

Ram Parkash Manchanda v. Amin Chand and others
(R. N. Mittal, J.)

from being in any way unconstitutional, the provisions of the Act subserve to the larger social purpose against the narrowly acquisitive ones of individual financial gain and are clearly within the ambit of reasonable restrictions. These provisions, therefore, must be up-held and the challenge thereto is hereby replied.

23. Apart from the contentions notices in the earlier part of the judgment, learned counsel for the petitioner did not and obviously could not advance any other argument to assail the provisions of the Act on the ground of arbitrariness or discrimination under Article 14 of the Constitution. Consequently, we are unable to find any infraction of the equality clause in the impugned Section of the Act.

24. In view of the above, all the nine writ petitions must fail and are hereby dismissed. Because of the somewhat intricate nature of the issues involved, I do not propose to burden the petitioners with costs.

S. P. Goyal,—I agree.

N.K.S.

Before R. N. Mittal, J.

RAM PARKASH MANCHANDA,—*Petitioner.*

versus

AMIN CHAND AND OTHERS,—*Respondents.*

Regular Second Appeal No. 245 of 1975.

May 13, 1983.

Punjab Municipal Act (III of 1911)—Section 3(13) (b)—Code of Civil Procedure (V of 1908)—Section 91—Public street vesting in Municipal Committee obstructed by a person—Member of public using such street—Whether has the locus standi to file a suit for permanent injunction against the person obstructing—Such member—Whether can maintain the suit without proving special damage.

Held, that the word 'public street' has been defined in sub-clause (b) of clause (13) of section 3 of the Punjab Municipal Act

1911 and from the reading thereof it is evident that the public streets are maintained out of the municipal or public funds. Therefore, the members of the public have a right to pass over such streets and if any member is obstructed to do so, he can bring a suit for establishing his right.

(Para 5).

Held, that a person cannot institute a suit in respect of a public nuisance unless he proves that he has suffered special damage thereby. Section 91 of the Code of Civil Procedure 1908 is an exception to that rule. It prescribes that the Advocate-General or two or more persons without proving special damage and with the leave of the Court can file a suit for relief regarding such nuisance. Under sub-section (2), an individual can also maintain a suit for relief regarding such nuisance by proving special damage. However, the section is applicable to public nuisance and not to breach of individual right of a person. Where the plaintiff is claiming a right for himself over a public street, it is not necessary for him to prove special damage in order to maintain the suit.

(Para 6).

Regular Second Appeal from the decree of the Court of the Senior Sub-Judge, Exercising enhanced appellate powers at Hoshiarpur, dated the 3rd day of December, 1974, reversing that of the Sub-Judge 1st Class, Hoshiarpur dated the 30th day of October, 1971 and dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

H. L. Sarin, Sr. Advocate with R. L. Sarin, Advocate, for appellants.

R. C. Puri for Baldev Kapur, for respondent No. 1.

JUDGMENT

Rajendra Nath Mittal, J (Oral)

(1) This second appeal has been filed by the plaintiff against the judgment and decree of the Senior Subordinate Judge, Hoshiarpur, dated 3rd December, 1974.

(2) Briefly, the case of the plaintiff is that the site marked ABCD shown in red colour in the plan Exhibit P. W. 11/1 was not owned by any individual. It vested in the Municipal Committee and was being used by the public as a passage. His house was near it and he was also using it as such. It was under the management and control of the municipality and was therefore a public street. It

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is further pleaded that defendant No. 1 obstructed the plaintiff from using it, which he has a right to use. Consequently, the plaintiff filed a suit for permanent injunction restraining the defendants from obstructing him from using the street.

(3) The suit was contested by the defendants who controverted the allegations of the plaintiff. Defendant No. 1 *inter alia* pleaded that the property in dispute was not a public street and that it was owned by him. He also took some other pleas but they do not survive now. The other defendants also took the same pleas.

