

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No264 of 2017**

- Meluram Sahu, aged about 58 years, son of Late Khorbahra Sahu, R/o. Village-Gondaiya (Okalahipara), Police Station-Ratanpr, Distt. Bilaspur (C.G.)

---- Petitioner**Versus**

1. Punau Ram Sahu, aged about 63 years, son of Late Baliram Sahu.
2. Yashwant Sahu, aged about 60 years, son of Late Baliram Sahu.
3. Manaram Sahu, aged about 70 years, son of Late Bliram Sahu.
4. Shivnarayan Sahu, aged about 42 years, son of Shri Punau Ram Sahu.

All R/o Village- Gondaiya (Okalahipara), Police Station-Ratanpur, Dist-Bilaspur (C.G.)

5. Chamru Ram Sahu, aged about 35 years, son of Shri Makhan Lal Sahu, R/O Village- Gondaiya (Okalahipara), Police Station-Ratanpur, Dist-Bilaspur (C.G.).
6. State of Chhattisgarh, through the District Magistrate, Dist.-Bilaspur (C.G.).

---- Respondents

For the Petitioner
For Respondent

: Shri Malay Kumar Bhaduri, Advocate
: Shri Ramnarayan Sharma, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****01.09.2017**

(1) Heard.

(2) Counsel for the petitioner submits that petitioner has moved an application before the Court of Sub-Divisional Magistrate, Bilaspur praying for removal of public nuisance under Section 133 of Cr.P.C.. A finding was given by Order dated 31.03.2016 passed by the Sub-Divisional Magistrate,

Bilaspur that a manure pit (ghurwa) has been made by the respondent in this case, by encroaching upon the Government land in which all the dust, waste materials, faecal matter, etc. is being thrown and the manure pit remains filled with waters. The manure-pit is situated on the west side of the petitioner's house. The presence of manure-pit is liable to invite disease etc is a nuisance.

(3) On the basis of the aforesaid finding, private respondents were ordered to remove the manure pit from the Government land. This order was challenged before the Court of Additional Sessions Judge, Bilaspur in Criminal Revision No. 16/2016. In the said matter, the Additional Sessions Judge, Bilaspur has passed an order dated 19.10.2016, in which the revision brought by private respondent was allowed and the sub-Divisional Magistrate has been directed to make an enquiry with respect to illegal encroachment over the land bearing Khasra No. 337.

(4) It is submitted by counsel for the petitioner that the order passed by the Revisional Court is bad in law and perverse. Section 133 of Cr.P.C does not vest the learned lower Court with power to enquire into the matter of encroachment and hence, prayed that the impugned order passed by the 4th Additional Sessions Judge, Bilaspur is liable to be set aside.

(5) Counsel for the respondents submits that the manure-pit in question alongwith various other manure-pit are situated on the Government land adjacent to the residential area of the village and the manure-pit in question is 50 years old. The objection to the situation of concerned manure-pit has been raised by the petitioner only after construction of his house by the side of the manure-pit in question, alleging illegal encroachment upon the

Government land. Hence, an enquiry has to be made with respect to the illegal encroachment in this case. It is prayed that the petition is without any merit, it may be dismissed.

(6) Heard counsel for both the parties and perused all the documents on records.

(7) Section 133 of Cr.P.C. provides that whenever a District Magistrate or a sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government receives information either from Police Officer or other information and on taking such evidence if any as he thinks fit, considers that any unlawful obstruction or nuisance should be removed from any public or from any way, river or channel, can pass order to remove such obstruction and nuisance. The objection raised in the enquiry takes place under Section 138 of Cr.P.C., if the person so ordered refused to remove the nuisance and obstruction, can appear before the Court to show cause as to why he should refrain from complying with the conditional order passed by the Magistrate concerned.

(8) Clearly from the reading of the provisions under Sections 133 to 138 of Cr.P.C. it shows that the powers under Section 133 of Cr.P.C. are not for the purpose of determining any illegal encroachment. Section 139 of Cr.P.C. although provides that the Magistrate may for the purposes of an enquiry under Section 137 or 138 of Cr.P.C. direct a local investigation to be made, that too is limited for the purpose of inspection to be made with respect to obstruction or nuisance and not for the purpose of finding out any illegal encroachment.

(9) On perusal of the Order passed by the Revisional Court, it appears

that while deciding the revision petition the learned Judge has overlooked the intention of Section 133 of Cr.P.C. and passed order for making an enquiry regarding illegal encroachment as alleged by respondent parties. Merely the petitioner has alleged that private respondents have encroached upon the Government land to make manure-pit and likewise the respondent alleged that petitioner constructed his house on the Government land. The purpose of passing order under Section 133 of Cr.P.C. is limited and does not intend to consider or decide regarding the rights or possession of any of the parties.

(10) The fact is not disputed that the manure-pit is present near the house of the petitioner, hence the question for determination was only this question that such manure-pit was a nuisance or not, as alleged by the petitioner and thus, conditional order for removal of nuisance passed by the Court of Sub-Divisional Magistrate, Bilaspur was a proper order or not. This question was to be decided by applying the tests of illegality, propriety and correctness of the order passed and as such the order passed by the learned Sessions Court is not sustainable.

(11) As a result, this petition is allowed at the motion hearing stage. The impugned order passed by 4th Additional District Judge in criminal Revision No. 16/2016 dated 19.10.2016 is set aside. Revisional Court below is directed to hear and decide the revision petition afresh, keeping in view the observations made in this order.

(12) Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge