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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22.01.2020

+ CRL.M.C. 5796/2019

DR. HANS U. NAGAR

..... Petitioner

Through

Mr. Pankaj Vivek with Ms. Bidyarani
and Mr. Harshit Chopra, Advs.

versus

STATE & ORS.

..... Respondents

Through

Mr. Panna Lal Sharma, APP for State
Mr. Ujjwal Jha, Adv. for R-2&3
Ms. Vipra Bhardwaj, Mr. Anushasit
Arya, Advs. (Court Commissioners)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

Crl. M.A. 1451/2020

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

Crl.M.C.5796/2019

3. The present petition is listed on 02.03.2020, however, with the consent of learned counsel for the parties, the same is being disposed of.

4. Vide the present petition, the petitioner seeks direction to set aside the impugned order dated 31.10.2019 passed in Criminal Revision No.237/2019 by learned ASJ, South District, Saket, New Delhi and for setting aside the

order dated 04.06.2019 passed in case no.335/2019 passed by SDM Mehrauli, New Delhi and consequently pass orders to close the proceedings under section 133 of the Cr.P.C. initiated on the basis of complaint dated 23.04.2019.

5. The facts of the case are that the respondent Nos. 2 & 3 filed a complaint on 23.04.2019 before the Ld. SDM, Tehsil Mehrauli, Distt. South, New Delhi, seeking relief of the removal of main gate from the common private road of Nagar Estate, Village Gadaipur, Tehsil Mehrauli, New Delhi.

6. Learned counsel for the petitioner submits that though the complaint did not make out a case warranting invocation of Section 133 of the Code of Criminal Procedure, 1973, yet on 25.04.2019 the Ld. SDM suo moto directed issuance of notice under Section 133 of Cr.P.C.

7. Learned counsel further submits that it is devoid of material particulars inasmuch as the respondent nos.2&3 did not claim that the petitioner had obstructed any public passage or way. Ld. SDM had called for a report from the Halka Patwari and report was submitted on 13.05.2019. Said report also does not state about the main gate being situated on any public passage or way. It was also not stated that any obstruction or hindrance was being caused by petitioner or his servants/employees.

However, it is merely stated that gate was found closed at the spot and that the guard did not open the gate. It was further stated that one has to open gate himself to enter. Neither the report nor photo annexed to it stated/showed any lock on the gate.

8. It is further stated that petitioner appeared in response to the notice and filed his reply on 27.05.2019. As per the reply, land in question is a private land and it is being used as private road by the parties. The land was not a public way, thus Ld.SDM has no jurisdiction to entertain the proceedings under Section 133 of Cr.P.C. The petitioner also referred to order dated 05.01.2015 passed by this Court wherein the prayer for removal of gate was not accepted. Petitioner had also referred to order dated 21.03.2013, wherein it was agreed that the parties would remove the security at the main gate and all three parties and their guests, employees, friends and relatives would have free passage.

9. Accordingly, it is submitted that there is no security guard employed by petitioner and anyone coming and going to the Nagar Estate has to open the gate himself. Petitioner had also filed the jamabandi and '*Aks Shizra*' of the land to show that it was private land. He had also filed documents to show that respondent nos.2&3 themselves admitted before the SDM that

‘*rasta*’ (passage) is a private one. The petitioner had also filed video grabs from the camera installed on his farm to show that the complainants were themselves opening and closing the gates while using it to enter/exit the Nagar Estate. However, Ld. SDM heard the parties on 27.05.2019 and reserved for orders. However, on 04.06.2019, an order was passed which was titled & styled as "*Conditional Order*" but actually it was a final order directing removal of the gate.

10. The relevant portion of the order dated 04.06.2019 passed by learned SDM reads as under:

"Whereas, notice were issued to both the parties and hearings were conducted on 20.05.2019 and 27.05.2019. Submissions have been heard. Documents, reports, along with pictures, other complaints enclosed, placed on the record have been perused. Respondents are submitting that since, the path in question is part of Nagar Estate. It cannot be seen as a public path and is hence not covered under Section 133 Cr. P.C. Whereas, field inspection report was also called for Halqua Patwari stated that on visiting Nagar Estate, Village Gadampur, no one opens the gate, which was found to be closed. The guard sitting in the gate does not open the door, implying an obstruction/unlawful interference into a person's rights over land or possession thereof. Patwari has reported that the concerned path, beyond the gate, is on Khasra No. 313/2 (0-8), 257/2 (0-09), 244/3 Min. (0-9), 198/1 Min (0-4), 197/1 (0-4), 185 Min (0-8) & 169 (0-4) Village Gadampur are recorded in the name of Ms. Ida Nagar, M/o the Sh. Hans Nagar, Sh. John Nagar & Sh. Ronald Nagar. The gate and the path ahead is hence, not in the

name of either the complainants Sh. Ronald & John Nagar, neither in the respondents Sh. Hans Nagar, and hence can be seen as common passage for all concerned, only for the purpose of this case and Section 133 Cr. P.C."

11. The petitioner being aggrieved by the order dated 04.06.2019 preferred Revision Petition bearing Crl. Rev. No. 237/2019 on the ground that Ld. SDM had no jurisdiction in the matter, the order dated 04.06.2019 is totally illegal and there was no evidence before Ld. SDM to the effect that gate was an obstruction on any public way/rasta.

12. The respondent nos. 2 & 3 appeared before the Ld. ASJ and filed written arguments and during arguments it was conceded by the respondents that procedure required to be followed has not been followed by the Ld. SDM.

13. The case of the petitioner is that Ld. ASJ without appreciating the other contentions of petitioner regarding jurisdiction and maintainability, simply remanded the matter back to SDM after altering the order dated 04.06.2019, thereby directing that this order be treated as conditional one under Section 133 Cr.P.C. requiring the petitioner to show cause. Ld. ASJ further directed the SDM to seek reply/objections from the side of petitioner & then proceed further as provided under Section 135 of Cr.P.C. However,

Ld. ASJ failed to call for the Trial Court records and passed impugned order dated 31.10.2019 without even perusing the complaint made by respondent Nos. 2 & 3. Had Ld. ASJ perused the Trial Court records, particularly the complaint dated 23.04.2019 and report of Halka Patwari dated 13.05.2019, Ld. ASJ would have discovered that the complaint did not make any assertion that there was any obstruction on any public way or passage. The Halka Patwari report dated 13.05.2019 was also silent in respect of the nature of ownership of the land on which the rasta and gate existed.

14. The case of the respondent nos.2 & 3 is that by putting the gate at the main entry which is going towards common passage of all the farm houses is meant to create hindrances in their right of moving freely inside their farm houses and petitioner has put a lock at the main gate, which until and unless is unlocked by the guards or any person, one cannot enter the area of the farm houses.

15. However, this fact has been disputed by counsel for the petitioner on instructions from petitioner, who is personally present in court, and submits that there is no lock at the main gate and there is no guard deputed over there. Therefore, one can simply enter inside the gate and the gate has to be closed so that no private person would have any access to the property.

16. Vide order dated 04.12.2019, to ascertain the presence of any hindrances on gate no.2 (the main entry), this Court appointed Ms.Punya Rekha Angara and Mr.Anushasit Arya, as Court Commissioners, to visit the site and file a report to clarify the following:

- i. Whether the said gate is locked?
- ii. Whether there are any security guards deputed at the gate.
- iii. Whether there is a room for security guard at the gate?
- iv. In case the gate is locked, who has the keys of the gate?
- v. In case the gate is not locked, are there any other hindrances to enter in the main gate?

17. This Court also made it clear that out of the pocket expenses including travel expenses of the Court Commissioners shall be borne by petitioner and respondent nos.2 & 3 in the same ratio.

18. Further made clear that the Court Commissioners shall visit the site between 10 a.m to 12 noon on 12.12.2019 and in their presence, the parties shall not come nearby.

19. During hearing of the present petition on 09.12. 2019, it was brought to the notice of this Court that the Private Secretary had contacted Ms. Angara, one of the court commissioners appointed in this case on her mobile No. 9560952425, who informed that she is on maternity leave and will not be able to comply with the directions passed by this Court.

20. Accordingly, Ms. Vipra Bhardwaj who was present in Court agreed to be the Court Commissioner and to inspect the site and file a report.

21. Accordingly, Ms. Vipra Bhardwaj (Mobile no. 9999744119) was appointed as Court Commissioner in place of Ms. Punya Rekha Angara.

