



2026:UHC:3172

Judgment reserved on: 10.04.2026
Judgment delivered on: 27.04.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application (C-482) No. 230 of 2021

Vishambhar Singh Negi and others -----Petitioners

Versus

State of Uttarakhand and others
-----Respondents

Presence:-

Mr. Ramji Srivastava, learned counsel for the applicant.

Mr. Amit Bhatt, learned Government Advocate with Mr. Kuldeep Rawal, learned AGA for the State.

Mr. Lalit Sharma and Mr. Rajesh Pandey, learned counsel for respondent no. 2.

Hon'ble Mr. Subhash Upadhyay, J.

1. The present Criminal Misc. Application under Section 482 of the Code of Criminal Procedure, 1973, (Cr.P.C.), was filed by the applicant Shri Vishambhar Singh Negi (hereinafter referred as 'applicant no.1') assailing the order dated 30.01.2021, passed by learned Additional Sessions Judge, IIIrd Dehradun, in Criminal Revision No. 09 of 2019, Vishamber Singh Negi vs. State of Uttarakhand and others, and order dated 11.01.2019, passed by City Magistrate, Dehradun, in Case No. 52 of 2018, State of Uttarakhand through Sub Divisional Magistrate (Sadar), Dehradun vs. Vishamber Singh Negi and another, under Section 133 Cr.P.C. directing the applicant no. 1 and perform respondent no. 3 to remove the encroachment from 15 ft. width public path adjoining to their houses within a period of one month. During pendency of the revision, the applicant no.1 Shri Vishambhar Singh Negi died and is represented by his



legal heirs.

2. The brief facts, which led to the filing of the present C-482 application is that, an application under Section 133 Cr.P.C. was filed by the respondent no.2, who claimed herself to be widow of late Anil Pundir, residing with her aged parents, before the District Magistrate Dehradun on 30.01.2018 making complaint that the public-path has been blocked by the applicant no. 1 and he is parking his vehicles in the remaining part of the path, thus creating public nuisance. A request was, as such, made for opening the blocked pathway and for restraining the applicant no. 1 from parking vehicles and creating nuisance.

3. The District Magistrate, Dehradun on 05.02.2018 directed the S.D.M., Dehradun to carry a spot inspection and to take appropriate action. A team of Revenue Officials and Naib Tehsildar was constituted on 7th February, 2018, which submitted a report before the S.D.M.Dehradun. The said report along with his recommendation was submitted by the S.D.M. on 14.03.2018 to the City Magistrate, Dehradun for taking cognizance under Section 133 Cr.P.C. against the applicant no.1. The City Magistrate on 24.03.2018, passed an order, by which, the applicant no.1 was asked to remove the encroachment made on public-path by 09.04.2018 or to show cause as to why further proceedings under Section 136/138 Cr.P.C., may not be carried out against him. The applicant no.1 submitted his response and after hearing the parties, the order dated 11.01.2019 was passed by the City Magistrate, Dehradun, in Case No. 52 of 2018, under Section 133 Cr.P.C. The said order was put to challenge by the



applicant no.1 by filing the Criminal Revision No. 9 of 2019, which was decided on 30.01.2021 by the learned Additional Sessions Judge, IIIrd, Dehradun against which the present Criminal Revision has been filed.

4. Learned counsel for the applicant assailing the aforesaid orders, has made the following submissions.

- (i) The order passed by the City Magistrate under Section 133 Cr.P.C. and the order passed by learned Additional Session Judge are liable to be quashed because for the similar controversy, a Civil Suit (Original Suit No. 47 of 2018), was filed which is still pending before the Civil Judge (Junior Division), whereby a *status quo* order was passed on 3rd April, 2018.
- (ii) The father of respondent no. 2, Shri Teerath Singh Rawat has filed a written statement and also counter-claim in the said suit whereby it was pleaded that the applicant no. 1 may be directed not to interfere in their possession and the application claiming the said relief was dismissed on 14.02.2019.
- (iii) That when the father of respondent no. 2, who was the defendant in the said suit, could not obtain any order then the respondent no. 2 filed a complaint before the District Magistrate, wherein the proceedings were initiated under Section 133 Cr.P.C. and the impugned order dated 11.01.2019 was passed, which was affirmed in the Criminal Revision.
- (iv) The path in dispute is not a public path, and the road, on which the alleged encroachment is said to be made by the applicant no.1 and his legal heirs is a dead end and as such, the path is being



used by the applicant and the three other respondents only.

