

Sl. No.A128
10.06.2026
Suman
Ct. 237

CRR 1923 of 2025

Md. Aktar Hossain
Vs.
The State of West Bengal and Ors.

Mr. Pinaki Dhole
Mr. R. K. Pathak
Ms. Srijita Noe
..for the petitioner

Mr. Avishek Prasad
..for the opposite parties

The petitioner assails the judgment and order dated May 10, 2024, passed by the learned District Judge, Malda, whereby the order dated May 11, 2023, passed by the learned Executive Magistrate, Malda, under Section 133 of the Code of Criminal Procedure, was set aside.

It appears that the petitioner had approached the learned Executive Magistrate by filing an application seeking removal of an alleged unauthorized construction. By an order dated May 11, 2023, the learned Executive Magistrate allowed the said application. Aggrieved thereby, the private opposite parties preferred a revision, which was allowed by the learned District Judge.

The learned District Judge, upon consideration of the materials on record, found that the alleged unauthorized construction had been in existence for more than thirty-five years. Taking into account the reports submitted by the concerned police authorities

as well as the Block Land and Land Reforms Officer, the learned District Judge was of the view that the existence of the said structure did not give rise to any imminent danger or nuisance affecting the public at large so as to warrant the exercise of jurisdiction under Section 133 of the Code.

This Court does not find any infirmity in the reasoning adopted by the learned District Judge so as to warrant interference with the impugned order.

Mr. Prasad, learned advocate appearing on behalf of Opposite Party Nos. 2 and 3, has rightly placed reliance upon the decision of the Hon'ble Supreme Court reported at **1995 Supp (4) SCC 54 (Vasant Manga Nikumba v. Baburao Bhikanna Naidu)**.

Paragraph 5 of the said decision is reproduced hereinbelow:

“5. In T.K.S.M. Kalyanasundaram v. Kalyani Ammal, the Madras High Court held that the alleged nuisance would have been in existence for a long period. The circumstance and the evidence in that case did not prove that an urgency existed warranting the taking of action under Section 133. No action can be taken under this section where the obstruction or nuisance has been in existence for a long period and the only remedy open to the aggrieved party was to move the civil court. It was also held that Section 133 is attracted only in cases of emergency and immediate danger to the health or physical comfort of the community. Accordingly on the facts in that case, it was held that there was no immediate danger or emergency for the removal of the structure offending in that case. It is also settled law that recourse to Section 133 could not be a substitute for the civil proceedings and the parties should have recourse to the civil remedy available and should not be encourage (sic encouraged) to taking recourse to the provisions of Section 133 of the Code.”

In view of the foregoing discussion, the present revisional application stands **dismissed**.

It is, however, made clear that the dismissal of the present revisional application shall not preclude the petitioner from pursuing such remedies as may be available to him in law before the appropriate forum.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)