



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(ITANAGAR BENCH)**

**Case No. : Crl.Petn./103/2023**

Ojing Tamut  
S/O Shri Tagong Tamut, 24 Yrs.  
R/o House No.E-221, Village-Saw Mill Area,near Public Bus Station,Pasighat,  
PO/PS-Pasighat, A.P

VERSUS

The State of Arunachal Pradesh  
represented through its Public Prosecutor  
2:District Magistrate  
East Siang District, Pasighat, A.P

**Advocate for the Petitioner** : Muk Pertin, Senior Advocate

**Advocate for the Respondent** : P P of AP

Linked Case : Crl.Petn./102/2023

Annong Tamut  
S/O Shri Tagong Tamut  
24 Yrs  
R/o House No.E-221  
Vill-Saw Mill area  
near Public Bus Station  
Pasighat  
PO/PSD-Pasighat

District-East Siang, A.P

VERSUS

THE STATE OF AP

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The State of Arunachal Pradesh

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East Siang District, Pasighat, A.P

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Advocate for : Muk Pertin, Senior Advocate

Advocate for : P P of AP appearing for THE STATE OF AP: Advocate GA, appearing  
for 2, respectively.

**BEFORE**  
**HONBLE MR. JUSTICE KARDAK ETE**

**ORDER**

**Date : 16.08.2024**

Heard Ms. T. Rima, learned counsel for the petitioners and also heard Ms. T. Jini, learned Addl. Public Prosecutor for the State.

**2.** By filing these criminal petitions under Section 482 of the Code of Criminal Procedure, 1973(Cr.P.C), the petitioners have assailed the orders dated 15.03.2023 and 01.06.2023, passed by the learned District Magistrate, East Siang District, Pasighat, whereby in exercise of the power conferred under Section 133 of the Cr.P.C., the learned District Magistrate has prohibited all types of construction on the land allotted to the Department of Civil Defence Training Institute at Gumin Nagar, Pasighat and directed to remove/evict any structures erected on the said land.

**3.** Shorn of unnecessary details, the brief facts of the petitioners' case are that, they are in possession of the plot of land at Gumin Nagar, Pasighat by cultivating maize and vegetables. The petitioners have applied for allotment of their respective lands, however, the same has not been considered by the authorities. The learned District Magistrate vide the impugned order dated 15.03.2023 under Section 133 of the Cr.P.C. has prohibited all types of construction and directed to remove/evict any structures erected on the said plot of land allotted to the Department of Civil Defence Training Institute at Gumin Nagar, Pasighat having been found that the some unknown person has illegally encroached the said land.

**4.** Thereafter, vide another impugned order dated 01.06.2023, the learned District Magistrate has directed the officer to perform the Magistrate duty for eviction of illegal structure from the said plot of land.

**5.** It is submitted by the learned counsel for the petitioners, that the learned District Magistrate has failed to comply with the provisions of Section 133 and 138 of the Cr.P.C, 1973 and as the above provisions mandates the District Magistrate to take evidence in the matter as in a summons case and shall give equal opportunity to both the parties to make their submissions. If the Magistrate is not so satisfied, no further proceedings shall be taken in the case. Therefore, the provisions provides an obligation on the Magistrate to take evidence as in the summons case.

**6.** Ms. Rima, learned counsel for the petitioners further submits that

whenever Section 133 Cr.P.C. is invoked, it is mandatory that the authorities concerned shall exercise its judicial discretion by keeping in mind the circumstances of the parties involved, but in the present case, the learned District Magistrate has failed to take into the account that the petitioners have been residing on the said plots of land since more than 2(two) decades. Therefore, the impugned orders have been passed in violation of the provisions as required to be followed under the Criminal Procedure Code, as such, the same may be set aside and quashed.

**7.** Ms. Jini, learned Addl. P.P. fairly submits that on their perusal of the orders, it appears that the learned District Magistrate has not followed the provisions as mandates under Section 133 of the Cr.P.C.

**8.** I have considered the submissions of the learned counsels for the parties and perused the documents annexed in the petitions.

**9.** On perusal of the impugned orders, it is noticed that the learned District Magistrate appears to have issued the impugned orders on an anonymous report that some unknown person has illegally encroached the allotted plot of land of Department of Civil Defence Training Institute at Gumin Nagar, Pasighat and on the satisfaction that such illegal encroachment of the government land and construction disturbed the public order and tranquility, the learned District Magistrate has prohibited all types of construction to be removed/evicted structure erected in the said area. Thereafter, the Magistrate was deputed for eviction of the said illegal structure from the allotted plot of Department of Civil

Defence Training Institute. The orders have been issued under Section 133 of the Cr.P.C. However, the learned District Magistrate while passing the impugned orders under Section 133 Cr.P.C. has failed to follow the mandate provided under the law.

**10. Section 133 Cr.P.C provides as follows:**

“133. **Conditional order for removal of nuisance-** (1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place

should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods of merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court."

**11.** Section 138 of the Cr.P.C., 1973 provides as follows:

“138. **Procedure where he appears to show cause-**. (1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not satisfied, no further proceedings shall be taken in the case.”

**12.** I have considered the submission of the learned counsels for the parties and also perused the records.

**13.** On perusal of the provisions of the above provisions of law, I am of the considered view that the learned District Magistrate has failed to follow the provisions mandated under Sections 133 and 138 of the Cr.P.C.

**14.** Having considered that while passing the impugned orders, the learned District Magistrate has failed to follow the law as mandated under Sections 133 and 138 of the Cr.P.C., the impugned orders are deserved to be interfered with. Accordingly, the orders dated 15.03.2023 and 01.06.2023, passed by the learned District Magistrate, East Siang District, Pasighat are set aside and quashed. However, the learned District Magistrate is at liberty to take action against any encroachers in accordance with law.

**15.** Accordingly, these criminal petitions are allowed and disposed of.

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**JUDGE**

**Comparing Assistant**