

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 15258 of 2015**

Arising Out of Complaint Case No.- 2707Year-2014 Thana- Sirisiya District- West
Champaran

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Raj Kumar Rai, Son of Ram Kahatri Rai, Resident of Village- Senuwariya
Bharwa Tola, P.S. Sirisiya, Anchal Chanpatiya, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
 2. The Sub-Divisional Magistrate, Bettiah Sadar, West Champaran.
 3. The Circle Officer Chanpatiya, West Champaran.
 4. Shivnath Rai, Son of Late Baburam Rai.
 5. Anil Rai, Son of Shivnath Rai.
- O.P. No. 4 and 5 are resident of Village- Senuwariya Bharwa Tola, P.S.
Sirisiya, District- West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Nandan Sahay, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 13-05-2019

Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the ‘Code’) for the following relief:

*“That this application is being filed for
quashing the notice dt. 31.12.2014 by which*



proceeding initiated under section 133 Cr.P.C. vide Case No. 2707-14, by the Sub-Divisional Magistrate, Bettiah Sadar, District- West Champaran against the petitioner.”

3. The allegation against the petitioner is that he is creating nuisance on a public land which was being used as a road.

4. Learned counsel for the petitioner submitted that he has a land abutting the so called road and was tying his cattle but the same was not causing any disturbance to the public and, thus, the order under Section 133 of the Code for removing the public nuisance is bad in law. At this juncture, on a direct query of the Court as to how he can put any encumbrances or utilize the land, which was Government land, irrespective of whether it was causing inconvenience to others or not, learned counsel submitted that the authorities be directed to get the land measured in his presence and then act accordingly.

5. Learned APP submitted that the Court may direct for such course of action.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the prayer made by learned counsel for the petitioner is reasonable.



7. Accordingly, a direction is issued to the opposite parties no. 2 and 3 to get the land in question measured in the presence of the parties within one month from today and depending on the result, action be taken, including that of removal of encroachment, if any.

8. The Court makes it clear that if any of the parties do not cooperate or appear on the date of actual measurement, the authorities shall proceed *ex parte* and not wait for the party concerned.

9. The application stands disposed off in the aforementioned terms.

10. The Court would clarify that the order has been passed on the basis of the stand taken before the Court by learned counsel for the petitioner.

11. Mr. Jharkhandi Upadhyay, learned APP shall communicate the order to the opposite parties no. 2 and 3 for its strict compliance.

(Ahsanuddin Amanullah, J.)

P. Kumar

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