Joginder Singh,
v.
Amar Singh,

Mehar Singh, J.

In spite of service respondent Amar Singh has not appeared, but on behalf of the State learned counsel has appeared and he has not been able to support the order of the District Magistrate by any cogent and acceptable argument. In the circumstances, there is no order in regard to costs. The parties present are directed to appear in the Court of the District Magistrate on September 30, 1963.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C. J. and A. N. Grover, J.

ARYA PRATINIDHI SABHA PUNJAB,—*Appellant*

versus

LAL CHAND AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 68 of 1962.

1963

Sept., 16th.

Punjab Village Common Lands (Regulation) Act, 1953 (I of 1954)—S. 18—Suit by an individual for removal of obstruction in a thoroughfare—Whether maintainable—Special damage—Whether necessary to be proved—Special damage—meaning of.

Held, that merely because a village thoroughfare vests in the Panchayat, even though in the fullest sense of that word, a person, who is entitled to the use of that thoroughfare is debarred from maintaining a suit if he can prove that there is hinderance or obstruction to his right to use that thoroughfare which by itself would constitute a kind of special damage or that he has suffered some other kind of special damage which would entitle him under the law to a relief.

Held, that no action can be maintained by an individual against another for obstruction to a public highway without proof of special damage. This rule is founded on adequate reasons of public policy that a man who may have committed some public injury shall not be harassed by

innumerable actions by persons, who have not sustained any damage or injury peculiar to themselves.

Held, that special damage does not mean serious damage in the sense of irreparable loss, but damage affecting the plaintiff individually or peculiar to the plaintiff or damage beyond what is suffered by him in common with the owners of the other houses opening into the road or the lane.

Letters Patent Appeal under Clause 10 of the Letters Patent from the judgment dated 24th January, 1962 of Hon'ble Mr. Justice Shamsher Bahadur in R.S.A. No. 823 of 1960 reversing that of Shri Ishar Singh Hora, Senior Sub-Judge with Enhanced Appellate Powers, Gurgaon, dated 10th March, 1963 and restoring that of Shri J. B. Garg, Senior Sub-Judge IV Class, Gurgaon, dated the 24th December, 1958 dismissing the plaintiffs suit and leaving the parties to bear their own costs.

B. R. AGGARWAL' D. R. MANCHANDA and S. K. AGGARWAL, ADVOCATES, for the Appellant,

F. C. MITAL and P. C. JAIN, ADVOCATES, for the Respondents.

JUDGMENT

GROVER, J.—This appeal under clause 10 of the Letters patent arises out of a suit filed by the Arya Pritinidhi Sabha for removal of certain encroachments by means of mandatory injunction on a thoroughfare in village Tauru, tehsil Nuh, district Gurgaon. The allegation of the plaintiff was that the Arya Samaj was the owner of the site shown in yellow colour in the plan, Exhibit P. 4 Suraj Bhan defendant No. 2 had purchased the house shown in blue colour from one Hira Lal which had now come to the share of defendant No. 1 by means of a partition between the two defendants. The wall between the plaintiff's site and the defendant's house was joint and it was alleged that defendant No. 1 had constructed a verandah and a *balakhana* over it in 1953-54. Besides, defendant No. 1 had also constructed an over-hanging shed, etc., on the thoroughfare. These constructions constituted encroachments on the thoroughfare and the

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view of the plaintiff's site or *sathan* was partially disturbed causing special damage. A number of pleas were raised and out of the issues which were framed two may be noticed for the decision of the present appeal. The first issue was whether the Court had jurisdiction to try the suit and the fifth issue was whether the plaintiff had suffered any special damage on account of the existence of the construction in dispute. The trial Court held that under clause (b) of section 3 of the Punjab Village Common Lands (Regulation) Act, 1953 (Act I of 1954) which had come into force on 9th January, 1954, the defendant had become the owner of the site in dispute and the jurisdiction of the Civil Court to entertain the matter was barred by section 8 of that Act. On issue No. 5 it was found that no special damage had been suffered because there had been no encroachment. On appeal, the learned Senior Sub-Judge was of the view that it was doubtful whether Tauru was a village or a town and that the view of the trial Court that the defendant had become owner of the site under the provisions of Act I of 1954 was erroneous. After considering the relevant material, it was held that Lal Chand defendant No. 1 had not become the owner nor was the jurisdiction of the Civil Court to try the suit barred. After giving decision on the other issues, the learned Judge found that the defendant had encroached upon the thoroughfare in the matter of construction of a verandah in front of his shop. He however, held that according to law it was not necessary for the plaintiff to prove any special damage. The suit was consequently decreed.

