

Order-03
04/12/2021

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Petitioner present through son.

Arguments on maintainability of petition already heard and record gone through.

Perusal of the record reveals that the petitioner has filed instant petition for initiating proceedings u/s 133 Cr.PC by contending that disputed property in the shape of street situated at the North of his house was purchased by him but respondent illegally occupied the same and constructed room on it, which obstructed and blocked the waste water of house of petitioner. That respondent is further inclined to raise construction on the disputed property who was restrained and FIR was also lodged against him but of no use. Hence, the respondent be restrained from raising construction and blocking the waste water of the house of petitioner.

From the bare reading of contents of petition in hand, it is evident that nothing has been mentioned in the petition that the alleged construction of respondent has caused an obstruction and disturbance to public. Similarly, it has not been mentioned in the petition that the subject pathway/street is being used by the other inhabitants of the locality or the same pathway is a public pathway rather in para no. 02 & 04 of petition, it has been categorically mentioned that disputed land is the ownership of petitioner and he curved pathway/street on the same. The contents of petition on the face of it suggest that there is a private dispute between the petitioner and respondent regarding the disputed land/pathway and the nature of which is such that by no means it is a public nuisance. To invoke the provision of 133 Cr.PC, it is sine-quinone that the nature of disturbance must be public in nature, effecting the locality or public. But in instant case, such a requirement is missing. Proceedings u/s 133 Cr.PC are never intended to settle private dispute between individuals.

In view of above discussion, petition in hand is held non-maintainable, hence, **dismissed**.

File be consigned to the record room after its necessary completion and compilation.

Announced
04.12.2021


FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela
Farman Ullah
Senior Civil Judge,
Orakzai at Baber Mela.