

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20683 of 2013

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Dhrub Bhagat Son Of Sheo Sagar Bhagat Resident Of Village - Jagarnatha Bazar
Tola, Police Station - Manjhagarh, District - Gopalganj

.... Petitioner

Versus

1. The State Of Bihar Through The Collector Of The District - Gopalganj
2. The Sub Divisional Magistrate, Gopalganj
3. The Anchal Adhikari, Manjhagarh, District - Gopalganj
4. The Officer - Incharge, Manjhagarh, District - Gopalganj
5. Hira Ram Son Of Late Charitra Ram Resident Of Village - Jagarnatha Bazar,
Police Station - Manjhagarh, District - Gopalganj
6. Badar Ram Son Of Late Charitra Ram Resident Of Village - Jagarnatha Bazar,
Police Station - Manjhagarh, District - Gopalganj
7. Ram Prasad Son Of Deo Ram Resident Of Village - Jagarnatha Bazar, Police
Station - Manjhagarh, District - Gopalganj

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv.

For the Respondent/s : Mr. Kunal Tiwari, AC to G.A. 2

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 28-02-2017

Heard learned counsel for the petitioner and Mr. Kunal

Tiwari, learned A.C. to G.A.-2.

Learned counsel for the petitioner is permitted to make
correction in the petition with regard to Khata and Plot number of the
land in question as described in the order dated 04.02.2010 and
19.03.2010.

It is submitted by learned counsel for the petitioner that
reports of the Officer Incharge as well as the Circle Officer as
contained in Annexures 2 and 3 the Khata number of the land in



question has been mentioned as 145 instead of 45 though the correct khata number of the land in question is 45 which gets reflected from the orders dated 4.2.2010 and 19.3.2010 as contained in Annexures 5 and 6 respectively but the mistake in the petition has occurred due to wrong mentioning of khata number in the reports as contained in Annexures 2 and 3. It is expected from the concerned respondent authorities to get the same corrected.

The present writ application has been filed for a direction commanding the respondent no. 1, Collector, Gopalganj to execute the order dated 04.02.2010 as contained in Annexure-5 and order dated 19.03.2010 as contained in Annexure-6 whereby the Sub-Divisional Officer, Gopalganj directed the Circle Officer, Manjharh for removal of the encroachment from the plot no.670, Khata No. 45 if the land in question is a public land.

It is submitted by the learned counsel for the petitioner that the petitioner is in possession of Khata No. 183 Plot No.627 situated at Mauza- Jagarnath Sipah in the district of Gopalganj measuring an area of 17 katha 15 dhurs. In between the government road and the land of the petitioner, there is Gairmazarua Deottar land which has been encroached by a number of persons, which has obstructed the ingress and outgress of the petitioner. On non-removal of the encroachment from the public land, the petitioner filed



application on 18.03.2009 before the Officer-in-Charge of Manjagarh police station. Consequently, enquiry report was submitted by the police on 06.04.209, the same has been brought on record as Annexure-2. The said report suggests the encroachment on a public path, hence the police recommended for initiation of a proceeding under Section 133 Cr. P.C. Consequently, proceeding under section 133 Cr.P.C. was initiated and on 08.06.2009 direction was issued by the Sub-Divisional Magistrate, Gopalganj to the Circle Officer for measurement of the land. The Circle Officer, after measuring the land, submitted a report vide letter no. 759 dated 16.09.2009 suggesting encroachment on the public land. The said report of the Circle Officer has been brought on record as Annexure-3. A further report was submitted by the Circle Officer with regard to encroachment vide letter no. 7 dated 07.01.2010. The same has been brought on record as Annexure-4. On the basis of the report of the Officer-In-Charge and Circle Officer, Manjagarh, the Sub-Divisional Officer, Gopalganj vide order dated 04.02.2010 as contained in Annexure-5, directed the Circle Officer, Manjagarh to remove the encroachment from the public land. Subsequently, similar direction was issued by the Sub-divisional Magistrate, Gopalganj to the Circle Officer vide order dated 19.03.2010 as contained in Annexure-6. It is submitted that despite such directions till date neither the order dated



4.2.2010 as contained in Annexure 5 nor the order dated 19.3.2010 as contained in Annexure 6 has been executed nor the proceeding under section 133 Cr.P.C. has been concluded till date. Hence, learned counsel for the petitioner confines his prayer at present only for disposal of the present application with a direction to the respondent authorities to conclude the proceeding under section 133 Cr.P.C. initiated vide case No. 48/97/09.

Mr. Kunal Tiwari, A.C. to G.A. 3 submits that he has no objection in such direction being issued for concluding the proceeding initiated under section 133 Cr. P.C.