On second appeal which was disposed of by Shamsher Bahadur, J., on 24th January, 1962, a new point was raised altogether, namely, whether after the enactment of the Punjab Village Common Lands

(Regulation) Act, 1961, (Act 18 of 1961) which vested the land included in *shamilat deh* of the village in the Panchayat, a suit for removal of the encroachments of such land could be brought by anyone except by the Panchayat. After referring to section 4(i) of Act 18 of 1961, the learned Judge held that the thoroughfare on which the encroachment was said to have been made vested in the Panchayat absolutely and, therefore, it was the Panchayat alone that could institute a suit or take any action with regard to it. The learned Judge was alive to the fact that Lal Chand, defendant No. 1 was the Sarpanch of the village which meant that the Panchayat would not normally have taken any action and the plaintiff would have been left without any remedy. He considered that under section 67 of the Gram Panchayat Act, 1952, a person who had any personal interest could not take any part in the proceedings of the Panchayat and in such a contingency the Panchayat would send the case or the suit to the District Magistrate or the District Judge or the Collector having jurisdiction for disposal. It was also observed that the Panchayat under the Gram Panchayat Act had the power to remove encroachments and nuisance. The learned Judge proceeded to rely on certain unreported decisions of this Court (*Mithu v. Tulla*, R.S.A. No. 631 of 1955, decided by Gosain, J., on 9th August, 1960, *Chailu* v. *Banwari*, R.S.A. No. 747 of 1954, decided by Chopra, J., on 19th May, 1959, *Charan Singh* v. *Pirthi Ram*, R.S.A. No. 452 of 1953, decided by me sitting singly on 12th March, 1958, and *Ch. Vijay Singh* v. *Sardha Singh*, S.A.O. No. 31 of 1959, decided by Mahajan, J., on 24th February, 1960, for holding that it was the Panchayat alone that could institute any legal proceedings in such matters as *Shamilat* land vested in it and no individual could file a suit.

It has been pointed out by the learned counsel for the appellant that the decisions on which the

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learned Single Judge has relied related to different set of facts altogether and were not at all apposite for the purposes of the present case. In most of those cases the suits had been filed by individuals claiming possession of certain part of *shamilat deh* on one ground or the other. Such suits could certainly not be filed by anyone individually and were competent only at the instance of the Panchayat. In the present case it has been argued that although the thoroughfare on which the encroachment is alleged vests completely in the Panchayat, it is open to any person whose full enjoyment of that thoroughfare is obstructed in some manner or the other or whose property suffers special damages because of the obstruction, to file a suit and seek redress of his grievance. By way of analogy it has been pointed out on behalf of the appellant that even in case of streets which vest in the Municipal Committees there is a body of judicial opinion that suits are maintainable even against the Committee if the right of any person to enjoy the convenience and amenity in question is hindered or obstructed by means of any encroachment. In this connection reference may be made to a Bench judgment of the Lahore High Court in *Municipal Committee* v. *Mohammad Ibrahim* (1), in which there is a fair amount of discussion of the law on the subject. It has been held that for the owners of houses abutting on a public highway the question of frontage means a great deal and if anything is done by those in whom the highway vests which interferes with the rights of the owners with regard to the highway and which tends to diminish the comforts of the occupants of the house, the owners will undoubtedly have an actionable claim against them. In such cases it is not necessary to prove that any special injury has taken place before a person wronged by the Committee can take action

(1) A.I.R. 1935 Lah. 196.

against it. In *Pahlad Maharaj* v. *Gauri Dutt Marwari* (2), it has been laid down that a person in the immediate neighbourhood and entitled to use a local public thoroughfare has a special cause of action in respect of any encroachment upon it, irrespective of whether he has proved special damage or not. The real principle, according to Courtney Terrell, C.J., who delivered the judgment of the Bench, is that a person of an immediate community or section of the public who is deprived of the amenity provided for that particular section may be deemed to have suffered loss without proof of such loss. This judgment was followed in a later decision of the Patna Court in *Dasrath Mahto* v. *Narain Mahto* (3), by Harries, C.J. and Fazal Ali, J., as he then was. In that case there was a roadway and the defendants proceeded to make certain constructions encroached upon the thoronghfare. The suit had been brought by certain persons who were inhabitants of the vicinity of the thoroughfare and certain others who were residents of the village alleging that they had suffered inconvenience as a result of this encroachment and they prayed for an order for the removal of the same and for restoration of the thorougfare to its original state. The Patna Bench directed removal of the obstruction on the ground that there was such damage in the case as was contemplated by law. In *Mandakinee Debee* v. *Basantakumarree Dabee* (4), the same rule was laid down, namely, that a member of the public could maintain a suit for removal of obstruction of a public highway if his right of passage through it is obstructed without proof of special damage. The learned Single Judge while apperciating the law laid down by these authoritative decisions felt somehow that

(2) A.I.R. 1937 Pat. 620.
(3) A.I.R. 1941 Pat. 249.
(4) A.I.R. 1933 Cal. 884.

