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2020

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

C.R.R.113 of 2019

SM

**Abhijit Tea Company Pvt. Limited & Anr.
Versus
State of West Bengal.**

Mr. Jagriti Mishra.
....for the petitioner.

Mr. Debabrata Dhar, AGP,
Ms. Paramita Sahu.
.....for the State.

The petitioner complains about encroachment of a portion of land comprised in the petitioners Tea Garden by the Municipal Authorities. The petitioners say that a plot of land described as “KHELAR MATH” is part of the Tea Garden of petitioner no.1 left open to provide social infrastructure to the employees of the tea garden. The same is not fenced and as such can be accessed from outside instead of being approached through the main gate of the Tea Garden had it been fenced. It is also the case of the petitioner since the said plot of land is adjacent to the office of the local Municipality, some shop-rooms and a community hall often people come and park their car. The petitioner in order to protect its property wanted to erect a boundary wall to guard the said plot of land. On the petitioner’s attempt to do so on 5th November, 2019 the local police came and stopped the work. At the instructions of the Sub Divisional Officer, Mal, a complaint was registered by the Mal Police Station also on that date.

The petitioners say that on the basis of such complaint a

proceeding under section 133 of the Code of Criminal Procedure, 1973 was initiated but the petitioner was neither afforded an opportunity to represent its case nor the evidence from the side of the petitioner that were required to be looked into had been considered by the Magistrate. The Magistrate without doing this has drawn up a proceeding under section 133 of Cr.P.C., prima facie holding that the plot of land (Khelar Math) it is a government land.

The petitioner further submits that without hearing the petitioner the proceeding under section 133 of Cr.P.C. could not have been drawn up. The petitioner cites a Single Bench judgment of the Calcutta High Court reported in 2003 Cri.L.J. 2634 and in particular paragraphs 19 and 24 thereof. The petitioner also relies upon a judgment of the Jammu and Kashmir High Court delivered on 3rd November, 2018 reported in (Girdhari Lal & Ors. -Vs- State of J & K) and in particular paragraph 7 thereof.

The additional government pleader submits that the case which the petitioner wants to run is actually a title dispute. Whether the land belongs to the petitioner and is covered within the Tea Garden land has to be established by the petitioner before a competent civil Court. The issue before the criminal Court cannot be equated with the petitioner's claim over the title land. Moreover, he relies upon page 158 being a letter addressed to the Officer-in-Charge, Mal Police Station and submits that the petitioner has complied with the order of the Magistrate dated 7th November, 2019. The revisional application is, therefore, not maintainable at the instance of the petitioner after having accepted the order.

After hearing the parties, considering the materials on record

and the judgments cited, I find that section 133 of the Code of Criminal Procedure, 1973 speaks of the Magistrate for taking of evidence if any, as it thinks fit. The impugned order does not reflect that the petitioner has been heard or any evidence has been considered by the Magistrate. The Magistrate without doing so has prima facie come to the conclusion that the land does not belong to the petitioner. The ambit of the proceedings has therefore been expanded. The petitioner at this stage cannot be directed to go before the Civil Court to prove his title as the order of the Magistrate will state at the petitioners face. Moreover, the letter at page 158 of the writ petition does not establish that the petitioner has accepted the order of the Magistrate by removing some materials. The order impugned dated 7th November, 2019 is, therefore, set aside. The Magistrate is directed to hear the petitioner and consider the evidence that may be produced before him before drawing up a proceeding under section 133 of the Cr.P.C. if the situation so demands.

This exercise shall be done as expeditiously as possible but not later than three months from the date of communication of a server copy of this order.

The revisional application is allowed.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of requisite formalities.

(Arindam Mukherjee J.)