- (v) The report submitted by the team constituted by the S.D.M did not give any notice to the applicant no. 1 and the report was prepared illegally without any documentary evidence.
- (vi) The learned Additional Sessions Judge, Dehradun dismissed the Criminal Revision without application of mind and without considering the fact that, in fact, a civil dispute was given a criminal colour and there was no public nuisance which required the attention of the authorities under section 133 Cr.P.C.
- (vii) Emergent power to readdress any issue under Section 133 Cr.P.C. can be used to cure an immediate wrong and cannot be used to cure a defect which has taken a shape of permanent wrong which can only be corrected under the civil remedy.

5. Thus, in sum and substance, the contention of learned counsel for the applicant is that in nature of civil dispute and where no public element is involved criminal proceedings cannot be used as a shortcut for redressal of grievance. Learned counsel for the applicant has placed reliance on the following judgments in support of his contention:-

- (i) *Vasant Manga Nikumba & others vs. Baburao Bhikaanna Naidu (1995 Supp (4) SCC 54).*
- (ii) *The Manager, Kodanand Estate vs. The Sub-Divisional Magistrate & Assistant Collector, Coonoor (2008 (2) MWN (Cr) 383).*

6. *Per contra*, learned counsel for the respondent no.1/State submits that the order passed by the City Magistrate and the learned Additional Sessions Judge



does not suffer from any infirmity and the court under revisional power cannot sit as an Appellate Authority and re-appreciate the evidence and is required to see as to whether there is any jurisdictional error in the judgment or there is any perversity. He further submits that mere pendency of a suit of civil nature cannot operate as a bar for exercise of power under Section 133 Cr.P.C. Learned counsel for the State placed reliance on the following judgments:

- (i) *Smt. Dr. Mamtesh Gupta vs. The State of U.P. and another, 2015 (41) RCR (Civil) 482.*
- (ii) *Hari Ram vs. Jyoti Prakash 2011 (2) SCC 682.*
- (iii) *Karam Hussain vs. State of U.P.,*
- (iv) *Ram Narain Singh and another vs. State of U.P.*
- (v) *Rajendra Puri vs. State of U.P.*
- (vi) *Smt. Ramawati vs. State of U.P. and 2 others, 2015 (36) RCR (Criminal) 191.*
- (vii) *Budhwa vs. State of U.P. 2006 Cri J 1037.*

7. Learned counsel for the respondent no.2 made the following submissions.

- (i) The proceedings under section 133 Cr.P.c. were initiated prior in time than the civil suit proceedings.
- (ii) The controversy in the civil suit was different than the controversy involved in the application filed under Section 133 Cr. P.C., as in the civil suit, the applicant no. 1 has prayed for removal of encroachment of two feet in the nature of *kyari* said to be allegedly made by the father of respondent no.2, on the public-path. He refers to the copy of the plaint filed by the applicant no.1 wherein the dispute was with respect to the alleged encroachment of two feet on the portion shown as A,B,C,D., which was a public path in front of the house of the respondent no.2, which continued till the house of the applicant no.1 & performa



respondent no.3.

- (iii) The application under Section 133 Cr.P.C. was filed before the City Magistrate, as the applicant no. 1 had obstructed the 15 feet public path which was being used by the respondent no. 2 and other residents and which was shown as a path not only in the sale-deed of the applicants but also in the sale-deed of other residents.
- (iv) The mere fact that the said public path was a dead end at the plot of the applicants and perforce respondent no. 3 would not entitle the applicants to obstruct the said public-path by installation of a gate.
- (v) The appellant by obstructing the said path at his end used to park the vehicles in front of the respondent residence in the remaining path causing hindrance in movement and creating public nuisance which could be addressed under Section 133 Cr.P.C.
- (vi) The order passed by the City Magistrate under Section 133 Cr.P.C. is based on the fact finding report of the Committee and the revisional authority has also dealt with the said issue in detail and has recorded a finding that the public path was encroached and public nuisance was created by the applicant.
- (vii) There is no bar of the proceedings under section 133 Cr.P.C., *vis-a-vis*, civil dispute pending for a different cause of action, and moreover in the present case the civil suit was filed after the proceedings were initiated under Section 133 Cr.P.C.



