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CRR 1037 of 2016

**Ashoke Kumar Chakraborty
versus
State of West Bengal & Anr.**

Mr. Animesh Bhattacharya. ... for the petitioner.

Mr. Binoy Kumar Panda,
Mr. Subham Bhakat.
... for the State.

This revisional application is filed challenging the order dated 4th March, 2016 passed by the learned Additional District and Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur, whereby learned Judge set aside the order dated 15.03.2012 passed by the learned Special Executive Magistrate exercising the power under Section 133 of the Criminal Procedure Code in connection with MP Case No. 42 of 2011.

On an application under Section 133 of the Criminal Procedure Code for removal of obstruction and nuisance, learned Sub-Divisional Magistrate, Balurghat Dakshin Dinajpur took the application and after registering the same as MP Case No. 42 of 2011 passed an order on 15.03.2012 for removal of the hindrance directing the municipality to give the way open after observing due formalities as per provision of Municipality Act. The said order was challenged before the learned Additional District and Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur.

Learned S.D.E.M. relied on a report of B.L. & L.R.O. as well as police report.

It appears from the B.L. & L.R.O's report that petitioner/claimant purchased the land in question from one Bandana Goswami, who also purchased from the opposite party. The petitioner/claimant purchased the some portion of the land to be used as ingress and egress and that ingress and egress was alleged to have been obstructed by the opposite party after constructing building and safety tank and that was bone of contention between the parties. Police report also harped on the same string.

Sub-Divisional Magistrate can deal with a dispute regarding public place under Section 133(1(a) of the Criminal Procedure Code.

Here in this case, learned Sub-Divisional Magistrate passed an order, directing Municipality for removal of all the construction ignoring the B.L. & L.R.O's report as well as that of the police. Thereby, learned Additional District and Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur observed as follows:

“The Ld. Court below has not also made any enquiry as to whether the passage in question is a public path or a private path. There is no doubt that the provisions of S. 133 Cr.P.C is applicable only in case of a public nuisance and not in case of any private nuisance. The Ld. S.D.E.M. in his impugned order dt.12.03.12 has stated inter alia that he is of the view that the way in question is used by the public but he has not made it clear in the impugned order as to on what basis he has come to said conclusion. Before passing the impugned order the Ld. Executive Magistrate should have made enquiry as to whether the alleged nuisance is a private nuisance or is a public nuisance. There is no evidence in the Lower Case Record that the passage in question is a public pathway and in such a

situation it can not be said that the alleged nuisance/obstructions caused by the present petitioner/revisionist on said passage is a public nuisance and as such the provisions of S.133 Cr. P.C. is not at all applicable.”

Therefor, I do not find any illegality or infirmity in the order passed by learned Additional District and Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur to interfere with.

Thus, the revisional application stands dismissed.

All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court

(Bibhas Ranjan De, J.)