

(2006) 06 PAT CK 0072

In the Patna High Court

Case No : Criminal Miscellaneous No. 27243 of 2002

Md. Abdul Wahood Khan

APPELLANT

Vs

Wajid Khan and Others

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 131, 133, 133(1), 135, 482

Citation : (2006) 4 PLJR 113

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Advocate : Rashid Alam, S. Azeem, for the Appellant;

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application u/s 482 of the Code of Criminal Procedure for quashing the order dated 6.8.2002 passed by the learned Sessions Judge, Jehanabad by which he has dismissed the revision application bearing No. 49/2000 confirming the order dated 18.5.2000/24.5.2000 passed in Case No. 189(M)99 by Sub-Divisional Magistrate, Arwal, District Jehanabad directing the petitioner to remove the structure found on plot No. 5821, failing which it may be removed by the aid of the armed force. Heard.

2. It appears that the petitioner filed a petition before the S.D.M., Arwal alleging therein that the opposite party had fixed a humepipe in the public canal bearing plot No. 220 at village Purakothi as a result of which there had been accumulation of water by the side of the wall erected on his plot No. 336/5821 and 366 and there was a danger of the falling down of wall. It was also alleged that on account of accumulation of water there was chance of outbreak of epidemic disease affecting the health of the people. The petitioner hence prayed therein for initiating a proceeding u/s 133 Cr.P.C. The learned S.D.M. initiated a proceeding u/s 133 Cr.P.C. and directed the parties to file show cause. The opposite parties did not appear but some villagers appeared in the case. The S.D.M, found that two more proceeding u/s 133 Cr. PC. bearing Case No. 17 of

1999 and 18 of 1999 were pending against the parties for obstructing flow of water of the canal by closing the outlets of the humepipe by erecting a wall resulting in accumulation of water in the houses of the villagers. As there was tension between the villagers and the petitioner for obstruction in the flow of water, the then S.D.M, considering the gravity of situation, along with S.D.P.O., Anchal Adhikari, B.D.O., Junior Engineer, Officer-in-charge of the P.S., Anchal Amin, Sub-Divisional Amin made local inspection, in presence of lawyers of both sides the above two Government Amins and three Amins nominated by the parties made measurement and reported that the petitioner had encroached the land of others as well as Gair Majarua land and that the petitioner himself had closed the outlets of humepipe by erecting of wall causing obstruction in normal flow of water as a result of which there was tension among the villagers and there was likelihood of breach of peace and there was also possibility of breaking of epidemic diseases. The Circle Officer also submitted a report that Plot No. 386/5821 was recorded as Gair Majarua Malik and the petitioner has been falsely claiming land on the basis of settlement by Ex-landlord. It was also mentioned in the report that according to the villagers the rain water used to flow through these plots.

3. It further appears that the learned S.D.M, heard the parties and as the three cases relating to obstruction of flow of water of the canal were pending he amalgamated two other cases with Case No. 189(M)/99 and he was satisfied that previously the water used to flow through plot No. 5821 but as the petitioner had erected a wall in plot No. 5821 by the side of a humepipe in plot No. 220 in July, 1999 since then the flow of water was obstructed as a result of which there was serious tension in the village and there was great possibility of loss of life and property. The learned S.D.M, hence passed a conditional order u/s 131 Cr.P.C. on 18/24.5.2000 directing the petitioner to remove the structure of plot No. 5821 within three days with a further direction that if the structure was not removed by that time, the same would be removed by the administration. The petitioner was also directed as provided u/s 135 Cr.P.C. to file show cause, if any, by 27.5.2000 against the order.

4. The petitioner then preferred revision against the order of S.D.M. The learned Sessions Judge by the impugned order dismissed the revision as stated above.

5. Learned counsel for the petitioner submitted that the petitioner was not given any opportunity to file show cause and therefore, the order directing him to remove the alleged obstruction on plot No. 386/ 5821 is bad in law. He further stated that the proceeding u/s 133 Cr.P.C. was initiated with respect to plot No. 220 by him and not with respect to plot No. 386/ 5821 and therefore, the petitioner should have been given opportunity accepting or denying the alleged obstruction in plot No. 386/5821.

6. He further submitted that the order of the learned S.D.M, would show that plot No. 386/5821 which was a Gair Majarua Malik and was settled in his favour by outgoing landlord, a Jamabandi is running in the name of the petitioner.

Therefore, the said land cannot be treated as public land and no order u/s 133 Cr.P.C. could be passed on the report of structure erected on the land. The order of the learned S.D.M, giving direction to the Anchal Adhikari to cancel his Jamabandi is also not tenable.

7. As regards giving no opportunity to file show cause it is not mandatory u/s 133(1) to give opportunity to any party to file show cause. u/s 133(1) the S.D.M, on any information can initiate a proceeding u/s 133(1) Cr.P.C. and the order of the learned S.D.M, shows that after making local inspection and finding that unlawful obstruction from plot No. 386/5821 should be removed, initiated the proceeding. So, the order cannot be said to be bad on this score. The petitioner would get opportunity u/s 135 to file show cause against the said order.

8. Then though Case No. 189(M)/99 was initiated with respect to plot No. 220, the order shows that there were other two cases regarding obstruction of flow of water of the canal, in which wall constructed on plot No. 386/5821 was requested to be removed for obstructing the flow of water and all the three cases have been amalgamated and the parties were since heard in respect of obstruction created by the petitioner by erecting wall over the plot. It is also an admitted position that the petitioner had constructed the wall. So no prejudice has been caused to the petitioner if there has been amalgamation of the proceeding of this case by adding plot No. 386/5821.

9. Again though the case of the petitioner is that plot No. 386/5821 is his private land, the impugned order shows that the plot is a Gair Majarua i.e. the public land and the petitioner has been falsely claiming it and has unlawfully occupied it. The order also shows that prior to construction of the wall, the water had been flowing out of the village since long through that plot. Hence, on this ground also, the order cannot be set aside. The petitioner has also been given opportunity to show cause against the order and if he can convince the learned Magistrate that the plot is actually his private land and Section 133 is not applicable, the order may be modified.

10. As regards the order of the learned S.D.M. to cancel Jamabandi of the petitioner, this is superfluous and no such order should have been passed in this proceeding. If the law permits, the S.D.M. should pass a separate order in this regard. The impugned order confirming the order of the learned S.D.M, cannot be interfered with. Therefore, the application is dismissed with the observation made above.