



2025:DHC:5732



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 7<sup>th</sup> May, 2025  
Pronounced on: 14<sup>th</sup> July, 2025*

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**CRL.M.C. 5138/2018, CRL.M.A. 33811/2018 & 30193/2023**

**RESIDENTS WELFARE ASSOCIATION AYA NAGAR  
THROUGH ITS GENERAL SECRETARY  
RAM ROOP SINGH**

at C-3 Block, Aya Nagar Extension,  
Mehrauli Tehsil, Delhi

.....Petitioner

Through: Ms. Tamali Wad, Sr. Advocate with  
Mr. Varyam Pandey, Advocate.

versus

1. **SH. NAVEEN @ DEEPAK**

S/o Sh. Chottey Lal

2. **SH. ASHOK**

S/o Sh. RAMPAL

3. **GOVERNMENT OF NCT OF DELHI**

through its SDM  
at Old Tehsil Building  
Mehrauli, New Delhi  
(Proforma Respondent)

.....Respondents

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. Petition under Section 482 Code of Criminal Procedure, 1973  
(*hereinafter referred to as "Cr.P.C."*) has been filed by the Petitioner/



Residents Welfare Association through its General Secretary Ram Roop Singh (*hereinafter referred to as 'RWA'*) to challenge Order dated 06.09.2018 passed by learned ASJ, New Delhi, whereby the Order of SDM, Mehrauli dated 06.04.2018 under Section 133 Cr.P.C. directing *removal of obstruction wall*, was set aside.

2. **Brief facts** are that Petitioner RWA, which is representing more than 300 families residing in Block C, Phase IV, Ayanagar Extension, a very densely populated area, filed a Complaint dated 12.12.2017 before SDM, Mehrauli, depicting the difficulties being faced by residents of the Colony on account of lack of proper access/ road to their Colony.

3. It was submitted in the Complaint that this Colony was demarcated back in 1990, when the Colony was surrounded with vacant plots. Now, over a passage of time, entire colony has been inhabited and the houses have been constructed on all the surrounding plots. There is only one passage of five feet through which only scooter and two wheelers, etc. can enter the colony. This has resulted in several difficulties for the residents; so much so that not even Ambulance, Fire Brigade, School bus or such vehicles to provide basic facilities, cannot enter into the colony. Therefore, a request was made that the passage be made available to the residents of the Colony.

4. Learned SDM considering the trauma being faced by residents of C-3 Block, Ayanagar Extension in the Colony being blocked by the plots constructed all around, thereby their access to public road was curtailed and the only public road through which they had access was blocked by the wall, directed the Patwari to submit his Report.

5. The Patwari, who in his Reports dated 28.02.2018 and 12.03.2018 confirmed that there was only one *public road* measuring about 15 feet



leading to C-3 Block, which has been blocked by some residents of adjoining Colony by constructing a wall. Because of the obstruction of this public road, residents of C-3 Block have been facing difficulties in accessing the basic facilities of Ambulance, Fire Brigade and School Bus, etc. There is no alternate route for these vehicles in case of emergency, to reach the Colony. The photographs and the site plan were annexed by the Patwari along with his Reports.

6. Based on the Patwari's Report, learned SDM was prima facie satisfied as to the existence of the public nuisance and obstruction on a public road. A conditional Order dated 13.03.2018 under Section 133 Cr.P.C. was passed, whereby the Respondents were directed to take immediate steps to remove the obstructions and to appear before the SDM Court.

7. Learned SDM followed the procedure under Section 134 Cr.P.C. and issued notice to the Respondents to appear before him. Hearings were held on several dates between 20.03.2018 and 04.04.2018. A Reply was filed on behalf of the Respondents, wherein, they denied the existence of a public right, the alleged obstruction of public way and causing any nuisance. It was stated by the Respondents that they are the owners of the Khasra number on which C-3 Block was constructed and that merely to enhance the value of their land, this false & motivated Complaint was filed.

8. *Learned SDM in exercise of powers under Section 139 Cr.P.C.* directed SHO, Ayanagar Extention to conduct local investigation, record statements of local residents and submit Report.

9. *Status Report dated 03.04.2018 along with statements of two local persons/witnesses and recent photographs* of the disputed wall were submitted by SHO, Ayanagar Extention, which confirmed that the street /



road that connects the main Road of Ayanagar to the houses of Respondent Nos. 1 & 2 and other families on the end of the street towards the main road, have been blocked by the Respondents by constructing a wall. It was further confirmed that this wall has blocked the public way.

10. **Learned SDM**, after hearing the parties and on the basis of material on record, including the Patwari's Reports and Status Report of SHO, Ayanagar Extention, *vide Order dated 06.04.2018 held that irreparable damage would be caused to the residents of the colony, if the disputed wall/obstruction is allowed to continue.* Accordingly, the Respondents were directed to remove the same and submit a compliance Report within 10 days.

11. Aggrieved by the said Order, **Revision Petition No.129/2018** was filed before the Court of District and Sessions Judge, New Delhi by the Respondents. Learned ASJ did not find favour with the procedure that was followed by the SDM while passing the Final Order 06.04.2018. It was observed that Section 138 Cr.P.C required the procedure as prescribed for a summons case trial which incorporates the fundamental principle of natural justice and gives right to the parties of being heard and present their side of the case, to be followed. Though the Respondents had given their Reply, but were not given any effective opportunity to rebut the Report of SHO or challenge the statements of the witnesses. Consequently, learned ASJ observed that by not following due procedure under Section 138 Cr.P.C., a fair trial was denied to the Respondents.

12. It was also observed that there was **no urgency** made out in a situation since the wall had been constructed some 13-14 years back. Consequently, the Order of Learned SDM was set aside. The core question which thus,



arises is that whether the circumstances justify restoration of the Order of Learned SDM to direct the Respondents to remove the wall which is obstructing the public way. The revision Petition was allowed *vide* Order dated 18.04.2018 and the Order of the Learned SDM was set aside.

13. Aggrieved by the said Order, Petitioners have filed the present Petition. The ***grounds of challenging the impugned Order*** dated 18.04.2018 are that it was admitted before the Learned District and Sessions Judge, New Delhi that the road on which the disputed wall was erected using MLA LAD funds. The road was shown to be a public road.

14. The procedure followed for adjudication by the learned SDM, was challenged before the Learned ASJ, who failed to consider the accepted facts and wrongly set aside the Order of learned SDM on a technical plea, which adversely affected the dispensation of justice.

15. It has been erroneously observed that the *Order Sheets* of the proceedings before the SDM do not show that the learned SDM passed any Order for proceeding under Section 138 Cr.P.C. or to record that there was no reliable evidence to support the plea of a public way raised by the Respondents.

16. In fact, learned ASJ had observed that there was no denial to the road being built by MLA LAD funds. It has been incorrectly observed by learned ASJ that there was no foundation for initiating proceedings under Section 133 Cr.P.C. by completely ignoring the Patwari's Reports, which has not been denied by the Respondents.

17. It ought to have been considered by ld. ASJ that learned SDM had the jurisdiction to exercise his powers under Section 133 Cr.P.C. on the basis of such other information apart from the Complaint of RWA dated 12.12.2017.



Despite the Patwari's Reports, Status Report of SHO, statements of local residents, photographs, site plans, Application from Executive Engineer (Irrigation and Flood Department), learned Sessions Judge has wrongly concluded that there was no compliance of provisions of law.

18. It has not been considered that the Order of a *Competent Authority* ought not to be reversed on account of any error, omission or irregularity in the proceedings unless the Court is of the opinion that the failure of justice has been occasioned thereby. Respondents have neither pleaded nor have they been able to show the circumstance, whereby any prejudice is shown to have been caused to them on account of non-recording of the evidence or non-mentioning the name of the witnesses examined, in the *Order Sheets* or in the Order of the Learned SDM in a manner as is provided in the Summons case.

19. Once Learned Sessions Court had satisfied itself that road in question was built using Public Funds and has been obstructed by construction of wall adversely affecting 300 families of the Colony, nothing more was required to come to a conclusion of existence of a Public nuisance.

20. The procedure is handmaiden of justice and any irregularity in following the procedure can be no ground to set aside a well-reasoned Order of a Competent Authority. The theory of '*substantial compliance*' or the '*Test of prejudices*' must be applied. The objections taken do not stand either on the touch-stone of prejudices or in denial of fair hearing to the parties. The Petitioners have thus, submitted that the impugned Order of the Learned ASJ, is liable to be set aside.

21. ***Respondent Nos.1 and 2 in their detailed Reply*** have submitted that the powers of SDM have to be exercised in compliance with the law laid



down by various Courts from time to time and also in consonance with the provisions of Cr.P.C. It need not be emphasized that Cr.P.C. and IPC need to be interpreted in a strict sense without leaving any scope of ambiguity.

22. Furthermore, since the Respondents denied the existence of alleged public right, a proper enquiry ending with a definite finding as to the reliability or otherwise of the evidence in support of such denial, was required to be undertaken by the Learned SDM.

23. The *Patwari's Reports* dated 28.02.2018 and 12.03.2018 merely confirms that only a large public road (measuring about 15 feet) leading to C-3 Block, that has been blocked by some residents by constructing a wall on it and due to such obstruction, basic facilities were being denied to the colony residents. It is nowhere stated that there is no other alternate road to reach the Colony in case of emergency.

24. Furthermore, the said wall structure is causing no hindrance or inconvenience to any of the residents of the Colony. The *Patwari's Reports* only show-cases certain photographs and does not give any detail of the wall construction. It does not mention the ownership and legal nature of the said wall or of the land on which it is built. Learned SDM had personally visited the area on 13.03.2018 and found that road approaching the main Road in Ayanagar was blocked due to construction of the wall.

25. It is asserted that incompleteness of Report and incompetency of the *Patwari* is clearly visible on bare perusal of his Reports. It is asserted that Learned SDM failed to follow and comply with the condition of Cr.P.C. and passed an illegal and cryptic Order. It was not appreciated that Section 133 Cr.P.C. can only be used in case of emergency. In the present case, it was an admitted fact that the wall structure was in existence for more than 12 to 14



years. The record of Learned SDM is silent about the personal visit to the site.

26. It is denied that the Notices have been served upon the opposite party in the manner prescribed under Section 134 Cr.P.C. The Respondents had appeared before Learned SDM through Counsel and had filed their Reply denying the existence of public right or the allegations of obstruction to public way or causing public nuisance. The Respondents were unable to place on record any evidence to substantiate their claim of private property and the same is not acceptable without filing any document. It is denied that any opportunity was given to the Respondents in the proceedings conducted under Section 133 Cr.P.C. in the form of summary trial.

27. Learned SDM was liable to stay the proceedings if there was slightest hint of doubt in regard to ownership of land on which the wall was built and to let the appropriate Learned Civil Court take its decision on the ownership rights. It is only when the ownership rights are clear, Learned SDM on the basis of the Order of the Learned Civil Court, can carry on the proceedings and pass a final Order. None of this procedure was carried out. Therefore, the impugned Order is illegal and has been rightly set aside.

28. It is asserted that Respondents were not given sufficient opportunity to prove their case. Learned SDM in a non-systematic manner has passed the absolute Order. Learned ASJ has rightly appreciated the irregularities in following the procedure as detailed under Cr.P.C. and also that there was no emergency for invoking the powers under Section 133 Cr.P.C. In the limited opportunity given to the Respondents, relevant documents, i.e. Sale Deed and Khatoni, produced before the Learned SDM were not taken on record before passing the impugned Order.



29. Section 133 Cr.P.C. may be of ancient vintage, but the new social justice orientation imparted by the Constitution of India, makes it a remedial weapon of versatile use. Social justice is due to the people and therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under Section 133 Cr.P.C. It is submitted that there is no infirmity in the impugned Order of Learned ASJ and the Petition is liable to be dismissed.

