

GAHC010093542024



2024:GAU-AS:13113

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

Case No. : Crl.Pet./547/2024

IMRAN HUSSAIN LASKAR
S/O LATE REJAN ALI LASKAR
R/O VILL- KHELMA PT-II
P.O. SADIRKHAL, P.S.KALAIN
DIST. CACHAR, ASSAM

VERSUS

GULAM RAJA MAZUMDAR AND ANR. (F)
S/O LATE SAID ALI MAZUMDAR
R/O KHELMA PT.II
P.O. SADIRKHAL, P.S. KALAIN
DIST. CACHAR, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE PP
ASSA

Advocate for the Petitioner : MR. U J SAIKIA, MS M DAS

Advocate for the Respondent : PP, ASSAM, MR. N ISLAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

26.07.2024

Heard Mr. U. J. Saikia, learned counsel appearing for the petitioner and Mr. N. Islam, learned counsel for the opposite party No. 1. Also heard Ms. S. Jahan, learned Additional

Public Prosecutor, Assam for the opposite party No. 2.

2) Contention of the petitioner herein is that he is a resident of Village-Khelma Pt-II under Kalain Police Station in the district of Cachar.

3) The opposite party No. 1 started constructing an iron gate over the public road that is the only path used by the villagers for ingress and egress and thereby, illegally tried to block the public road of the village. As the construction of the said gate by the opposite party No. 2 on the said public road is likely to cause breach of peace and tranquility in the area, the petitioner along with 4 (four) others as first party filed Case No. 191^M/2024 before the Court of the learned Additional District Magistrate, Cachar, Silchar, praying to draw up a proceeding under Section 133 of the Cr.P.C.

4) On receipt of the said application from the petitioner and the other 4 (four) associates, the Magistrate concerned called for a police report pertaining to the incident and on perusal of the police report that was forwarded by the Officer-in-Charge of Kalain Police Station and after hearing the petitioner, the learned Magistrate was satisfied to believe that the opposite party No. 1 created unlawful obstruction of the common public path that has been used by the petitioner and other local inhabitants. As such, the learned Additional District Magistrate, Cachar, Silchar by order dated 04.04.2024 had drawn up a proceeding under Section 133 Cr.P.C directing the opposite party No. 1 to remove the obstruction created by it over the concerned pathway within 15 (fifteen) days from the date of receipt of the copy of the order dated 04.04.2024, with the observation that in the event of any objection, the second party in said Case No. 191^M/2024, i.e., the present opposite party No. 1, to show cause as to why the said order dated 04.04.2024 should not be made absolute on the next date; fixing the matter on 06.05.2024, directing the local police to execute the order immediately and maintain peace in the locality.

5) Aggrieved with the said order dated 04.04.2024 passed by the learned Additional District Magistrate, Cachar, Silchar in said Case No. 191^M/2024 under Section 133 Cr.P.C., the opposite party No. 1 preferred a Revision Petition under Sections 397 and 399 Cr.P.C., being Criminal Revision Case No. 37/2024 before the Court of learned Sessions Judge, Cachar, Silchar. The learned Sessions Judge, Cachar, Silchar transferred the said Criminal Revision

Case No. 37/2024 to the Court of the learned Additional Sessions Judge (FTC), Cachar, Silchar for its adjudication and disposal.

6) After hearing both the parties and going through the materials on record, including the said order dated 04.04.2024 passed by the learned Additional District Magistrate, Cachar, Silchar in said Case No. 191^M/2024 under Section 133 Cr.P.C. as well as the connected documents, the said Revisional Court by its order dated 30.04.2024 admitted the said Criminal Revision Case No. 37/2024 preferred by the opposite party No. 1 and stayed the said order dated 04.04.2024 passed by the learned ADM, Cachar, Silchar in said Case No. 191^M/2024.

