

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 CRIMINAL WRIT PETITION NO.91 OF 2021

JAYRAM SIDDHESHWAR KANCHARLAWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr.V.J.Dixit, Sr.Adv. i/b S.V.Dixit
APP for Respondent State: V.S.Badakh
...

CORAM : MANGESH S. PATIL, J.
DATE : 19.01.2021

PC. :-

Heard learned Senior Advocate for the petitioner.

2] The petitioner has been served with a notice under Section 133 of the Cr.P.C. which is being impugned in the present Petition.

3] On a query as to how the Writ Petition would be maintainable even before the final order is passed confirming the order passed under Section 133 of the Cr.P.C. the learned Senior Advocate would submit that the notice itself makes it clear that the petitioner has been called upon to remove the construction. The authorities are bent upon to remove the construction and the whole purpose would be lost if in the mean time the order passed under Section 133 of the Cr.P.C. is executed.

4] The learned Senior Advocate would also submit that pursuant to such notice the petitioner has already appeared before the Sub Divisional Officer

and has solicited time to respond to the notice and he has been granted 7 days time. However, the petitioner apprehends that in all probabilities the authorities would act hastily and would not desist from demolishing the property in which case the whole purpose of filing the Writ Petition would be frustrated.

5] It would be apposite to appreciate the scheme of the provisions contained in Sections 133 to 143 of the Cr.P.C. pertaining to public nuisance under Chapter X of the Cr.P.C.

6] Section 133 empowers a District Magistrate or Sub Divisional Officer etc. to pass a conditional order for removal of nuisance, requiring a person causing such obstruction or nuisance to remove it but further adds that in case he wants to object to such order, to appear before the authorities and to show cause as to why the order is not to be made absolute.

7] Section 134 then requires the order passed under Section 133 to be served on the person against whom it is made.

8] Section 135 gives an option to the person against whom the order is made under Section 133 of the Cr.P.C. either to obey the order or to appear and show cause against the same.

9] Section 136 then speaks about the consequences of failure of the person to follow either of the courses mentioned in Section 135, of obeying the order or showing the cause.

10] Section 138 then prescribes the procedure after the person appears and shows cause. After the person appears before the Magistrate who is supposed to record the evidence and either modify the order passed under Section 133 or make it absolute. If the Magistrate is not satisfied about such obstruction or public nuisance no further proceeding is to be taken.

11] Sections 139 and 140 then specify about procedure to be followed by the Magistrate in conducting the inquiry. Section 141 lays down the provisions and the procedure when the Magistrate makes the order passed under Section 133 absolute and also speaks about the consequences of its disobedience. Conspicuously it lays down that when he makes the order absolute he is to give a notice to the person against whom the order is made calling upon him to perform the act as directed in the order within a stipulated time and even to prosecute him under Section 188 for its disobedience. Sub Section 2 of Section 141 then empowers the Magistrate to perform or cause to be performed the act of removal at the cost of the person against whom the order is passed.

12] As can be gathered, the Magistrate is expected to exercise a quasi judicial power while passing the order under Section 133 and making it absolute under Section 141. Even after passing of the final order he is supposed to issue notice to the person concerned stipulating time for obeying the direction.

13] In the matter in hand, even before a final decision is taken by the Magistrate under Section 141, the petitioner has approached this Court no sooner he has been served with an order passed under Section 133. Needless

to state that, that order is merely in the nature of an interlocutory order which has to become absolute after an inquiry. This Court in exercise of a writ jurisdiction cannot prevent the quasi judicial authority from going ahead and conducting the proceeding under Chapter X pursuant to the provisions of Sections 133 to 143 of the Cr.PC..

14] Irrespective of the consequence, the petitioner will have to appear and contest the proceeding before the concerned Magistrate and wait for the final outcome of the inquiry.

15] The Writ Petition is premature and is dismissed in limine.

[MANGESH S. PATIL, J.]

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