proceedings under Section 164 of the BNSS is factually wrong. Thereafter, the Learned Magistrate has recorded

that he has decided the matter on the basis of the material on record. If that is so, then there are no findings in the order of the Learned Magistrate as to why the Petitioner was in actual possession of the said property as on 29th January 2025.

ii) The Notice dated 29th January 2025 describes the said property as survey No. 171/6 at Morjim, Pernem Goa. Admittedly, there is more than one house standing on survey No. 171/6. The pending dispute between the parties under the Mundkar Act is only in respect of House No. 793 standing on survey No. 171/6. The Respondents never claimed any rights in respect of the entire survey No. 171/6 or other houses and structures standing thereon. Therefore, the Learned Magistrate ought to have made an inquiry in respect of the actual possession of House No. 793 standing on survey No. 171/6. No such inquiry was conducted by the Learned Magistrate. The inquiry ought to have been done by the Learned Magistrate, particularly in view of the admitted fact that the proceedings under the Mundkar Act are pending between the parties for a long time.

iii) The entire order passed by the Learned Magistrate practically proceeds on the basis of the title of the said property. The

material produced by the Petitioner is only in respect of the title to the said property. The title was not in dispute at all because the Respondents have never claimed any ownership of the property. The claim made by the Respondents is of Mundkarship, and therefore, the ownership is admitted by the Respondents. The Learned Magistrate has even exceeded his jurisdiction in this regard, though at the end of the order, he has stated that he has not decided the title of the said property. The fact that the Respondents have lost the proceedings under the Mundkar Act and the appeal has also been dismissed and the proceedings are pending before the Administrative Tribunal are not relevant facts to decide the factum of possession of House No. 793 as on 29th January 2025. The Learned Magistrate has only considered these facts to decide the matter in favour of the Petitioner. Further, the Form I & XIV maintained under the Land Revenue Code shows that the Petitioner is the owner and occupant of the said property. The Learned Magistrate has considered this document and the facts to arrive at the conclusion that the Petitioner was in possession of the said property. The Learned Judge has rightly held that the presumption under Section 105 of the Land Revenue Code is a

rebuttable presumption and I agree with this finding. In any case, when the dispute was only in respect of House No. 793 standing on survey No. 171/6, there was no reason to consider Form No. I & XIV for the entire property. The proceedings under Section 164 of the BNSS cannot be decided on the basis of the land revenue record. It requires evidence to establish actual possession as on the date of a preliminary order, and therefore, the Learned Judge has rightly held that there is no evidence on record to establish that the Petitioner was in actual possession of House No. 793 as on 29th January 2025. The fact that the Respondents also have a house somewhere else and they are residing there and that the address on the voter list is not of House No. 793, cannot be a factor in favour of the Petitioner, and the Learned Judge has rightly held so. The Learned Judge has rightly held that because the Petitioner is the owner of the said property, it does not establish that the Petitioner was in actual possession of House No. 793 as on 29th January 2025.

iv) It is clear from the record that when there is long standing dispute between the parties only in respect of House No. 793 standing on survey No. 171/6. If that is so, then there was no

reason to include the entire property, having many houses and structures standing thereon, in the complaint. Admittedly, survey No. 171/6 is a very large property that includes a resort owned by the Petitioner. When the claim in respect of Mundakarhip is pending only in respect of House No. 793 standing on survey No. 171/6, the Petitioner ought to have mentioned that fact in the complaint. However, that was not mentioned and the house was identified by the Respondents only when they filed their written statement. This was a mischievous attempt made by the Petitioner to abuse the process of law, and the Learned Magistrate completely ignored this fact.

v) It is the case of the Respondents that House No. 793 situated in survey no. 171/6 of village Morjim, Pernem Goa was constructed by their grandfather, late Savlaram Tari. The construction of the house No. 793 took place with the consent of the original landlord Jose Piedade Fernandes. Thereafter, the ancestors and their Descendants have been residing in House No. 793 and is in full possession thereof. In the background of this claim of the Respondents, if, according to the Learned Magistrate, it was agreed that the matter would be decided on

the basis only of material on record, then it is clear from the record that the Learned Magistrate has not considered the evidence produced by the Respondents to establish their possession of House No. 793 standing on survey No. 171/6. This evidence includes:

1. A copy of affidavits of legal heirs of the late Jose Piedade Fernandes, (the original landlord and father of the Petitioner stating on oath that their father/father-in-law had allowed late Saularam Tari to construct the house in the property surveyed under No.171/6 of Village Morjim and the fact acknowledging that the Respondents are Mundkars of House No. 793 situated in said property.
2. A copy of the NOC dated 08.03.2024 given by Mrs. Pulqueria S. D'Souza giving no objection to Smt. Satyawati S. Tari for water connection.
3. A copy of the Income certificate issued by the Village Panchayat of Morjim to Smt. Satyavati S. Tari for obtaining a free water connection.
4. A copy of the no objection certificate dated 02.03.2004 given by the Sarpanch, Village Panchayat of Morjim, stating that

the H.No. 793 is registered for assessment of tax in the name of Smt. Satyawati Tari is used for residential purposes.

5. A copy of the contract for water supply having the thumb impression of the consumer; declaration dated 11.03.2004 by Satyawati Tari;
6. A copy of the application dated 11.03.2004 requesting a free water supply connection by Satyawati S. Tari;
7. A copy of an FIR No.177/2015 dated 13.11.2015 of Pernem Police. In November 2015, the possession of the Respondents over house No. 793 was disturbed when the grandmother of the Respondent was admitted to the hospital. Respondents filed an FIR No. 177/5 against the Petitioner at Pernem Police Station and the case was registered against the Petitioners bearing case no. 85/IPC/2015. FIR was filed by Respondents against the Petitioners by making allegations that Petitioners broke open the lock and stole all the valuable belongings of the Respondents and threw all the furniture, utensils and demolished Tulsi Vrudanvan situated in front of the house. Allegations were also made that the Petitioner removed idols of the Hindu god by replacing Christian gods in order to depict it as a Christian house. This incident was

widely published in the local newspaper and the Respondents have produced a newspaper cutting along with photographs. Thereafter, local administration and police restored the possession of the Respondents of House No. 793 situated in survey no. 171/6.

8. Newspaper cutting of article published in Marathi newspaper dated 17.11.2015, another newspaper cutting of newspaper Lokmath dated 22.11.2021, another newspaper cutting of the incident that led to the filing of the complaint against the Petitioner by the Respondent on 13.11.2015.

9. There are photographs produced on record by the Respondents depicting the celebration of all Hindu festivals, such as Ganesh Chaturti, Tulsi Vivah, and Nagpanchami, in House No. 793.

10. A copy of the certificate dated 05.12.2015 issued by the Village Panchayat of Morjim certifying that as per the records maintained and available in the office of the Panchayat, House bearing No. 793 situated at Vithaldaswada, Morjim, Pernem-Goa is registered in the name of Savlaram B. Tari since the year 1987-88. Certificate of panchayat further certifies that House No. 793 has been transferred in the name

of Smt Satyavati S. Tari in the year 2012-2013 and now the house is registered in the name of Smt. Satyavati S. Tari as per the Panchayat record. It is also certified by the Village Panchayat that the house tax has been paid until 2015-16.

11. A copy of the Certificate dated 09.02.2021 issued by the Village Panchayat of Morjim, certifying that as per the records maintained/available in the Village Panchayat Office Houses No.793 situated at Vithaldaswada, Morjim. Pernem Goa, is registered in the name of Shri. Vithal Savlaram Tari (father of Respondent Nos.1 and 2) and further certified that House No. 793 is registered for house tax assessment since the year 1987-88 till date i.e. 2020-2021.
12. A Copy of the House Tax receipt dated 14.10.2001 in the name of Savlaram B. Tari.
13. A Copy of Electricity Bill standing in the name of Vithal Savlaram.
14. A copy of the water bill standing in the name of Smt. Satyawati Tari.
15. A copy of the complaint dated 19.10.2015 filed by Shri. Vithal S. Tari stating that Nobert Fernandes/Petitioner had started illegal construction of a compound wall around the

Respondent's dwelling house in the property bearing Survey No.171/6 situated at Morjim, Pernem, Goa.