8. Learned counsel for the respondent no. 2 has placed reliance on the following judgements:

- I. *Smt. Dr. Mamtesh Gupta vs. The State of U.P. and another, 2015 (41) RCR (Civil) 484.*
- II. *Hari Ram vs. Jyoti Prakash 2011 (2) SCC 682*
- III. *Karam Hussain vs. State of U.P.*
- IV. *Ram Narain Singh and another vs. State of U.P.*
- V. *Rajendra Puri vs. State of U.P.*
- VI. *Smt. Ramawati vs. State of U.P. and 2 others 2015 (36) RCR (Criminal) 191*
- VII. *Budhwa & others vs. State of U.P. & others 2006 Cr. L.J. 1037*

9. Heard learned counsel for the parties and perused the record.

10. A Coordinate Bench of this Court vide order dated 12.12.2025 has asked the learned counsel for the applicant to specify as to whether he has placed a gate in front of his house on the dead end of the pathway and thereafter, on 18.12.2025, the records of the proceedings under Section 133 Cr.P.C. were summoned. The order dated 12.12.2025 and 18.12.2025 read as follows:

12.12.2025

“Mr. V.S. Dhapola, Advocate, holding brief of Mr. Ramji Srivastava, Advocate for the petitioner.

Mr. Amit Bhatt, Government Advocate for the State.

Mr. Lalit Sharma, Advocate and Mr. Jagat Singh Mehra, Advocate, holding brief of Ms. Devika Tiwari, Advocate for the private respondents.

The Court asked learned counsel for the petitioner as to whether he has place a gate in front of his house on the dead end of the pathway. He submits that he needs time to get instructions.

List on 18.12.2025 as a first case after fresh.”

18.12.2025

“Mr. Ramji Srivastava and Mr. Vikram Singh, Advocates for the



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petitioner.

Mr. Amit Bhatt, Government Advocate with Mr. Kuldeep Singh Rawal, AGA for the State.

Mr. Lalit Sharma, Advocate for respondent no.2.

Let call for the record of the proceedings initiated under Section 133 of the Code of Criminal Procedure, 1973.

List on 05.01.2026 at 04:00 p.m.

Interim order, if any, is extended till the next date of listing.”

11. The records of the proceedings under Section 133 Cr.P.C. have been perused which reveal that the applicant no. 1 had admitted the fact of installation of a gate on the pathway. The City Magistrate in its order dated 11.01.2019, has dealt with the said aspect and has recorded a finding to the said effect, as follows:

“मेरे द्वारा पत्रावली पर सम्मिलित दस्तावेजों का अवलोकन एवं परिशीलन किया गया एवं विपक्षीगण की बहस को सुना गया। प्रकरण में पक्षगणों के आवास के मध्य सड़क मार्ग के संबंध में विवाद है। विपक्षीगणों के द्वारा शिकायतकर्ता के विरुद्ध इस आशय का वाद सिविल न्यायालय देहरादून में योजित किया गया कि शिकायतकर्ता श्री तीर्थ सिंह नेगी आदि ने 15 फीट चौड़े रास्ते पर बागीचा कर 02 फीट रास्ता दबा रखा है, उक्त वाद वर्तमान में सिविल न्यायालय में गतिमान है। अतः इस बिन्दु पर इस न्यायालय द्वारा टिप्पणी करना अथवा आदेश देना उचित नहीं है।

इसके अतिरिक्त शिकायतकर्ता के शिकायती प्रार्थना पत्र के आधार पर जो वाद इस न्यायालय में योजित किया गया है उसमें यह निर्धारित होना है कि क्या विपक्षीगण द्वारा सार्वजनिक 15 फीट चौड़े रास्ते को दीवार एवं गेट लगा कर बंद किया गया है अथवा नहीं।

प्रकरण में राजस्व टीम की आख्या, प्रतिवादी संख्या दो श्री पूरन के द्वारा प्रस्तुत प्रार्थना पत्र/दस्तावेज एवं विपक्षी संख्या एक श्री विशम्बर सिंह के संलग्न दस्तावेजों एवं मौखिक बयान उपलब्ध है। पत्रावली पर शिकायकर्ता एवं विपक्षी संख्या-01/02 की विक्रय पत्र की प्रति उपलब्ध है जिसके अवलोकन से स्पष्ट है कि शिकायतकर्ता एवं प्रतिवादी -02 के आवास के पश्चिम दिशा की ओर 15 फीट का रास्ता है एवं प्रतिवादी संख्या 01 के आवास की पूरब दिशा की ओर भी 15 फीट का रास्ता है। राजस्व टीम की रिपोर्ट के साथ संलग्न नजरी नक्शे में पक्षकारों के आवास के मध्य रास्ता दर्शाया गया है जिसमें गुलाबी रंग के क्षेत्र, जो रास्ते का हिस्सा है वह प्रतिवादीगण द्वारा अतिक्रमित रास्ते के रूप में दर्शाया गया है। चूंकि विक्रेता द्वारा यह 15 फीट



का रास्ता छोड़ते हुए प्लाटिंग की गयी अतः यह रास्ता संबंधित समस्त प्लाट हेतु सार्वजनिक रास्ता है एवं जिस प्रकार शिकायतकर्ता अपने प्लाट के सामने के रास्ते पर विशिष्ट अधिकार का दावा नहीं कर सकता है जो प्रतिवादीगणों के उपयोग के लिए भी है, जहाँ से प्रतिवादीगणों को अपने आवास हेतु रास्ता प्राप्त है, उसी प्रकार प्रतिवादीगणों द्वारा भी अपने आवास के सामने के 15 फीट रास्ते पर भी विशिष्ट अधिकार का दावा नहीं किया जा सकता है जो सार्वजनिक उपयोग का रास्ता है। जिसको इस तथ्य से भी बल मिलता है कि उपरोक्त अतिक्रमित रास्ते को विपक्षी संख्या-01 के द्वारा माननीय न्यायालय सिविल जज (जू०डि०). देहरादून में योजित वाद में स्वयं द्वारा पेश नजरी नक्शे में जिसकी प्रति प्रतिवादी संख्या-01 द्वारा इस न्यायालय में भी उपलब्ध करायी है, में प्रतिवादी संख्या 01 एवं प्रतिवादी संख्या-02 की संपत्ति के मध्य खाली छोड़ा गया दर्शाया है। मात्र इस तथ्य से कि यह रास्ता आगे नहीं जाता है जैसा कि विपक्षी संख्या-01 द्वारा अपने बयानों एवं बहस में भी कहा गया है, विपक्षी संख्या-01 का इस सार्वजनिक रास्ते पर अधिकार नहीं बनता है एवं जिसे अतिक्रमित करना लोक न्यूसेंस का कृत्य होगा।

विपक्षी संख्या-01 द्वारा यह भी कहा गया है कि शिकायतकर्ता/ अभियोजन पक्ष को स्वयं अपना दावा सिद्ध करना था जो नहीं किया गया है, जिसका भार प्रतिवादी पर स्थानांतरित नहीं किया जा सकता है में स्पष्ट है कि अभियोजन द्वारा प्रस्तुत स्थल निरीक्षण आख्या चालानी रिपोर्ट व दस्तावेजों से वाद स्वयं सिद्ध है जिसमें प्रतिवादीगणों द्वारा संलग्न दस्तावेजों से भी बल मिलता है। प्रतिवादी द्वारा बहस में यह भी कथन किया कि नायब तहसीलदार मसूरी, देहरादून को रिपोर्ट देने का अधिकार नहीं था चूंकि यह क्षेत्र उनके क्षेत्राधिकार से बाहर है में स्पष्ट है कि नायब तहसीलदार मसूरी, देहरादून को मात्र जांच टीम में सदस्य के रूप में नामित किया गया है जो जांच रिपोर्ट के अनुसार मौका स्थिति एवं दस्तावेजों के आधार पर की गयी है जिस कारण आख्या एवं चालानी रिपोर्ट पर कोई प्रतिकूल प्रभाव नहीं पड़ता है।
Proceedings can not be taken as vitiate on the above basis.

अतः उपरोक्त विवेचना के आधार पर यह स्पष्ट है कि प्रतिवादीगणों द्वारा अपने आवास के सामने लगते हुए 15 फीट सार्वजनिक मार्ग पर अतिक्रमण किया है जो लोक न्यूसेंस का कृत्य है जिसे हटाया जाना आवश्यक है।

अतः विपक्षी संख्या-01 श्री विशम्बर सिंह एवं विपक्षी संख्या-02 श्री पूरन चन्द को आदेशित किया जाता है कि अपने-अपने आवास के सामने लगते हुए 15 फीट सार्वजनिक मार्ग पर किए गए अतिक्रमण/ लोक न्यूसेंस को एक माह की अवधि के भीतर/ तक हटाना सुनिश्चित करें। यदि आप इस आदेश का पालन नहीं करते हैं तो द०प्र०स० के तहत धारा 141(1) के अनुसार उक्त आदेश कि अवज्ञा करने पर भारतीय दंड संहिता (1850 का 45)



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की धारा 188 द्वारा उपबन्धित शास्त्रि के भागी होंगे। इसके अतिरिक्त द०प्र०सं० की धारा 143 के अंतर्गत यह भी आदेशित किया जाता है कि उक्त लोक न्यूसेंस की पुनरावृत्ति न हो।

उक्त आदेश आज दिनांक 11/1/19 को खुले न्यायालय ने उद्घोषित व हस्ताक्षरित किया गया।

नगर मजिस्ट्रेट,
देहरादून।”

12. The revisional court in Criminal Revision No. 9 of 2019 has also considered the said fact and has recorded a clear finding of installation of a gate on path way in Para 7 to para 10 which reads as hereunder:

“7. न्यायालय ने समस्त तथ्यों का विश्लेषण किया। मूल पत्रावली पर मौजूद प्रलेख संख्या 4 / 28 शिकायतकर्ता निधि पुण्डरी के शिकायती पत्र पर जिलाधिकारी सदर देहरादून के आदेश से जाँच कमेटी गठित करने के पश्चात् दिनांक 24.03.2018 को नगर मजिस्ट्रेट देहरादून द्वारा धारा 133 सीआरपीसी के अंतर्गत विपक्षीगण विशम्बर तथा पूरन चंद के विरुद्ध कार्यवाही प्रारम्भ करते हुए नोटिस पारित किया गया था। धारा 133 सीआरपीसी के नोटिस के अवलोकन से यह ज्ञात होता है कि यह नोटिस एक रास्ते की भूमि पर विपक्षीगण विशम्बर एवं पूरन चंद द्वारा गेट लगाकर रास्ते का बंद करने के कारण से जारी किया गया था एवं इस सदरभ में मूल पत्रावली पर 4 / 4 राजस्व उपनिरीक्षक बट्टीपुर के द्वारा नक्शा 4 / 4 से यह दर्शित होता है कि उक्त विपक्षीगणों ने रास्ते पर कब्जा कर उस पर गेट बना लिया है। इस मामले में आपत्ति व साक्ष्य आदि के अवलोकन से यह दर्शित होता है कि इस रास्ते के संदर्भ में विपक्षीगण ने यह उल्लिखित किया है कि यह रास्ता एक प्राईवेट कॉलोनी में एक साइड से पूर्णत रास्ता है अतः यह आम रास्ता नहीं है तथा कालोनी के अंदर का एक **dead end** रास्ता है। अतः यह रास्ता सार्वजनिक न होकर दो पक्षकारों के बीच एक व्यक्तिगत विवाद है एवं इसे आम जनता के स्तर पर कोई लेना देना नहीं है।