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the language of Act 18 of 1961 was very wide and did not permit of such an action as had been brought in this case.

After giving the matter due consideration, it is not possible to accede to the view that merely because a village thorougfare vests in the Panchayat, even though in the fullest sense of that word, a person who is entitled to the use of that thoroughfare is debarred from maintaining a suit if he can prove that there is hinderance or obstruction to his right to use that thoroughfare which by itself would constitute a kind of special damage or that he has suffered some other kind of special damage which would entitle him under the law to a relief. It is true that in the Patna and the Calcutta cases as also in the Lahore case it has been observed that it is not necessary to prove special damage but those cases were decided on their own facts from which it could be concluded that the plaintiff had suffered damage of special kind in some manner or the other, namely, by obstruction of his right of way, etc. Indeed, in *Ramabrahma Sastri* v. *Lakshminarasimham* (5), Viswanatha Sastry, J., struck a discordant note by observing that the decision of the Privy Council in *Manzur Hasan* v. *Muhammad Zaman* (6), on which the Lahore and the Patna cases were mainly decided, did not lay down that special damage need not be proved. It will be useful to refer to the observations of Viswanatha Sastry, J., at page 47:—

> "I am humbly of the opinion that apart from section 91, Civil Procedure Code and in conformity with its provisions, no action can be maintained by an individual against another for obstruction to a public highway without proof of special damage. This

(5) A.I.R. 1957 Andh. Pra. 44.
(6) A.I.R. 1925 P.C. 36=I.L.R. 47 All. 151.

rule is founded on adequate reasons of public policy that a man who may have committed some public injury shall not be harassed by innumerable actions by persons who have not sustained any damage or injury peculiar to themselves. It had been enforced by Indian Courts as a rule of justice, equity and good conscience till 1924 and in my judgment, has not been abrogated by the decision of the Privy Council in *Manzur Hasan* v. *Muhammad Zaman* (6)".

Viswanatha Sastry, J., agreed with the view expressed in a Bench decision of the Calcutta Court in *Surendra Kumar Basu* v. *District Board, Nadia* (7), in which it has been held that where a plaintiff seeks relief in respect of a public nuisance and the suit is not brought in confirmity with the provisions of section 91(1) it is bound to fail unless special damage is shown. According to Viswanatha Sastry, J., special damage does not mean serious damage in the sense of irreparable loss but damage affecting the plaintiff individually or peculiar to the plaintiff or damage beyond what is suffered by him in common with the owners of the other houses opening into the road or the lane. Moreover, it must be remembered that in the Lahore and Patna cases to which reference has been made, no such objection was raised that the suit was not maintainable without proof of special damage in the absence of compliance with the provisions of section 91 of the Code of Civil Procedure. According to that section, in case of a public nuisance the Advocate-General or two or more persons having obtained the consent of the Advocate-General may institute a suit, though no special damage has been caused, for a declaration or injunction or for such relief as may be appropriate in the circumstances of

(7) A.I.R. 1942 Col. 360.

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the case. With respect, we are inclined to agree with the view expressed by Viswanatha Sastry, J., in the *Ramabrahma Sastri's case* (6).

In the present case the lower appellate Court did not give any finding with regard to the damage which the plaintiff is suffering or would suffer owing to the existence of the alleged encroachments. It is essential, therefore, before the present appeal can be disposed of, to obtain that finding from the lower appellate Court. We direct that Court to submit a report containing its finding on the above matter with particular reference to issue No. 5 within three months from today.

The parties are directed to appear in the lower appellate Court on 21st October, 1963. No fresh evidence will be allowed to be produced.

The appeal shall be set down for hearing after the report has ben received.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

RATTAN SINGH AND ANOTHER,—*Petitioners*

versus

UNION OF INDIA AND ANOTHER,—*Respondents*

Civil Writ No. 1449 of 1962.

1963

Sept., 19th

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 24(3)—Chief Settlement Commissioner—Whether can cancel sale of property without notice to the aliencees of the vendee.