(4) Mr. H. S. Khushdil, Subordinate Judge, held that the property was a public street and that it was not owned by defendant No. 1. Consequently, he decreed the suit. Amin Chand defendant went up in appeal before the Senior Subordinate Judge, who affirmed the finding of the trial Court that the property was a public street but reversed it with regard to the other matter and held that it was owned by defendant No. 1. He found that the following issue had not been decided by the trial Court:—

Has the plaintiff no *locus standi* to sue even if the road is proved to be public street ?

Consequently, he remanded the case to the trial Court for deciding the said issue. The learned trial Court, after remand, held that the plaintiff had *locus standi* to file the suit. In view of that finding, the suit of the plaintiff was again decreed. Amin Chand defendant filed an appeal against the judgment and decree of the trial Court before the Senior Subordinate Judge, Hoshiarpur who held that the plaintiff failed to prove special damage and thus had no *locus standi* to institute the suit. In view of that finding, he allowed the appeal and dismissed the suit. Ram Parkash has come up in second appeal to this Court.

(5) The only question that arises for determination is as to whether the plaintiff has got a right to institute the suit. It is not disputed that the property is a public street. The word 'public street' has been defined in sub-clause (b) of clause (13) of section 3 of the Punjab Municipal Act, 1911, as follows:—

“Public Street, shall mean any street—(i) heretofore levelled, paved, metaled, channeled, answered, or repaired out of municipal or other public funds, unless before

such work was carried out there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor; or

- (ii) Which, under the provisions of section 171, is declared by the committee to be, or under any other provision of this Act becomes, a public street."

From a reading of the sub-clause, it is evident that the public streets are maintained out of municipal or public funds. Therefore, the members of the public have a right to pass over such streets and if any member is obstructed to do so, he can bring a suit for establishing his right.

(6) Now, it is to be seen whether a member can file a suit without proving special damage. The counsel for the respondents submits that in view of section 91 of the Code of Civil Procedure, the suit cannot be filed by the plaintiff unless special damage is proved. In order to determine the matter, it will be advantageous to read section 91 which is as follows:—

"91. Public nuisances and other wrongful acts affecting the public.

- (1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,—
 - (a) by the Advocate-General, or
 - (b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.
- (2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions."

Under the common law, a person cannot institute a suit in respect of a public nuisance unless he proves that he has suffered special

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damage thereby. The section is an exception to that rule. It prescribes that the Advocate-General, or two or more persons without proving special damage and with the leave of the Court, can file a suit for appropriate relief regarding a public nuisance. Under sub-section (2), an individual can also maintain a suit for relief regarding such nuisance by proving special damage. However, the section is applicable to public nuisances and not to breach of individual right of a person. In the present case, the plaintiff has not filed a suit for removal of any public nuisance. Rather, he is claiming a right for himself over a public street. Therefore, it is not necessary for him to prove special damage. In the above view, I get force from the observations of a Full Bench of Bombay High Court in *Chandu Sajan Patil and others v. Nyabalchand Panamchand and others*, (1) wherein it was observed by Chagla, C. J. speaking for the Bench, that every citizen or a community or section of a community has an inherent right to conduct a non-religious procession through a public road and has, therefore, also a right to file a declaratory suit without proof of special damage. It was further observed that such inherent right is however subject to the rights of other citizens also to use the same in lawful manner. In the present case, the claim of the plaintiff is for passage for himself which is a lesser right than that of conducting a non religious procession. Therefore, in my view, the learned appellate Court has erred in holding that the suit is not maintainable by the plaintiff as he failed to prove special damage.

(7) For the aforesaid reasons, I accept the appeal, set aside the judgment and decree of the appellate Court and restore those of the trial Court. No order as to costs.

H. S. B.

Before R. N. Mittal, J.

KANSHI RAM,—Petitioner.

versus

NARAIN SINGH,—Respondent.

Civil Revision No. 2030 of 1979.

May 13, 1983.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961) as amended by Punjab Village Common Lands (Regulation)

(1) AIR 1950 Bombay 192.