16. A copy of the complaint dated 05.11.2022 by Smt. Rukmini Vithal Tari against the Petitioner to the Village Panchayat of Morjim, making an allegation that the Petitioner was carrying out illegal construction of a building comprising three floors in Survey No. 171/6 at Vithaldas Wado, Morjim.
17. A copy of the letter dated 22.02.2023 by the Secretary cum PIO of the Village Panchayat of Morjim to Rohan Vithal Tari for furnishing the information and the documents, such as the panchanama dated 07.01.2023, the site inspection attendance sheet, and a copy of the sketch of the illegal construction carried out by the Petitioner.
18. Copy of complaint dated 17.03.2023 filed by Rohan Vithal Tari Volvoikar before the GCZMA, Patto, Panaji, against the Petitioner, making allegations of illegal construction in Survey No. 171/6 of Village Morjim.
19. A copy of the survey plan of Survey No.171/6 of Village Morjim showing the presence of the house therein.

20. A copy of the Election Identity card of Satyawati Savlaram Tari, aged 76 years, showing address as 793, Vithal Rukmini Temple, Vithaldaswada, Morjim, issued on 04.01.2007.

51. The Learned Magistrate has not even dealt with the above-listed documents. The sole basis for the Learned Magistrate's order is that the Petitioner is the owner of the property. The Learned Magistrate has clearly erred on facts and in law.

52. All the above are manifest and patent errors in law and on the facts, resulting in gross injustice to the Respondents. The order passed by the Magistrate on 7th April 2025 is grossly erroneous and without jurisdiction; in non-compliance with the provisions of law. The findings recorded in favour of the Petitioner are based on no evidence and by ignoring the material evidence produced by the Respondents. The order of the Learned Magistrate is perverse and arbitrary in view of the fact that he completely ignored the documents produced by the Respondent to establish their possession of House No. 793. Therefore, the Learned Judge was completely right in exercising his jurisdiction under Section 438 of the BNSS. The reading of the impugned order justifies interference in the revisional jurisdiction practically on all grounds. The

Petitioner has abused the process of law by systematically invoking the provisions of Section 164 to take possession of the said property during the pendency of the Respondents Appeal under the Mundkar Act, thereby gaining possession of the said property without following due process of law.

53. I agree with the findings of the Learned Judge in the impugned order. Therefore, I reject the submissions of Mr. Kantak that the Learned Judge has committed a manifest and patent error in law in re-appreciating the documents/records in exercise of revisional powers under Section 438 of the BNSS, 2023. The findings of the Learned Judge in the impugned order are well-reasoned, and the Learned Judge has exercised the jurisdiction under Section 438 of the BNSS in conformity with the judgment of the Hon'ble Supreme Court in ***K. Ravi v/s State of Tamil Nadu,*** [2024 SCC Online SC 2283].

54. Therefore, the interim protection granted on 25th August 2025 to the Petitioner and continued thereafter stands vacated. The Police Inspector, Morjim Police Station, is ordered and directed to implement the order of the Additional Session Judge-2, Mapusa, Goa, dated 20th August 2025 (being Exhibit A hereto) within a

period of two weeks from today. The Respondents undertake to this Court that, except for House No. 793, they are not claiming any rights of possession in respect of houses/structures standing on Survey No. 171/6 of Village Morjim, Pernem, Goa. The undertaking of the Respondents is accepted. The findings in this judgment shall not be used by the parties in any pending proceedings between them under the Mundkar Act. **The Writ Petition stands dismissed.** The Rule is discharged.

55. The Petitioner shall pay a sum of Rs.10,000/- to Respondent Nos. 1 and 2 as and by way of cost within a period of one week from today.

56. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on the production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]