

(1969) 09 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No 1208 of 1908

Gain Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 12-09-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133

Citation : (1969) 09 P&H CK 0010

Hon'ble Judges : A.D. Koushal, J

Bench : Single Bench

Advocate : B.S. Jawanda, for the Appellant; M.P. Singh Gill, for the Respondent

Final Decision : Allowed

Judgement

A.D. Koshal, J.—This petition for revision of the order dated the 10th October, 1968, of Shri Udham Singh, Sessions Judge, Patiala, has arisen in the following circumstances. On the 16th of August, 1963, Amar Singh Respondent No. 2 filed an application u/s 133 of the Code of Criminal Procedure with the Sub-Divisional Magistrate at Nabha stating that the two Petitioners, who are father and son. had about three months earlier-encroached upon Khasra No. 648 (in the estate of Dandrala Dhindsan) which was public property, being a thoroughfare. The learned Magistrate passed a conditional order in pursuance of the application and issued notice to the Petitioners who appeared before him but later on absented themselves from the proceedings. The learned Magistrate held on the basis of the jamabandi entries that Khasra No 648 was a public pathway to the use of which the entire population of village Dhandrala Dhindsan was entitled He further found, as reported by the Assistant Office Kanungo who measured the Khasra number at site, that it was in possession of the Petitioners. On the basis of these findings the learned Magistrate made the conditional order absolute.

The Petitioners went up in revision to the Sessions Court at Patiala. By his order dated the 10th of October 1968, the learned Sessions Judge affirmed the findings arrived at by the learned Sub-Divisional Magistrate and turned down a contention

raised on behalf of the Petitioners that they had not been properly served during the proceedings before the learned Magistrate, that on that account they had failed to produce their evidence and that the proceedings vitiated in consequence.

It is against the order of the learned Sessions Judge that the Petitioners have come up in revision to this Court.

2. The only point raised by learned Counsel for the Petitioners before me was that the encroachment was an old one having existed at least since the earlier part of 1961 and that the provisions of Section 133 of the Code of Criminal Procedure could not be pressed into service for vacating it, their operation being limited to cases of emergency or, in any case, urgency. After going through the material on the record, I am of the opinion that the point is well taken.

In the application dated the 16th of August, 1963, abovementioned, Respondent No. 2 stated that Khasra No 648 had been encroached upon only about three months earlier. This assertion is falsified by unimpeachable documentary evidence which is part of the record. Exhibit R.W. 4/A is the copy of a resolution dated the 6th of May, 1961, passed by the village Panchayat on the application of one Darbara Singh that the thoroughfare in question has been amalgamated by petitioner No. 2 with his own land. The resolution was to the effect that a notice be served upon Petitioner No 2. My attention has also been drawn to the certified copy of an (undated) order of Shri Sham Sunder-Kakar, District Development and Panchayats Officer exercising the powers of Deputy Commissioner, Patiala, at pages 50-52 of the record. The order was passed in the matter of an application u/s 97 of the Gram Panchayat Act praying for the suspension of the resolution evidenced by document Exhibit R.W.4/A. The application was accepted.

It is thus clear that the encroachment complained of had existed at least since the 6th of May, 1961, so that it was more than two years old by the time the proceedings before the learned Magistrate were initiated.

3. It appears to be well settled that Section 133 is not intended for long-standing constructions but is meant to vacate only such unlawful constructions which had been lately built in a public place. Authorities for this proposition are *Baisakhi Ram v. Emperor*, AIR 1930 Lah. 361 AIR 1935 28 (Lahore) AIR 1938 523 (Lahore) and AIR 1939 Lahore 452 and I may quote the following observations with advantage from *Emperor v. Tulsi Ram* (supra):-

It has been frequently pointed out that it is only on proof of urgency or imminent danger to the public interest that action u/s 133 et(sic) seq can be taken, and that these provisions should not be allowed to be used as a substitute for litigation in Civil Courts:

Ch. 10 of the Code deals with, public nuisances, and as has been stated above provides a speedy and summary method for dealing with them, in cases of great emergency and where there is imminent danger to the public interest. The fact that an obstruction has been allowed to stand, without objection in a public place

for many years itself indicates that there is no such emergency or imminent danger to the public interest. The existence "of a long-standing obstruction cannot therefore without proof of something having recently happened, be considered to be a public nuisance.

These observations are fully applicable to the facts of the present case wherein, as pointed out earlier, the encroachment made was two years old when the proceedings before the learned Magistrate originated. Section 133 of the Code of Criminal Procedure not being meant for proceedings of this kind, I accept this petition and set aside the orders passed by the two Court below. Respondent No 2 may, if so advised, pursue his remedy in a civil Court.