Considering the rival submissions of the parties, it shocks the conscience of this Court that the writ applications are being filed for a direction to conclude 133 Cr. P.C. proceeding which reflects sordid state of affairs. Section 133 Cr. P.C. lays down a well-structured system, which, if invoked properly, is an effective statutory mechanism for removal of obstructions or public nuisance from public places. The present case is an example where the authorities have failed to exercise the jurisdiction vested under section 133 Cr.P.C. It is really shocking that proceeding under section 133 Cr.P.C. was initiated in 2009 and it has not been concluded till date. The Hon'ble Supreme Court in the case of Municipal Council, Ratlam Vs. Vardhichand and Ors. AIR 1980 SC 1622, in clear terms, lays down that the provisions,



embodied in Section 133 of the Code of Criminal Procedure must go into action, whenever there is public nuisance inasmuch as the public power of the Magistrate, as conferred on him under Section 133 of the Code, is a public duty to the members of the public, who are victims of the nuisance and the Magistrate must, therefore, exercise his power under Section 133, when the jurisdictional facts are present. Paragraph 9 of the judgment reads as follows:

“9. So the guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. “All power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist.” (1) Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercised.”

Considering the ratio laid down in the case of Municipal Council, Ratlam (supra), a Division Bench of this Court in the case of Sanjay Jha Vs. State of Bihar through the Chief Secretary & Ors 2016(1) PLJR 248, not only deprecated the compulsive exercise of discretionary jurisdiction under Article 226 of the Constitution of India for removal of obstruction or public nuisance from the public place but has also given a general direction for exercise of the jurisdiction under section 133 Cr.P.C. by the concerned District Magistrate, Sub-divisional Magistrate or any other Executive



Magistrate specially empowered in this behalf by the State Government. Paragraph nos. 24 and 25 of the judgment read as follows:

“24. In our opinion, once it is brought to the notice of the Magistrate, or if he, otherwise, comes to know about existence of obstruction/public nuisance, etc., as enumerated in Section 133 of the Code, he (Magistrate) is legally duty bound to swing into action at once inasmuch as his duties, in this regard, are directly concerned with public nuisance/unlawful obstruction, which may be injurious to health or physical comfort of public.

25. We, accordingly, issue general directions to be followed by all concerned, in the State of Bihar, in following terms:-

(i) Once a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this regard by the State Government, receives an information, on the basis of a report of a police officer or otherwise, that condition precedent for exercise of power under sub-Section (i) of Section 133 of the Code are present, the Magistrate shall at once make a *conditional order* for removal of obstruction or nuisance from public place and it will be the bounden duty of the person -- who may be a natural person or a juristic person, such as, a Municipal Body or a Gram Panchayat -- to either comply with the order or appear in the proceeding and, upon appearance of the proceedee, the Magistrate shall be duty bound to ask the proceedee if he (the proceedee) wishes to deny the existence of facts leading to the *conditional order* and if the proceedee denies existence of any unlawful obstruction or nuisance on any public place or from any way, river or channel, which is or may be lawfully used by the public, and gives *reliable evidence* in support of such denial, the Magistrate shall stay further proceedings until a competent court decides; but if the proceedee fails to give any *reliable evidence* in respect of denial of



the existence of the facts leading to making of *conditional order*, the Magistrate shall order the proceedee to comply with the *conditional order* and, if the *conditional order* is not complied with and obeyed, penal consequences, as embodied in Section 188 of the Penal Code, shall follow.

(ii) It will be the duty of the Chief Executive Officer or any other Officer, specially authorized by him/Head of the local body, by whatever name he may be called, to inform or cause to be informed the District Magistrate, Sub-Divisional Magistrate or any other Magistrate, specially empowered in this behalf by the State Government, as regards existence of obstruction/nuisance and other factors, enumerated under Section 133 (1) of the Code. The Officer-In-Charge of the concerned police station shall also have similar duty to inform the Magistrate concerned under Section 133 of the Code. In the event, any public nuisance or unlawful obstruction of the nature, as provided under Section 133 (1) of the Code, is found to be existing without any information to the concerned Magistrate, the Officer-in-Charge of the concerned police station and the Chief Executive Officer or any other Officer, authorized on his behalf of the local body, shall be jointly responsible for inaction and will be liable for disciplinary action accordingly.

(iii) The Magistrate, upon receiving information, in the manner as aforesaid, shall proceed at once in accordance with Section 133 (1) of the Code and pass appropriate order as required of him under the said provision. Any inaction or dereliction of duty by the Magistrate in this regard shall make him liable for disciplinary action. (iv) A *conditional order*, if not objected to, or an order, which has been made *absolute*, shall have to be obeyed by all concerned and any disobedience of the order shall attract penal provisions of Section 188 of the Indian Penal Code.

(v) This order must be followed with utmost scruples and without any demur. Any person, who is found to be not complying with the present order, shall be liable for disciplinary/criminal



action apart from contempt of this Court.”

Hence, in view of the above general direction, now, it is expected from the respondent nos. 1 and 2 to get the 133 Cr.P.C. proceeding, initiated vide case No. 48/97/09, concluded expeditiously within the parameters laid down by the Division Bench as quoted above.

Accordingly, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

Amrendra/Anil/

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27/03/2017
Transmission Date	N/A

