

(2006) 11 JH CK 0061
In the Jharkhand High Court

Smt. Shanti Devi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2007) 1 JCR 234

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Permod Kohli, J

Bench : Division Bench

Judgement

1. Admittedly, the construction in question was made by 5th respondent without sanction of the Municipality. It is also noticed that as early as on 30.10.2001 final order has been passed u/s 133 of the Code of Criminal Procedure, directing the respondent No. 4 to remove the public nuisance over the public road caused by the 5th respondent.

2. In pursuance of the said order, it is submitted that the Municipality sent a notice on 29.12.2001 asking the 5th respondent to demolish the illegal construction. Even then, there was no response from the side of the 5th respondent. So, consequently, the petitioner has given representation after representation requesting the Municipality regarding the compliance of the order passed by Sub-divisional Magistrate u/s 133, CrPC, which has not been challenged. Despite the receipt of all the representations, the Municipal authority did not take any effort to remove the construction, therefore, the petitioner has been constrained to file the writ petition before this Court which has been ordered to be converted into a Public Interest Litigation.

3. We have heard the counsel for the petitioner, counsel for the State as well as the counsel for the 5th respondent. The only contention urged by 5th respondent is that the procedure u/s 193 of the Bihar and Orissa Municipal Act, 1952 has not been complied with and that the respondent No. 5 has also filed a suit before the Civil Court for declaration of Easement right.

4. In our view, the pendency of the suit will not in any way affect the authority concerned to demolish the construction in the light of the order passed by the Sub-divisional Magistrate u/s 133, CrPC which has reached finality, and also in the light of the admission by the 5th respondent that it was without the sanction of the Municipality. The issue before the Civil Court is entirely different. In the Civil Court, neither Municipality is a party nor there any Injunction against any party from demolishing the construction. In such situation, the Municipality ought to have taken steps to remove the unauthorized construction over the public road. On the other hand, it is quite unfortunate to notice that a counter affidavit has been filed by the Executive Officer of the Municipality stating that the writ is not maintainable. We are surprised to see that the Executive Officer of the Municipality instead of implementing the order passed by the Sub-divisional Magistrate u/s 133, CrPC on 30.10.2001 has got audacity to tell this Court that the writ is not maintainable. In fact, he has no business to say so, especially when he admitted in paragraphs 6 and 7 of the counter affidavit that construction was without sanction of the Municipality and they have taken steps to remove the encroachment, pursuant to the order passed u/s 133, CrPC. However, in the last paragraph of the counter affidavit, he has stated that the Executive Engineer is duty bound to comply the order of the Sub-divisional Magistrate and also for preventing the violation of Municipality Act and Bye laws by the respondent No. 5.

5. So, in view of the stand taken by the Municipality it would be appropriate to direct the Municipality, Jhumri Tilaiya Municipality, Koderma to take immediate steps to demolish the construction made by the 5th respondent in pursuance of the order passed by the Sub-divisional Magistrate on 30.10.2001. Therefore, the 4th respondent is directed to remove the encroachment and demolish the construction made by the respondent No. 5 within a period of four weeks from today and after compliance of the order, send a compliance report to this Court.

6. The application is accordingly disposed of.