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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**WPA 3889 of 2023
(Specially Assigned)**

**Sajahan Sk.
-Vs-
The State of West Bengal & Ors.**

Mr. Dyutiman Banerjee
Ms. Poulami Chakraborty
Mr. Vishal Mallick
... for the petitioner

Mr. Chandi Charan De, Ld. AGP
Mr. Anirban Sarkar
... for the State

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India for setting aside the order dated 9th January, 2023 passed by the learned Executive Magistrate, SDEM Court (Sadar), Berhampore, Murshidabad under Section 133 of the Code of Criminal Procedure.

The brief fact of the case is that the petitioner is in occupation in respect of the plot of land lying and situated at Mouza Jan Mohammadpur, J. L. No.112, Police Station Berhampore, District Murshidabad adjacent to L.R. Dag No.1526 by carrying on a business of sweetmeat shop for last 50 years in the said plot of land. The private respondent being an occupier of the said land filed an application under Section 144(2) of the Code of

Criminal Procedure before the Sub-Divisional Executive Magistrate, Berhampore Sadar precisely on the ground that the petitioner is trying to make construction on the public road maintained by the P.W.D., which would affect the egress and ingress of the private respondent. On 1st March, 2021 *status quo* order was passed in the aforesaid proceeding which was challenged in Criminal Revision No.61 of 2021 before the learned Sessions Judge, Murshidabad wherein the aforesaid order was stayed. Subsequent thereto, the private respondent filed an application under Section 133 of the Code of Criminal Procedure being Case No.2476 of 2022 before the Sub-Divisional Executive Magistrate, Berhampore Sadar. The learned Executive Magistrate vide its order dated 9th January, 2023 in the proceeding under Section 133 of the Code of Criminal Procedure directed the petitioner to remove the construction from the public road in front of plot of land in question. Being aggrieved of such order, the petitioner has filed the present writ petition.

Mr. Dyutiman Banerjee, learned Advocate for the petitioner submits that the learned Executive Magistrate has issued order for removal of the shop of the petitioner under Section 133 of the Code of Criminal Procedure, which is passed not in accordance with the procedure laid down. He seeks for appropriate orders. He furnishes a copy of the impugned order dated 9th January, 2023, which is taken on record.

Mr. Chandi Charan De, learned Additional Government Pleader submits that the order passed under Section 133 of the Code of Criminal Procedure is a revisable order under the Code and as such, the writ petition is not maintainable.

Admittedly, the impugned order dated 9th January, 2023 was passed invoking the power under Section 133 of the Code of Criminal Procedure. Such order passed by the learned Executive Magistrate under the aforesaid provision is to be assailed taking recourse to the provisions of the Code of Criminal Procedure. In the aforesaid backdrop, the writ petition is liable to be dismissed as not maintainable.

Accordingly, the present writ petition being **W.P.A. 3889 of 2023** is dismissed as not maintainable.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)