7) Aggrieved with the said order dated 30.04.2024 passed by the learned Additional Sessions Judge (FTC), Cachar, Silchar, the petitioner has filed this petition under Section 482 Cr.P.C. read with Section 397 Cr.P.C., praying amongst others, to set aside and quash the same on the grounds that the said order dated 30.04.2024 — (i) is not tenable in law as it is apparent from the records that the opposite party No. 1 has constructed a gate over the public road without authority; (ii) while passing the order dated 30.04.2024 the learned Additional Sessions Judge, Cachar, Silchar did not apply its judicious mind and failed to appreciate that the public at large will suffer if the public road is obstructed by constructing a gate without any authority; (iii) the learned Additional Sessions Judge (FTC), Cachar, Silchar erred in law while passing the said order dated 30.04.2024 and the said Revisional Court failed to appreciate that there is public resentment regarding construction of an iron gate blocking the said public road.

8) The Court while issuing notice to the opposite parties on 13.05.2024, in the interim, stayed/suspended the said order dated 30.04.2024 of the learned Additional Sessions Judge (FTC), Cachar, Silchar which is in force till date.

9) Mr. Islam, learned counsel appearing for the opposite party No. 1 submitted that this is a second revision petition filed by the petitioner and the first revision petition is pending before the Court of the learned Additional Sessions Judge (FTC), Cachar, Silchar, noted above.

10) Mr. Islam also submitted that the part which the petitioner placed before the public road is a private part on a private land of the opposite party No. 1 and over which, a name

plate has already been given in the name of his father Haji Syed Ali Majumdar that was installed way back in the year 2017.

11) Mr. Islam, learned counsel for the opposite party No. 1 also stated that the said opposite party purchased an Alto vehicle bearing registration No. AS-11K-3877 and for safety of the said car, he had constructed the gate over the private path and the petitioner out of jealousy has filed this case.

12) On instruction of the opposite party No. 1, Mr. Islam, learned counsel submitted that the said opposite party No. 1 did not prohibit ingress and egress through the said gate, and if required, the said opposite party may give a pair of keys of the said gate to the petitioner.

13) Mr. Islam, learned counsel on behalf of the opposite party No. 1 also submitted that the petitioner/first party failed to show a single document regarding their names in the said path and also failed to show that it is an ejmali land, considering it as a public path to come under the provision of Section 133 Cr.P.C.

14) Proceedings under Section 133 Cr.P.C. is summary in nature. As settled, 'nuisance' is an inconvenience materially interfering with the ordinary comfort of a human being. In such a proceeding under Section 133 Cr.P.C., a Magistrate need not take evidence at the time of making conditional order and may proceed ex-parte, but the said authority must give hearing to the concerned parties before making the order absolute. Two conflicting considerations arise before the Court before exercising power under Section 133 Cr.P.C. — (i) rights of the individuals to free and full enjoyment of their property on the one hand and (ii) their right to be free from nuisance on the other hand. The Court is required to strike balance between the two [*Kachrual Bhagirath Agrawal Vs. State (2005) 9 SCC 36*].

15) In the case in hand, it is seen that after obtaining the police report forwarded by the Officer-in-Charge of Kalain Police Station, the Additional District Magistrate, Cachar, Silchar passed the order on 04.04.2024 by giving notice to the opposite party No. 1 to appear before the said Magistrate and to file his objection, if any, before making the said order dated 04.04.2024 absolute.

16) After considering the entire aspect of the matter, on hearing the learned counsels for the parties and finding that the learned Additional District Magistrate, Cachar, Silchar passed

the order dated 04.04.2024 after a detailed report of the Officer-in-Charge of Kalain Police Station, the Court in exercise of its power under Section 482 Cr.P.C. and to prevent the abuse of the process of the Court and to secure the ends of justice, sets aside and quash the impugned order dated 30.04.2024 passed by the learned Additional Sessions Judge (FTC), Cachar, Silchar in Criminal Revision Case No. 37/2024 preferred by the opposite party No. 1. Further, the learned Additional District Magistrate, Cachar, Silchar is directed to dispose of the said Case No. 191^M/2024 under Section 133 Cr.P.C. at the earliest, after giving an opportunity of hearing to both the parties pertaining to the said case.

17) Till the disposal of the said Case No. 191^M/2024, parties to the said proceeding shall maintain status-quo as on today with regard to the disputed land, i.e., the road in question involved in the case by maintaining law and order, and/or further order of the Court.

18) The interim order passed earlier on 13.05.2024 in this proceeding stands merged with this order.

19) With the above observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant