

**Raj Kumar and ors. Vs. State Through Lal Chand and ors.**

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**Court : Allahabad**

**Decided On : May-24-1961**

**Reported in : 1962CriLJ413**

**Judge : W. Broome, J.**

**Appellant : Raj Kumar and ors.**

**Respondent : State Through Lal Chand and ors.**

**Judgement :**

**ORDER**

**W. Broome, J.**

1. In these three connected criminal references the Second Additional District and Sessions Judge of Agra has recommended that proceedings pending against the applicants in the court of the City Magistrate of Agra Under Section 133 Cr IPC should be quashed.

2. The applicants are occupying various wooden stalls and other structures standing on the footpaths bordering the Hospital Road in Agra. These structures are said to have been put up as a temporary measure in the year 1948 to accommodate refugees arriving from Pakistan. Subsequently the Shivaji Market was built for the use of refugee shop-keepers and many stallholders shifted from the Hospital Road, but the applicants refused to budge and remained in

occupation of the offending structures.

In December 1957 certain members of the public complained and moved the City Magistrate of Agra to take action in the matter. The Station Officer of the Agra Kotwali was asked to make an inquiry and his report dated 9-1-1958, which is on the file, shows that these stalls were found to constitute a real obstruction to the free flow of traffic along the Public road. Inquiries were also made from the Municipal Board and its reply revealed that the Board too was alive to the inconvenience suffered by the public on account of the continuance of the stalls and was contemplating filing suits for ejectment of the applicants. The learned City Magistrate accordingly decided to take action and on 17-3-1958 issued a preliminary notice Under Section 133 Cr IPC calling on the applicants to remove the stalls.

3. The learned Additional District and Sessions Judge- recommends the quashing of the proceedings that have been taken Under Section 133 for the removal of these stalls and other structures, on the ground that they have been allowed to remain in existence for a considerable time and the public have acquiesced in their continuance. In this connection he has referred to the case of *Rameshwar Prasad v. State of Bihar* : AIR1958 Pat210 , in which it was held that a house constructed on railway land and allowed to stand there for seven years should not be removed by an order under this section. It was remarked in that case that proceedings Under Sections 133 Cr IPC should not be used as a substitute for a civil suit. I do not think however that it is possible to lay down an inflexible rule that where a structure constituting an unlawful obstruction to a public way has been allowed to stand for a number of years it can in no case be ordered to be removed Under Section 133. It is to be noted that there is nothing in the Section itself prescribing any kind of time limit; and each case must be decided in the light of its own facts and circumstances.

4. In the present case it is no doubt true that the offending structures were allowed to remain in existence for 10 years before any action was thought of Under Section 133 Cr. P. C; but it must not be forgotten that when the structures were originally erected, there was a state of desperate emergency occasioned by the

sudden influx of refugees who had somehow or other to be accommodated, even at the cost of some inconvenience or curtailment of the rights of the citizens of the towns in which they sought shelter. It was in that time of emergency that the applicants were permitted to occupy structures standing on the footpaths bordering the Hospital Road in Agra; and naturally enough the State Government, the Municipal Board and the general public, bearing in mind the wider interests of the country as a whole, acquiesced in the continuance of these structures so long as the refugees remained in need of rehabilitation and assistance. But when alternative accommodation became available for the applicants, that state of emergency came to an end and the acquiescence on the part of the Government, the Board and the public automatically ceased. Likewise the Municipal Board decided to file civil suits for abatement and the district authorities initiated the present proceedings Under Section 133. I do not think that in the peculiar circumstances of this case it can be said that the initial acquiescence in the obstruction to the public way or the fact that the stalls and other structures were allowed to remain in existence for 10 years before action was taken for their removal can operate as a bar to proceedings Under Section 183 Cr IPC

5. In addition to supporting the ground of delay and acquiescence on which the learned Additional District and Sessions Judge has based these references, learned Counsel for the applicants has put forward the further argument that the stalls in question cannot be treated as an 'unlawful obstruction' because they were built by the Municipal Board itself. It is not clear whether the stalls and other structures were constructed by the Board or by private enterprise; but in any case it is obvious that they were built with the permission of the Board and of the local authorities. Nevertheless it cannot be denied that the Board and the local authorities have now withdrawn their approval for the continued occupation of the said structures by the applicants; and it seems to me that with this withdrawal of approval the structures, even, though initially authorised and in a sense lawful now undoubtedly constitute an 'unlawful obstruction' within the meaning of Section 133.

6. My conclusion therefore is that there is no legal bar to the continuance of the proceedings Under Section 133 Cr IPC against the applicants. These references are accordingly rejected. The records shall be returned to the City Magistrate of

Agra at once, so that he may dispose of the proceedings as expeditiously as possible.

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