30. **Submissions heard and written submissions perused.**

31. It would be useful to commence with the observations of V. R. Krishna Iyer, Justice in the case of Municipal Council, Ratlam vs. Vardichan, (1980) 4 SCC 162, wherein it observed that it is procedural rules which infuse life into substantive rights, which activate them to make them effective. What looks like a pedestrian quasi-criminal litigation under Section 133 Cr.P.C, a few profound issues of processual jurisprudence of great strategic significance emerges under Section 133 Cr.P.C and involves problems of access to justice for the people beyond the blinkered rules of 'standing' of British-Indian Vintage. If the centre of gravity of justice is to shift as the Preamble of the Constitution of India mandates, from the traditional individualism of *locus standi* to the community orientation of Public Interest Litigation, these issues must be considered.

32. Learned SDM, made an activist application of Section 133 Cr.P.C. for the larger benefit of the Petitioners to abate the nuisance of blocked / obstructed public way and to provide access to the Colony Residents. He sought to address the said nuisance of no access, by affirmative action by directing the Respondents to remove the wall that was obstructing the public



way. The Order dated 06.04.2018 of the Ld. SDM was set aside by the Ld. ASJ by the impugned Order.

33. However, the seminal issue of right jurisdiction and fair trial by following *due process of law* have been raised to challenge the impugned Order dated 06.04.2018.

34. Learned SDM after a due inquiry and report from the Patwari and the SHO, took cognizance of the difficulties faced by the Petitioners of blocking of a public road thereby denying the access to the residents of Aya Nagar Extension Colony, concluded that though the Defendants/respondents had created public nuisance by constructing a wall in public road, thus obstructing it in C-3 Colony, Aya Nagar Extension, Aya Nagar-I. Learned SDM thereby ordered the Defendants/Respondents to remove the said obstruction immediately and submit a Compliance Report.

35. *Learned ASJ* did not find favour with the procedure that was followed by the SDM while passing the Final Order 06.04.2018. It was observed that Section 138 Cr.P.C. required the procedure as prescribed for a summons case trial which incorporates the fundamental principle of natural justice and gives right to the parties of being heard and present their side of the case, to be followed. Though the Respondents had given their Reply, but were not given any effective opportunity to rebut the Report of SHO or challenge the statements of the witnesses. Consequently, learned ASJ observed that by not following due procedure under Section 138 Cr.P.C, a fair trial was denied to the Respondents.

36. It was also observed that there was *no urgency* made out in a situation since the wall had been constructed some 13-14 years back. Consequently, the Order of Learned SDM was set aside. The core question which thus,



arises is that whether the circumstances justify restoration of the Order of Learned SDM to direct the Respondents to remove the wall which is obstructing the public way.

37. ***The first ground*** on which the Petitioners have assailed the Order of Learned ASJ is that due process as envisaged in Chapter X of Cr.P.C. dealing with Maintenance of Public Order and Tranquillity, has been duly followed and the contentions of the Defendants/Respondents that the due process as envisaged under Section 138 Cr.P.C, has not been followed is fallacious. To understand his objection this ground of challenge it would be pertinent to refer relevant Sections.

38. Section 133 Cr.P.C. provides a summary remedy for removal of specific Public Nuisance or obstruction, etc. It is not intended to settle private dispute between two members about their claim to their right of the public access, for which they must approach the Civil Court for determination of title. The Magistrate's jurisdiction can be invoked under Section 133 Cr.P.C. where there is public nuisance or obstruction and situation demands an *urgent redressal* of the same.

39. Section 133 Cr.P.C. empowers the SDM to direct removal of unlawful obstruction or nuisance from the public way on receiving a complaint from a *Police Officer or on the basis of any other information*. The procedure to be followed is detailed in Section 139, and is that while passing a Conditional Order, in case such person objects to do so, he be directed to appear in person and ***Show Cause***, why the Conditional Order so made, not be made absolute. Section 133 Cr.P.C. further provides for service or Notification of the Conditional Order on the person against whom it is made.



40. *Section 137 Cr.P.C.* details the procedure to be followed where existence of public right is denied and provides that in such a situation, proceedings under *Section 138 Cr.P.C.* be followed to hold the inquiry.

41. *Section 138 Cr.P.C.* provides the procedure to be followed and states that the Magistrate shall take evidence in the matter as in the *Summons case*.

42. *Section 139 Cr.P.C.* empowers the Magistrate to direct local investigation and examination of an expert, during the Enquiry.

43. *Section 141 Cr.P.C.* provides for making an Order absolute and also provides the consequences of disobedience.

44. It is evident that in case Respondent denies the existence of public right, the inquiry as in the summons case is required to be undertaken. These Sections contain a full scheme of inquiry under *Section 133 Cr.P.C.*

45. The *first aspect* for consideration is whether due procedure as detailed above, was followed by the SDM, while conducting the Proceedings under *S. 133 Cr.P.C.*

46. The proceedings under *Section 133 Cr.P.C.* got initiated on the Application dated 12.12.2017 of the Petitioner, as representative of RWA of C-3 Block, Ayanagar Extension, addressed to Learned SDM, whereby the difficulty of having access to public road on account of it being blocked by construction of a wall by the Respondents, was highlighted.

47. The Ld. SDM, in terms of *S.133 Cr.P.C.* passed a Conditional Order dated 13.03.2018, and directed the Respondents to immediately stop the obstruction/nuisance (*caused by building of wall on the road*) and to appear before the Court of Learned SDM on 20.03.2018. Simultaneously, because the Respondents took an objection, the Respondents were directed to *Show*



*Cause* why this Order be not enforced. Pertinently, Section 133 Cr.P.C. provides for passing of conditional orders but it also states that if an objection is taken by the Respondents then a Show Cause Notice be issued as to why the Order should not be made absolute.

48. Therefore, the first conditional Order dated 13.03.2018 was made inconsonance with the procedure prescribed in Section 133 Cr.P.C.

49. Section 137 further provides the procedure to be followed when the existence of public right is denied. It provides that in case of denial of a public right by the Respondents the procedure provided in Section 138 Cr.P.C. be followed.

50. The SDM, assumed the powers in terms of *Section 139 Cr.P.C.* empowering the Magistrate to direct local investigation and examination of an expert, called for the Reports from the Patwari, who in its Reports dated 28.02.2018 and 12.03.2018, resonated the anguish of the Petitioners and stated that the landlocked Colony of C-3 Block, has no access to public road. The only access was through the road which has been blocked by construction of the wall. Section 138 provides that if the Respondent contests the Show Cause Notice then the matter shall be decided as in a summons case and thereafter pass a final Order.

51. Section 139 further states that for the purpose of an inquiry under Section 137 or Section 138; (a) Magistrate may direct local investigation to be made by the person who deems fit and/or (b) summon and examine an Expert.

52. The directions were accordingly issued to the SHO who complied with the directions and recorded the statement of two local witnesses *Sh. Dhananjay Sharma s/o Sh. Ram Chander* and *Sh. Yashwant Singh Rawat s/o*



Late Sh. Bishan Singh Rawat, who also stated that because of the construction of wall, they have been denied access to the public way. **The detailed Status Report along with the photographs and site plans was filed.**

53. While as noted above, Learned SDM has the power under Section 139 to direct local investigation or examine an Expert, but that can be done only during an inquiry under Section 138 Cr.P.C. Pertinently, the statements of local witnesses were directed to be recorded by the SHO when in fact the witnesses should have been recorded by the Learned SDM himself. The procedure as for the summons case was required to be followed, which has not been done.

54. Learned SDM, then considering the Reply of the Respondents in the light of the documents and the statements of the witnesses, observed that such denial of access to the Petitioners was public obstruction and creating a nuisance for the residents and considering the urgency which led into the whole situation of denial of access, directed the removal of the wall.

55. It is evident that though the SDM may have followed the procedure as understood by him, by directing the *SHO* vide Order dated 13.03.2018 to record the statement of local witnesses, collect photographs and documents and submit detailed Report, but it was in contravention of the scheme as envisaged in Chapter X of Code of Criminal Procedure and cannot substitute the procedure to be followed under Section 138 Cr.P.C. The Learned SDM should have conducted, the proceedings as in Summons case, as provided in Section 138 Cr.P.C. The statements of witnesses recorded by SHO were relied upon by the SDM without any opportunity to the Respondents to cross



examine the witnesses. The procedure followed by SDM is denial of fair hearing and principles of natural justice.

