

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1792 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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1. Rajendra Prasad Singh Son of Late Dudheshwar Prasad Singh R/o Mohalla - Rajbanshi Nagar, Road NO. 2 (Extension), Post Office - Shastri Nagar, P.S. - Shastri Nagar, Distt. - Patna
 2. Rajiv Ranjan @ Raju Yadav Son of Rajendra Prasad Singh R/o Mohalla - Rajbanshi Nagar, Road NO. 2 (Extension), Post Office - Shastri Nagar, P.S. - Shastri Nagar, Distt. - Patna

... .. Petitioners

Versus

1. The State of Bihar, through Principal Secretary, Dep. of Lands Reforms and Revenue, Gov. of Bihar Patna
2. The Divisional Commissioner, Patna Division, Patna Bihar
3. The Collector Cum District Magistrate, Patna Bihar
4. The Additional Collector, Patna Bihar
5. The Sub-Divisional Magistrate, Patna Sadar, Patna Bihar
6. The Deputy Collector Land Reforms, Patna Sadar, Patna Bihar
7. The Circle Officer, Patna Sadar, Patna Bihar
8. S.H.O., Shastri Nagar Police Station, Patna Bihar
9. Kumar Anil Sinha @ Anil Yadav Son of Ramyati Singh @ Ramyati Yadav R/o Mohalla - Rajbanshi Nagar, Road No. 2 (Extension), P.O. - Shastri Nagar, P.S. - Shastri Nagar, Distt. - Patna, Presently Posted as Deputy Secretary, Dep. of Rural Work, Gov. of Bihar, Patna
10. Ramyati Singh @ Ramyati Yadav Son of Late Brahmdeo Singh R/o Mohalla - Rajbanshi Nagar, Road No. 2 (Extension), P.O. - Shastri Nagar, P.S. - Shastri Nagar, Distt. - patna

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Helal Ahmad, Advocate
For the State	:	Ms. Prakritita Sharma, AC to SC-25

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 08-11-2023

Heard Md. Helal Ahmad, learned counsel for the
petitioners and Ms. Prakritita Sharma, AC to SC-25 for the
State.

2. The petitioners in the present writ application are questioning the order dated 07.02.2019 passed by learned Sessions Judge, Patna in Criminal Revision No. 57 of 2019 whereby and whereunder the learned Sessions Judge has been pleased to dismissed a challenge to the order dated 31.12.2018 passed by learned Sub-Divisional Magistrate, Patna Sadar in Case No. 1767 (M) of 2015 in a proceeding under Section 133 of the Code of Criminal Procedure (hereinafter referred to as the 'CrPC').

3. The petitioners are further challenging the consequential orders dated 06.05.2023, 04.09.2023 and 12.10.2023 as contained in Memo Nos. 3863, 7869 and 8835 respectively issued by the Circle Officer, Patna Sadar whereby the petitioners have been directed to vacate their personal lands left for passage which according to the petitioners is not a public land.

Submissions on behalf of the Petitioners

4. In course of hearing, learned counsel for the petitioners has taken this Court through the order dated 31.12.2018 as contained in Annexure 'P/8' to the writ application. A reading of the order would show that the first party of the case has filed an application under Section 133

CrPC alleging that the second party has encroached upon the lands of Thana No. 7, Khata No. 308 Khesra No. 577 measuring area 8ft. in width and 65ft. in length for purpose of road. The learned SDM heard both the parties and learned counsel for the State and also called for a report from the Circle Officer, Patna Sadar. In his order, the SDM has referred an earlier order dated 19.11.2018 passed in case No. 182 (M) of 2016 in a proceeding under Section 147 CrPC. Ultimately, the SDM, Patna Sadar has directed for measurement of the land which were left for 'way' and a direction has been issued to get measurement of the said area and remove the encroachment.

5. Learned counsel for the petitioners submits that after passing of the order as contained in Annexure 'P/8', the order dated 19.11.2018 passed by learned SDM, Patna Sadar in Case No. 182 (M) of 2016 has been set aside by learned Sessions Judge, Patna in Cr. Revision No. 10 of 2019 vide order dated 18.01.2019 for the reason that a title suit is pending in respect of the same land between the parties. The main grievance of the petitioners is that while passing the impugned order dated 31.12.2018, the learned SDM, Patna Sadar has directed not only for measurement but also for removal of the alleged encroachment. It is submitted that the order under

Section 133 CrPC has not been passed in accordance with law.

6. Pointing out to Annexures 'P/2', 'P/3' and 'P/4' to the writ application, learned counsel for the petitioners submits that the Circle Officer called upon the petitioners to produce their documents of title relating to the land in question and when the petitioners did not participate in the said process before the Circle Officer, he has issued Annexure 'P/5' directing the petitioners to remove the encroachment from the land which were left for way, failing which the encroachment will be removed upon measurement of the said land.

Submission on behalf of the State

7. Learned counsel for the State submits that so far as pendency of Title Suit is concerned, it would appear from Annexure 'P/14' which is an order dated 01.10.2016 passed by learned Sub-Judge VII, Patna in Title Suit No. 31 of 2013 that one of the petitioners of this case is plaintiff in the said suit. It is the case of the plaintiff that he had purchased the land from one Nawal Kishore Singh in the year 2001 on the Link Road towards West to East which is 10ft.×115ft. in size and his grievance is that the defendants have blocked the Link Road towards East to West and have constructed septic latrine tank over the 10ft. wide Link Road and by such encroachment they

have caused inconvenience to the persons having easementary right over the Link Road. Learned counsel points out that the subject matter of said suit is different and distinct.

8. It is further submitted that on perusal of Annexure 'P/8' it would appear that the SDM, Patna Sadar has heard both the parties and called for a report from the Circle Officer and only thereafter issued a direction to get the land measured of the road/*rasta* and take steps for removal of encroachment. It is not and cannot be said to be a final order and the learned Sessions Judge, Patna has rightly observed in the impugned order passed in Criminal Revision No. 57 of 2019 that the magistrate can pass a preliminary conditional order and there is no bar in passing preliminary conditional order. No illegality or infirmity may be found at this stage.

9. It is further submitted that the petitioners are not cooperating with the Circle Officer and despite several notices given to them, they have not produced the documents so as to get the measurement of the land done.

Consideration

10. Having heard learned counsel for the petitioners and learned counsel for the State, this Court finds force in the submission of learned counsel for the State. A bare perusal of

the impugned order as contained in Annexure 'P/8' and consequential orders from Annexure 'P/2' to Annexure 'P/4', it appears that the SDM, Patna Sadar has presently passed a conditional order which has not been interfered with by the learned Sessions Judge, Patna. This Court has noticed the order of the learned SDM, passed in the title suit as contained in Annexure 'P/14' that in the said title suit, prima facie, the subject matter of the suit is different and the plaintiffs who is one of the petitioners before this Court is praying for a relief which is different and distinct from the reliefs prayed in the proceeding under Section 133 CrPC.

11. Section 133 CrPC falls under Chapter X dealing with maintenance of public order and tranquility. It is under Part B of Chapter X. Section 133 CrPC gets attracted in a case where it is alleged that any unlawful obstruction and nuisance is required to be removed from any public place or from any way, river or channel which is or may be lawfully used by the public. There are other circumstances in which Section 133 CrPC may be attracted and those may be found from clause (a) to clause (f) of Sub-Section (1) of Section 133 CrPC. The Magistrate under this Section is empowered to make a conditional order requiring the person causing such obstruction or nuisance, or carrying on

such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order to remove such obstruction or nuisance. The Magistrate may pass such other orders which are provided under sub-clauses (i) to (vi) of clause (f) of Sub-Section (1) of Section 133 CrPC.

12. Section 137 CrPC provides the procedure where existence of public right is denied. In such cases, the Magistrate shall before proceeding under Section 138 inquire into the matter.

13. Section 138 CrPC thereafter provides procedure where a person against whom an order under Section 133 CrPC is made appears and shows cause against the order, in such a case, the Magistrate shall take evidence in the matter as in a summons-case and on being satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification. According to Sub-Section (3) of Section 138 CrPC, if the Magistrate is not satisfied, no further proceedings

shall be taken in the case. For purpose of inquiry, under Section 137 CrPC or under Section 138 CrPC, the Magistrate is empowered to direct local investigation and examination by an expert. Section 141 CrPC further provides on order being made absolute and consequences of disobedience.

14. This Court has taken note of the aforementioned provisions in order to record that the petitioners in the present case seem to have proceeded to challenge the order dated 31.12.2018 but did not apply for the remedy which were already available under the aforementioned provisions. The conditional order has yet not been made absolute and the petitioners could have very well participated in the proceeding and requested the learned Magistrate for conducting an inquiry. The petitioners did not raise any objection on the grounds stated under Section 137 CrPC. At the same time, they did not participate before the Circle Officer despite several notices issued to them vide Annexures 'P/2' to 'P/4'.

15. In these circumstances, this Court finds no error in the impugned orders and the memos.

16. This writ application, as framed, cannot proceed. It is dismissed but with liberty to the petitioners to seek their remedy in accordance with law.

17. If the petitioners apply for their remedy before the learned SDM, Patna Sadar and/or any other authority in accordance with law, the same shall be considered immediately without being prejudice by this order.

18. The observations, if any, of this Court shall not be taken as an opinion of this Court on the merit of the lis.

(Rajeev Ranjan Prasad, J)

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CAV DATE	
Uploading Date	10.11.2023
Transmission Date	