
(2013) 10 MP CK 0099
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 9238 of 2013

Hamid Baba and Another

APPELLANT

Vs

Khalid Khan and Another

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0099

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Arpan Shrivastava, for the Appellant; Akshay Namdeo, Panel Lawyer for respondent No. 2 in the State, for the Respondent

Final Decision : Disposed Off

Judgement

N.K. Gupta, J.—The applicants have challenged the order dated 16.11.2011 passed by the S.D.M. Seoni in M.Cr.C. No. 6/2010 relating to Ashok Ward, Seoni, whereby it was directed that public nuisance be removed and construction be stopped. The applicants have also challenged the order dated 24.5.2013 passed by the learned 2nd Additional Ses whereby the order dated 16.11.2011 passed by the S.D.M. was confirmed. Facts of the case, in short are that, in Ashok Ward Seoni, the respondent No. 1 had a plot no. 34 in block no. 50. It was shown that there was a public way on the south side of that plot. The applicant constructed a building to run a Madarsa and he closed that way available in the south side. Also a staircase is constructed in front of the respondent No. 1's house and therefore, a public nuisance was caused. On the application made by the respondent No. 1, a report of the Revenue Inspector was called and it was found that the applicant has constructed a shade over the wall of the respondent no. 1's house and also constructed a staircase on the public land and therefore, the transportation of the respondent no. 1 from his house was affected. After considering the report given by the Revenue Inspector and the photographs filed by the respondent no. 1, the S.D.M. Seoni passed an order dated 16.11.2011, whereas the revision filed by the applicant was dismissed vide order dated 24.5.2013.

2. I have heard the learned counsel for the parties.

3. The respondent No. 1 did not appear before the Court, though notice of this petition was served.

4. After considering the submissions made by the learned counsel for the applicants, it is apparent that the learned counsel for the applicants has invited attention of this Court to the Khasra entry at page 11 and the report given by the Revenue Inspector to show that the entire construction was done one year prior to the date of the complaint and the construction was done on the land belonging to the applicants therefore, it is prayed that the impugned order passed by the learned S.D.M. Seoni appears to be incorrect. However, looking to the photographs, which are submitted by the respondent No. 1 before the trial Court, it appears that the staircase is constructed in front of the wall of the respondent no. 1 and the entry from the door of the respondent no. 1's house is slightly restricted. Similarly, it is apparent that one shade was created on the wall of the respondent no. 1. At present, it is to be decided as to whether the respondent no. 1 had lodged a complaint u/s 133 of Cr.P.C. after one year of the construction done by the applicants. Also it is to be decided as to whether the respondent no. 1 has a right to open his door on the back side of his house and whether any public way is available on that side or not. It is also apparent that the order passed on 16.11.2011 was a conditional temporary order and a notice was given as to why the order may not be made final therefore, the applicant has a right to defence his case before the S.D.M., where he was not doing any construction at present.

5. The learned counsel for the applicant has placed his reliance upon the order passed by the Single Bench of this Court in the case of Kunoo Vs. Sewalal and Another, and the order passed by the Single Bench of the Bombay High Court in the case of Laxman alias Bala Govekar Vs. Janardhan S. Kalangutkar and Others, to show that, if the construction is done by anyone within the limit of the land belonging to that person then, no public nuisance u/s 133 of Cr.P.C. is made out. At present, in the present case, the applicant has an opportunity to produce such evidence before the S.D.M. Seoni and raise all such objections before that Court. It is also apparent that the applicant was not constructing anymore, when the S.D.M. has passed a conditional temporary order. Under such circumstances, there is no immediate problem to the applicant due to that order. When he has an opportunity to get a final order in his favour then, it is for him to defend his case before the S.D.M. whereas the S.D.M. has to pass a final order in the case after considering the objections raised by the applicant. If any observations are given by this Court then, it would be caused a prejudice to the proceedings as well as to the opposite party. Under such circumstances, at present, where no final order has been passed by the S.D.M., Seoni, it cannot be said that there is a matter in which any interference is required to be done from the s(sic)

6. On the basis of aforesaid discussion, the present petition filed u/s 482 of Cr.P.C. cannot be accepted and consequently, it is hereby dismissed with the

directions that the applicant shall raise all such objections before the S.D.M. Seoni and the S.D.M. Seoni shall pass a final order after considering the objections raised by the applicant and the evidence laid by both the parties.

7. Copy of the order be sent to both the Courts below alongwith their records for information and compliance. Since the petition is disposed off, the interim order is automatically vacated and the trial Court is directed to proceed with the case.