56. It may thus, be held that the SDM failed to conduct the trial in terms of S.139 which required the SDM to follow the procedure as in the Summons case.

57. In the case of Prabhu and Ors. vs. Satya Narain, MANU/UP/0030/1954, it has been reaffirmed that where there is a denial of the existence of a public way, the Magistrate if required to enquire and record reliable evidences, in support of the denials so made. Similar observations have been made in the case of Bardeshwari Prosad Battacharjee vs. Rabi Nandan Saha, MANU/WB/0007/1956.

58. In the present case, the Respondents vide detailed Reply had denied that the road, which though was built from the MLA LAD fund, was a public way to the Petitioners had a right. In the light of this denial, while calling for an investigation report from the Patwari or SHO, may be in accordance with Section 137 Cr.P.C. Learned SDM was required to follow the summons case, as detailed in Cr.P.C. The SDM, while considering an Application under S.133 Cr.P.C is discharging quasi judicial function and is bound to follow the prescribed procedure. The procedure may have been prompted by concern for more than 300 families getting confined with having no access to public road, but this was no ground to justify the short-circuiting of the procedure of recording the evidences to given its findings. Failure to do so makes the Order of SDM susceptible to be set aside.

59. It is thus, held that the Learned SDM failed to conduct the trial in terms of S.139 which required the SDM to follow the procedure as in the



Summons case. Learned ASJ has rightly observed that due procedure as provided under Section 137 Cr.P.C. was not followed by Learned SDM.

60. ***The Second aspect*** is that ***there must be an urgency*** warranting such Orders by Learned SDM. However, in the present case, it has emerged consistently that this public road has been blocked by the Respondents by constructing a wall about 12-13 years prior to the date of filing of the complaint. The grievance of the Petitioners was that when the Colony was demarcated in the year 1990 by the colonizer, the plot all around the Colony were vacant and there was free access. However, over a period of time because of the construction of houses all around the colony, they are not getting any free access to the public road outside. The photographs which have been placed on record also show that essentially the residents were having access through the broken boundary of the wall. *Apparently, there is no access through a public road.*

61. However, it cannot be overlooked or denied that this situation would not be have emerged over night but must have developed over a period of many years. It is not as if ***it is an urgent situation*** which has emerged suddenly, meriting the intervention by Learned SDM. No doubt, it is a grave situation, which may be causing extreme inconvenient to the residents, but it has not emerged suddenly, for which Section 133 Cr.P.C. could be invoked.

62. In the case of *Emperor vs. Tuisi Ram*, MANU/LA/0204/1938, a similar situation arose of existence of long standing obstruction. In this context it was observed that Section 10 of the Code (old Code of Criminal Procedure, 1898), which is akin to Section 133 of the Code of Criminal Procedure, 1973, was intended to provide a speedy and summary method for dealing with the cases of great emergency and when there is imminent



danger to the public interest. An obstruction which has been allowed to stand without objection in a public way for many years, itself indicates that there is no such emergency or imminent danger to the public interest. The existence of long standing obstruction cannot therefore, without proof of something having recently be considered as public nuisance.

63. In the present case as well, it is not denied that the wall had been constructed to obstruct the public road some 12-13 years prior to the filing of the complaint in the year 2017. It being a long standing obstruction and this situation of no other access has emerged over a period of years; it cannot be termed as an imminent danger situation of urgency or emergency.

64. It also cannot be overlooked that the respondents have raised a claim that the Colony has been raised on a private land and has also challenged the title to the land. In such like cases, appropriate remedy is to approach the Civil Court. In fact, in the Order dated 19.04.2018 it has been noted that a civil Suit has already been filed to claim the access to public road by removal of constructed wall.

**Conclusion:**

65. Therefore, it is held that the Learned ASJ was right in concluding that this was not a case where any relief under Section 133 Cr.P.C. could be granted to the petitioner.

66. There is no merit in the present Petition, which is hereby dismissed. Pending Application, if any, also stands disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JULY 14, 2025/R**