

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 858 of 2019

Sk. Aminur Rahaman

Vs

The State of West Bengal & Ors.

For the Petitioner : Mr. Soumyajit Chatterjee.

For the State : None.

For the Opposite Party : Mr. Prasanta Kumar Banerjee,
Ms. Indrani Nandi.

Heard on : 28.02.2023

Judgment on : 18.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 19.07.2018 by the Learned Sub Divisional Executive Magistrate, 2nd Court, Hooghly Sadar, in MP Case No. 581/2013, thereby turning down the prayer of the petitioner under Section 133 of Criminal Procedure Code.
2. The petitioner's case is that the petitioner and his brother are the joint owners in respect of a plot of land situated at Mouza – Sreenagore, Police Station Pandua, District – Hooghly, appertaining to plot no. 1287, Khatian nos. 756 and 757 (henceforth referred to as the plot). The name of the petitioner, in connection with the plot was duly recorded in the concerned record of rights.
3. The Opposite Party No. 2 and 3 are the owners in respect of plot nos. 1288 and 1289 under the same Mouza, Police Station and District. The plot of the Opposite Party No. 2 and 3 is situated on the southern side of petitioner's plot.
4. The genesis of the instant case dates back to 03.06.2013, when the petitioner laid down a petition of complaint before the Learned Sub-Divisional Executive Magistrate, 2nd Court, Hooghly Sadar being MP case no. 581/2013 under Section 133 of Criminal Procedure Code against the Opposite Party No. 2 and 3.

5. The allegation in the said petition of complaint is to the effect that the plot of the Opposite Party No. 2 and 3 situated on the southern side of the petitioner's plot has been acquired by illegally filling up one "Doba" (water body) measuring around .09 Satak, without obtaining any permission from the land department, thereby causing inconvenience for the petitioner to discharge foul water from his house. On the northern side of the plot of Opposite Party No. 2 and 3, there is one big Jiyal tree, which leans towards the house of the petitioner in such a manner that it has rendered peaceful enjoyment of the house and property of the petitioner difficult. The said Jiyal tree leans and hovers over the house of the petitioner in such a manner that cats and other animals climb up the tree and then on to house of the petitioner. The falling leaves of the said tree are a nuisance and the main branches of the said tree poses serious threat to the life of the petitioner and his family members and also to the property of the petitioner.
6. The Learned Executive Magistrate, Sadar, Hooghly, by his order dated 04.06.2013 was pleased to direct the Officer in Charge, Pandua Police Station to submit a report in connection with the complaint of the petitioner. The personnel attached with Pandua Police Station submitted a report dated 02.07.2013. The Learned Magistrate directed the opposite party no. 2 and 3 to show cause as to why proceeding under Section 133 should not be initiated against them.

7. The Learned Executive Magistrate, Sadar, Hooghly, after perusal of the police report dated 02.07.2013, by his order dated 06.01.2015 was pleased to **direct the Opposite Party No. 2 and 3** to cut the portion of the disputed Jiyal Tree which was leaning on the house of the petitioner and by his further order dated 11.05.2015 was further pleased to make the order dated 06.01.2015 absolute and directed the Officer-in-Charge, Pandua Police Station to file compliance report within 15 days from the date of the order.
8. The Learned Executive Magistrate, Sadar, Hooghly by his order dated 28.09.2015 further directed **the Pradhan** of concerned Gram Panchayet to cut the portion of the disputed Jiyal Tree, which was leaning over the house of the petitioner and called for a report within 2 weeks from the date of the order.
9. The Learned Executive Magistrate, Sadar, Hooghly, then in contrary to all the previous orders so passed in MP case No. 581/2013, by way of the impugned order dated 19.07.2018 was pleased to observe that the **dispute between the petitioner and the Private Opposite Parties is private in nature and thus dropped the proceeding** under Section 133 of Criminal Procedure Code.
10. **Mr. Soumyajit Chatterjee learned counsel for the petitioner** has submitted that the impugned order is prima facie bad in fact and law per se and has been passed without and/or erroneous appreciation of the provisions of law as enumerated in Section 133 of Criminal Procedure

Code and other guiding provisions. Thus the impugned order is liable to be set aside.

11. He has further relied upon Clause (d) to Section 133 Cr.P.C.
12. **Mr. Prasanta Kumar Banerjee learned counsel for the Private Opposite Party** has submitted that the order under revision is in accordance with law and as such the revision is liable to be dismissed.
13. Heard both sides. Perused the materials on record and the order under revision. Considered.
14. **Section 133 Cr.P.C. comes under the chapter “public nuisance”.**
15. **Section 133 of the Code of Criminal Procedure, lays down:-**

“133. Conditional order for removal of nuisance.-

(1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or

support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may 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-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the Order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation- A " public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes."

16. The dispute between the parties relates to a tree on the Opposite Party's property, which leans over the property of the petitioner causing nuisance.
17. Admittedly the properties are private. The tree too stands on private property of the opposite party. And also leans over the property of the petitioner.
18. Thus considering the fact that the dispute is private and civil in nature, the Learned Executive Magistrate rightly passed the order under revision.
19. The order dated 19.07.2018 passed by the Learned Sub Divisional Executive Magistrate, 2nd Court, Hooghly Sadar, in MP Case No. 581/2013, being in accordance with law needs no interference by this Court.
20. **CRR 858 of 2019 is dismissed.**
21. There will be no order as to costs.
22. All connected Applications stand disposed of.
23. Interim order if any stands vacated.
24. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
25. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)