8. न्यायालय ने निगरानीकर्ता के उपरोक्त के सदरभ में यह विचार किया है कि मूल पत्रावली पर प्रलेख संख्या 4/6 श्रीमती हीरा देवी पत्नी श्री तीर्थ सिंह नेगी की रजिस्टर्ड सेल डीड की प्रति है जो शिकायतकर्ता निधि पुण्डरी की माता है। इस सेल डीड रजिस्टर्ड के पृष्ठ 15 के अवलोकन से यह ज्ञात होता है कि इसमें 'एक खण्ड भूमि खसरा नं 251 मि० रकबा 0.076 एकड़ यानी 3243 वर्गफिट अर्थात् 302 वर्गमीटर जिसके पूर्व में भूमि राजेन्द्र प्रसाद आदि नाप 70 फिट 3 इंच व पश्चिम में रास्ता 15 फिट चौड़ा नाप 70 फिट 3 इंच व उत्तर में रास्ता 12 फिट चौड़ा अंकित है।

इसके अलावा मूल पत्रावली पर ही प्रलेख संख्या 4/23 निगरानीकर्ता विशम्बर सिंह नेगी के विक्रय पत्र की प्रति 4/24 के अवलोकन से यह ज्ञात होता है कि इसमें निगरानीकर्ता की विवरण सम्पत्ति निम्न प्रकार से उल्लिखित है भूमिधरी भूमि खसरा नं0 251 रकबा 0.055 एकड़ स्थित मौजा नत्थनपुर परगना देहरादून में इसकी सीमायें निम्न है। पूर्व में 15 फिट चौड़ा रास्ता,..... पश्चिम में श्रीमती भुल्लन देवी..... उत्तर में भूमि श्री नेयो जी..... दक्षिण में भूमि श्रीमती भूलन देवी.....अंकित है।

इस प्रकार यह संदेह से परे स्थापित होता है कि इस मामले का प्रश्नगत रास्ता 15 फिट चौड़ा है एवं इस **dead end** रास्ते को साक्ष्य के आधार पर निगरानीकर्ता एवं अन्य विपक्षी पूरन चंद द्वारा गेट डालकर बंद कर दिया गया



है।

9. न्यायालय ने यह भी विचार किया है, कि इस अराजी रास्ते व इस पर श्रीमती हीरा देवी द्वारा किये गये अतिक्रमण के संदर्भ में एवं निगरानीकर्ता द्वारा किये गये इसी रास्ता पर कथित अतिक्रमण के संदर्भ में एक सिविल वाद सं० 47/2018 विशम्बर सिंह नेगी बनाम श्रीमती हीरा देवी आदि के रूप में दर्ज है, जिसमें ही श्रीमती हीरा देवी के प्रतिदावा में प्रश्नगत रास्ता पर अतिक्रमण द्वारा विशम्बर सिंह नेगी चलायमान है। इस प्रकार गेट के सदर्थ में सिविल वाद लबित है। तब भी न्यायालय ने यह विचार किया है कि विद्वान अवर न्यायालय द्वारा जारी धारा 133 सीआरपीसी का नोटिस दिनांक 24.03.2018 एवं तत्पश्चात् दिनांक 11.01.2019 को इस सम्बन्ध में जारी अंतिम आदेश पोषणीय एवं पूर्ण रूप से विधि अनुकूल है।

इस संदर्भ में न्यायालय ने निम्न नजीरों का ससम्मान अवलोकन किया, जिसमें धारा 331 सीआरपीसी के संदर्भ में यह उल्लिखित है कि—

**1-Suresh Prakash vs Krishna Swarup And Ors.-
1976 CrLJ 462 (All)**

Neither the injunction nor pendency of the civil suit or even the fact that the dispute was of civil nature would bar proceedings under this section.

2-Budhwa vs State of U.P-2006 CrLJ 1037

The nature of the relief, which is granted by the Executive Magistrate under S. 133 CPC is to remove the nuisance immediately and if the proceeding of the case is dropped merely because a civil suit is pending, the object of sections 133, 137 and 138 CrPC would fail. Mere pendency of the civil suit does not exclude the right of the Magistrate to proceed in accordance with law for removal of nuisance. The proceeding under CrPC is dropped when a specific order is passed by the Civil Court in respect of the possession or when rights of the parties are decided.

