

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41589 of 2014

Arising Out of PS. Case No.- Year- Thana- District-

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Ram Anuj Sharma Son of Late Girjanandan Singh Resident of New Area,
Krishnapuri, P.S. - Town, Town - Nawada, District - Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Rajiv Kumar Roy @ Om Singh Son of Gauri Shankar Prasad Singh Resident
of Village - Apsarh, P.S. - Warsaliganj, District - Nawada.
3. Gauri Shankar Prasad Singh Son of Late Munna Singh Resident of Village -
Apsarh, P.S. - Warsaliganj, District - Nawada.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Sanjay Parasmani, Advocate
		Mr. Ajay Kumar, Advocate
		Mr. Manoj Kumar, Advocate
		Mr. Surya Nilambari, Advocate
For the Opposite Party/s 2 and 3	:	Mr. Shravan Kumar, Sr. Advocate
		Mr. Uday Shankar Sharan Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 25-01-2019

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite parties no. 2 and
3.



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 is an application for quashing order dated 2.8.2014 passed in Cri. Rev. No. 25 of 2014 by Session Judge, Nawada whereby and where under the Ld. Court of Session Judge has set aside the order dated 11.02.2014 passed by Ld. S.D.M, Nawada invoking conditional order u/s 133 Cr. P.C. in case no. 723 of 2013.”

3. The petitioner filed Case No. 723 of 2013 under Section 133 of the Code alleging that the opposite parties had encroached Government land while erecting boundary wall which was used as a road/passage by the public, before the Sub Divisional Magistrate, Nawada Sadar. By order dated 11.02.2014, after hearing both the sides, the Sub Divisional Magistrate, Nawada Sadar directed the opposite parties to remove the boundary finding him to be encroacher on Government land, which was a road. Aggrieved by the same, the opposite parties no. 2 and 3 moved in Cr. Revision No. 25 of 2014 before the Sessions Judge, Nawada which was allowed by order dated 02.08.2014 and the order dated 11.2.2014 was set aside.

4. Learned counsel for the petitioner submitted that the grievance raised by him was with regard to encroachment by the opposite parties no. 2 and 3 on a public road by erecting the



boundary wall. It was submitted that after going through the records available before the authority and in the presence of the opposite parties no. 2 and 3, a finding was recorded that the opposite parties no. 2 and 3 had encroached on a road which was Government land. It was submitted that in such view of the matter, a direction was given to remove the boundary wall. Learned counsel submitted that law provides that an order passed under Section 133 of the Code is conditional and if the person against whom it is passed objects, the authority is supposed to consider the same and then pass a final order either making the initial order absolute or recalling the order. It was submitted that in the order passed by the Sessions Judge dated 02.08.2014, the Court has gone on an erroneous presumption that the original authority has not followed the provisions of Sections 137 and 138 of the Code. It was submitted that the said provisions are in a different context and at best, even if it can be assumed for the moment that there were documents produced by the opposite parties no. 2 and 3, which needed to be considered and may not have been considered by the original authority, the course available to the Sessions Judge was to remand the matter, but setting aside without any remand is totally arbitrary and in fact, against public interest as a whole. It was submitted that in such background, the Court may exercise its



inherent jurisdiction under Section 482 of the Code for securing the ends of justice.

5. Learned A.P.P. and learned counsel for the opposite parties no. 2 and 3 submitted that there are enough materials /documents to indicate that they have not encroached upon any government land and boundary wall built by them was on land bought by them. It was further submitted that in fact it is the petitioner against whom encroachment proceeding has been initiated by the District authorities.

6. Having considered the facts and circumstances of the case and submission of learned counsel for the parties, without going into the factual merits of the matter, the Court finds that in the background of there being a serious dispute as to whether the boundary built by the opposite parties no. 2 and 3 is on Government land and the original authority having found, on the basis of materials on record available before him, that Government land had been encroached, the matter cannot be just consigned. Even if it is assumed that the opposite parties no. 2 and 3 may have required further opportunity or that they have documents which go in support of their case that their lands are private land bought by them, the matter was required to be sent to the same authority which would have given opportunity to both the sides to



present all documents in support of their respective case and also the authorities concerned in the matter, and then record a finding by passing a final order, in accordance with law. Further, the Court finds that the finding given by the Sessions Judge, Nawada in the impugned order dated 02.08.2014 that the land in question cannot be regarded as public place or public property is totally erroneous and unjustified as it is not based on any cogent material and merely on the contention of the opposite parties no. 2 and 3, which is impermissible. In fact, the same was also beyond his legal competence or jurisdiction while deciding the Revision application.

7. Thus, the Court finds that the matter requires interference and a case has been made out for such interference under the inherent power of the Court under Section 482 of the Code for securing the ends of justice, moreso, as the authority has found that the boundary wall of the opposite parties no. 2 and 3 is on Government land, which was being used as a public road.

7. For reasons aforesaid, the application is allowed. The order dated 02.08.2014 passed by the Sessions Judge, Nawada in Cr. Revision No. 25 of 2014 stands modified to the extent that the matter is remanded to the Sub Divisional Magistrate, Nawada, Sadar to consider afresh Case No. 723 of 2013, in accordance with



law, after giving opportunity of hearing to all concerned, including the District authorities and after considering all materials which may be brought on record by the respective parties and then to pass an order. The exercise be completed within two months from the date of production of a copy of this order before the Sub Divisional Magistrate, Nawada Sadar.

(Ahsanuddin Amanullah, J)

P. Kumar

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