22. The Court commissioners mentioned above filed their report whereby stated that outside of the main road, on to their left side, there were two surveillance cameras tied on a lamp pole and on their right side, there was one surveillance camera. As they stood outside of the premises, they observed that there was one large double door gate and one small single door gate which was on the right side of larger gate. Larger gate was numbered as Gate No.2, was closed with a door handle from the inside but did not have a lock. Smaller gate was found ajar. There was a room admeasuring 10 ft. by 12 ft. adjoining smaller gate. The room had two single beds, a desk with a register and a monitor which displayed live streaming from surveillance cameras.

23. While standing at the foot of Gate No.2, they saw at a few feet distance another double doored gate inside the Estate. The doors were wide open and was numbered as Gate No.3. There were surveillance cameras on either side of Gate No. 3.

24. It is further stated in the report that all gates can be locked with a padlock and key. If someone arrives in a vehicle, one will have to step out of vehicle to slide the door handle in order to open any of the gates.

25. Further states, they stepped out of Nagar Estate and walked on main road parallel to boundary wall of Nagar Estate and came across an unnumbered gate which was chained and padlocked with key. There were barbed wires running on top of boundary wall with a board that cautioned of high voltage. They did not see any security guard nor a room to house the guard. As they looked through this gate, they saw semi built rooms which were immediately next to this gate, however, inside the Estate. The place wore a deserted look and they did not find a living soul in sight.

26. The main issue in the present petition is that petitioner is creating hurdles on the common passage for the respondent nos.2&3.

27. As stated above, for the aforesaid purpose, court commissioners were appointed by this Court who have filed a report, which is on record.

28. Be that as it may, it is agreed by the petitioner and respondent nos.2&3 and prayed that let security guards be provided, from any licenced agency, who shall guard the gate turn wise by being on duty for eight hours. As stated in the report, immediately after gate no.2, on the right side there is

around 10 feet vacant land. Further, there is a guard room, which is claimed to be constructed by the petitioner, however, the same has been disputed by respondent nos.2 & 3 by stating that the said guard room was constructed by their mother.

29. Petitioner and respondent nos.2&3 are real brothers and the Estate has been established by their late mother i.e. Ida Nagar.

30. Accordingly, I hereby direct Incharge of SIS security to provide three guards to be posted at gate no.2 at Nagar Estate.

31. It is jointly agreed that the petitioner and respondent no.2&3 shall pay salary to each guard.

32. Accordingly, the petitioner shall pay monthly salary to one security guard and respondent nos.2&3 shall pay monthly salary to the other second and third security guard, respectively.

33. It is made clear that SIS security shall provide security guards at the same rate at which they provide to other institutions.

34. It is further made clear that if there is any enhancement of the salary, the petitioner and respondent nos.2&3 shall bear the same.

35. It is further made clear that the security agency named above shall provide additional guard, if any of the guard is on leave. However, monthly

salary shall be paid only to three guards.

36. The petitioner has agreed to construct a porta cabin 6'6' feet inside the gate no.2 and left side of the gate i.e. just opposite the guard room already in existence on right side.

37. Accordingly, the petitioner is directed to construct porta cabin within one week from today. The SIS security shall provide the security guards within one week from the receipt of this order.

38. Registry is directed to communicate this order to Incharge, SIS security.

39. It is made clear that neither of the parties shall create any hurdle in the common passage including the gate no.2& 3.

40. It is also made clear that this order is qua the common passage and passages of petitioner and respondent nos.2&3. As regards to farm house no.2, the petitioner claimed his possession, however, it is disputed by the respondent nos.2&3. Thus, order passed by this Court has nothing to do with aforementioned farm house and the execution petition which was disposed of vide order dated 14.01.2019 filed by respondent nos.2&3 with liberty to file a fresh execution.

41. It is made clear that parties in this petition shall be bound, failing

which action shall be taken against the defaulter.

42. It is further made clear that till the porta cabin is constructed and SIS security guard is posted, neither petitioner nor respondent Nos.2&3 shall create any hindrance on the entry of the gate.

43. Gate no. 2 (the main gate) shall remain closed without any lock, however, the security guard shall open the gate as and when any of the residents and their guests enter/exit through the gate.

44. In view of above the petition is disposed of.

45. The date already fixed in the matter stands cancelled.

CRL.M.A. 1450/2020

46. In view of order passed in CRL.M.C. 5796/2019, the present application has become infructuous and the same is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 22, 2020/ms