**3-Rakesh Kumar vs State of U.P. 1994 CrLJ 289
(All)**

Parellel proceedings under S. 133 CrPC and civil suit can continue and there is no bar.

इस संदर्भ में न्यायालय ने निगरानीकर्ता द्वारा प्रस्तुत निम्न नजीरों :-

1-Ramchandra Malojirao Bhonsale vs Rasikbhai Govardhanbhai -2001(3) Crimes 379

2-State of Mysore vs Venkataraman Manjunath Hegde – 1972 0 Supreme 195

के ससम्मान अवलोकन के पश्चात् न्यायालय ने यह विचार किया है उक्त नजीरों वर्तमान मामले में प्रभावी नहीं होती है क्योंकि रास्ता एक प्राईवेट कॉलोनी के **dead end** का ही क्यों न हो वह हमेशा आम जनता के उपयोग हेतु ही माना जाएगा तथा इस मामले में यह स्पष्ट रूप से स्थापित भी है कि शिकायतकर्ता एवं निगरानीकर्ता तथा दूसरे विपक्षी पूरन चंद की रजिस्ट्रियों में प्रश्नगत सत्ता 15 फिट का है एवं रास्ते पर किसी भी प्रकार का अतिक्रमण **Public Nuisance** की परिभाषा में ही आयेगा।



इस संदर्भ में न्यायालय ने एक नजीर:-

Hari Ram vs Jyoti Prasad & Anr. 2011 (2) SCC 682 का ससम्मान अवलोकन किया, जिसमें माननीय उच्चतम न्यायालय ने यह स्थापित किया है कि किसी प्राईवेट कॉलानी में बेचे गये प्लॉट्स के साथ सड़क हेतु छोड़े गये रास्ते जनता हेतु ही होते हैं।

10. अतः न्यायालय ने उपरोक्त समस्त विश्लेषण के आधार पर यह निष्कर्ष लिया है कि विद्वानः अवर न्यायालय द्वारा पारित आलोच्य आदेश दिनांकित 11.01.2019 शुद्ध वैध व औचित्यपूर्ण है। अतः यह फौजदारी निगरानी निरस्त किये जाने योग्य है।”

13. The question as to whether the pathway was on the private property of the applicant no.1 or is a public pathway shown in the sale-deed of the applicant no.1 and other respondents was considered and a finding to the said effect was recorded by the City Magistrate and the learned Additional Sessions Judge, Dehradun. The copy of the sale-deed of the applicant no.1 and other respondents and copy of the plaint filed by applicant no.1 was also taken into consideration while recording the finding that 15 feet pathway shown in front of the property of the applicant no. 1 as well as in front of the other respondents was a public path and does not fall under the private property of the applicant no. 1. The issue, which was to be considered by the City Magistrate and learned Additional Sessions Judge was only to the effect as to whether any encroachment was made on the said pathway and the said issue was decided by a cogent and reasoned order against the applicant.

14. The power of the Court under revisional jurisdiction is limited and it cannot sit as an Appellate Authority and re-appreciate the finding of facts and evidence led by the parties. The Hon'ble Apex Court in the case of *Dulichand vs. State of Delhi* 1975 (4) SCC 649 has held as follows:

“The appellant preferred an appeal against the order of conviction and sentence to the Sessions Court, Delhi. The learned Additional Sessions Judge who heard the appeal, on



a re-assessment of the evidence, came to the same conclusion as the learned Magistrate and confirmed the conviction of the appellant under [Section 304-A](#) but taking into account the fact that the appellant might have lapsed into absent mindedness at the critical moment, the learned Additional Sessions Judge reduced the sentence to six month imprisonment. The appellant, dissatisfied with the order, preferred a Revision Application in the High Court. Now, the jurisdiction of the High Court in a Criminal Revision Application is severally restricted and it cannot embark upon reappraisal of the evidence, but even so, the learned single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of the appellant. This was, however, of no avail, as the learned single Judge found that the conclusion reached by the lower Courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant. The learned single Judge accordingly confirmed the conviction and sentence recorded against the appellant and dismissed the revision application. Hence the present appeal by special leave obtained from this Court.”

15. The same view was reiterated by the Apex Court in the cases of *State of Kerala vs. Puttumana Illath Jathavedan Namboodiri*, AIR 1999 Supreme Court 981 and *Bindeshwari Prasad Singh vs. State of Bihar (now Jharkhand)*, AIR 2002, Supreme Court 2907.

16. I have perused the judgments placed by learned counsel for the applicants and the respondents. The learned counsel for the applicants has relied on the case of *Vasant Manga Nikumba (supra)* and *The Manager, Kodanand Estate (supra)*. In the case of *Vasant Manga Nikumba (supra)*, the issue before the Court was with respect to the demolition of the 15 shops



and the court on the basis of perusal of the photographs of the building concluded that there was no reason to demolish the shops immediately. The facts of the said case are different as in the present case, the issue is of the encroachment made on public path. The City Magistrate, Dehradun and the learned Additional Sessions Judge, Dehradun, based on the report submitted by the authorities and taking into consideration the sale-deed of the applicant no.1 and other residents, which discloses the public path to be in front of the houses of the applicant and the respondents, concluded that the installation of a gate on the said pathway by the applicant no.1 was a public nuisance. Similarly, the facts of the case of the The Manager, Kodanand Estate (supra) are totally different as in the said case, with respect to the use of a path, which was admittedly on the private land the villagers were only claiming the right of the path with least restrictions.

17. In the case of Ramawati vs. State of U.P., reported in 2015 (36) RCR (Criminal) 191, the Hon'ble Allahabd High Court in para 21 has held as follows:

“From the above discussuion, it is manifest that revisionist has made construction over the area which was not purchased by her and has encroached over the public street. Findingof City Magistrate that public way has been blocked is supported from the admitted maerial submitted by the reivisionist in this Court. Exisence of public way is not denied. Whether it is used by thousand persons or one person would not make any difference and does not change the nature of public way. Public property belongs to entire public and everyone has right to access on every inch of the public road. Nobody has right to encroach or block public street, road or footpath. It is irrelevant that it is used by limited persons or that even after encroachment not much difficulty would be caused.”



18. The Hon'ble Allahabad High Court in the case of Dr. Mangesh Gupta (*supra*) has held that any obstruction made by a person on public road or patri land objected to only by one person does not mean that it is only a source of nuisance to one person and not the public at large. Para 16 of the said judgment reads as under:

“It is not in dispute that the generator had been installed outside the house of the petitioner, over vacant patri, abutting public road. Any obstruction made by a person on a public road or patri land though in the instant case, objected to only by the second respondent, does not mean that it is only a source of nuisance to the second respondent and not the public at large. In the opinion of the court, it is another matter that the law was set into motion by an individual, but in view of the nature of obstruction and the resultant nuisance, it is a public wrong. In *Hari Ram vs. Jyoti Prasad*, 2011 (2) SCC 682: 2011 (2) AWC 2006 (SC), the Surpeme Court held that “an encroachment when made to a public property like encroachment to public road, would be a graver wrong, as such pre-judicially affects the number of people and therefore a public wrong.”

19. Similarly, in the case of *Smt. Ramawati (supra)*, *Budhwa vs. State of U.P. (supra)*, *Karam Hussain vs. State of U.P. (supra)*, the Hon'ble Allahabad High Court has held that filing of a civil suit ipso facto, does not bar the proceedings under Section 133 Cr.P.C. The revisional Court has also dealt with the said aspect and on consideration of various judgments has recorded a finding that mere pendency of the civil suit does not bar the proceedings under Section 133 Cr.P.C. This Court does not find any perversity in the said finding.



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20. In view of the above, the Court is of the considered view that the orders passed by the City Magistrate, Dehradun and the learned Additional Sessions Judge, IIrd, Dehradun does not suffer from any jurisdictional error, perversity or material irregularity. The C-482 Petition lacks merits and the same is dismissed.

(SUBHASH UPADHYAY, J.)

Dated: 27.04.2026

Kaushal