M/S. GOBIND PERSHAD JAGDISH PERSHAD

v.

NEW DELHI MUNICIPAL COMMITTEE

JULY 14, 1993

[KULDIP SINGH, V. RAMASWAMI AND K. RAMASWAMY, JJ.]

Punjab Municipal Act, 1911—Section 3(13)(a) and 17(4)—"Street"—Municipal Committee declaring verandahs in front of shops as 'public streets'—Validity of.

Words & Phrases—"Streets" and "Public Streets"—Meaning in the context of Punjab Municipal Act, 1911, Sections 3(13)(a) and 17(4).

The appellant-plaintiff owned a shop premises with a verandah in front adjoining the verandahs of other shops in row. This made a continuous passage for the convenience of customers, and was used for passing and repassing by the members of the public. The Respondent-Committee by its resolutions decided, in the public interest and public safety, to declare all the Verandahs in front of the shops in that area as 'public streets' under s.17(4) of the Punjab Municipal Act.

The appellant challenged the action of the Respondent-Committee by way of a civil suit. Since the suit was dismissed, he preferred an appeal before the Senior Subordinate Judge, but was not successful. His second appeal was dismissed by a Single Judge of High Court and the Letters Patent appeal before the Division Bench of the High Court also came to be dismissed, against which the appellant preferred the present appeal. The appellant contended that the Verandah, being his private property, could not be declared a 'public streets' and in any case he could not be deprived of his property without payment of compensation.

Dismissing the appeal, this Court

HELD: 1.1. The verandah in dispute is a "street". It has been declared as a "public street" for the better enjoyment of the public-right in the said street. When a "street" is declared as 'public street' the owner of the property comprising the said "street", has no right to claim compensation. [244-A]

1.2. There is no ground to differ with the concurrent findings of the

A courts below and take a view that the appellant has dedicated the Verandah in dispute to the public use. It is being used for passing and repassing by the public at large and as such is a "street" in terms of section 3(13)(a) of the Punjab Municipal Act, 1911. The appellant has, thus, surrendered his rights in the property for the benefit of the public. The user of the
B property is and always shall be with the public. Any space, passage, verandah, alley, road or footway dedicated to public by the owner for passing and repassing, partakes the character of a "street" and no longer remains under the control of the owner. The owner has no right at all times to prevent the public from using the same. When the owner of the property has, by his own volition permitted his property to be converted into a
C "street", then he has no right to claim any compensation when the same property is made a "public street" under section 17(4) of the Act. The "streets" are meant for public use. It is necessary that "streets" which are being used by the public are frequently repaired and are also saved from public abuse. It is common knowledge that in the absence of any regulatory
D control, the hawkers and squatters are likely to occupy the "streets" thereby creating nuisance for the public. In a situation like this it is necessary for the Committee to step in and exercise its powers under section 17(4) of the Act. The Committee exercises regulatory control and is responsible for the repair and upkeep of the "public streets". [243-E-H; 244-A]

E 1.3. No interference is called for in respect of the concurrent finding of fact that notices prescribed under section 17(4) of the Act were put up in the verandahs. [244-B]

Halsbury's *laws of England,* 3rd Edition, Vol. 19 p.49, referred to.

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4135 of 1984.

From the Judgment and Order dated 12.3.1982 of the Delhi High Court in L.P.A. No. 4 of 1976.

G H.K. Puri for the Appellant.

R.K. Maheshwari and Vineet Maheswari for the Respondent.

The Judgment of the Court was delivered by

H **KULDIP SINGH, J.** The short question for consideration is whether

the New Delhi Municipal Committee (the Committee) was justified in declaring the verandah in front of the shop, owned by the appellant, in the Connaught Circus, New Delhi, as "public street" under section 171(4) of the Punjab Municipal Act, 1911 (the Act). The trial court answered the question in the affirmative and dismissed the suit filed by the appellant-plaintiff. The appeal against the said order was dismissed by the Senior Subordinate Judge on February 13, 1967. The second appeal was also dismissed by a learned single Judge of the Delhi High Court. Finally, the letters patent appeal preferred by the appellant was dismissed by the Division Bench of the High Court on March 12, 1992. This appeal by way of special leave is against the judgment of the Division Bench of the High Court.

The appellant-plaintiff obtained a perpetual lease, dated February 20, 1940, from the Governor-General in Council, in respect of plot no.2, in block 'H', Connaught Circus, New Delhi. The appellant constructed the building in accordance with the sanctioned plan. The building has a verandah in front of it measuring 95.33x17 feet. The verandah adjoins the verandahs of other shops in the Connaught Circus thereby making a continuous passage for the convenience of the customers. These verandahs have always been used for passing and repassing by the members of the public. The appellant claims that the verandah, being its private property, could not be declared a "public street" under the Act. In any case the appellant cannot be deprived of its property without payment of compensation.

Section 171 of the Act was extended to the New Delhi area by the notification dated July 31, 1958. The Committee by a Resolution dated July 18, 1959, decided, in the public interest and public safety, to declare all the verandahs in front of the shops in Connaught Place and Connaught Circus as "public streets" under the Act. Thereafter, by another Resolution dated September 30, 1958, the Committee resolved to follow the procedure under section 171(4) of the Act and that the verandahs be declared as "public streets". The appellant challenged the action of the Committee by way of civil suit. As mentioned above, the appellant has lost from all the courts below.

The action of the Committee was challenged before the Division Bench of the High Court on the following grounds:-

A 1. Section 171(4) of the Act was confiscatory and, as such, violative of Article 31 of the Constitution of India as it stood before the Constitution (Forty-Fourth Amendment) Act, 1978.

2. That the verandah in dispute was not a "street" as defined under Section 3(13)(a) of the Act. According to the appellant only
B a "street" can be declared a "public street" under the Act. The verandah being a private property of the appellant it could neither be treated as a "street" nor declared as "public street" under the Act.

C 3. That the mandatory notice as required under section 171(4) of the Act was not affixed in the "street" and, as such, the impugned resolution was passed without following the procedure laid down under the law.

While dealing with the first point, the High Court proceeded on the
D assumption that the appellant was deprived of its property and also that the appellant could invoke the protection of Article 31 of the Constitution of India as the said article was in Part III of the Constitution at the relevant time. The High Court, however, came to the conclusion that the Act was an "existing law" under Article 31(5)(a) of the Constitution and as such was
E immune from the attack on the ground of Article 31(2) of the Constitution. The High Court, therefore, rejected the argument on the following reasoning:

"We, therefore, hold that Section 171(4) even if it amounts to a deprivation of property of the plaintiffs is an 'existing law' and
F is, therefore, saved from the attack of unconstitutionality. The declaration of the plaintiffs' verandah in Connaught Circus as 'Public Street' is not void on this ground. We uphold the validity of Sec. 171(4) and the Notification dt. June 3, 1958."

G We are of the view that the High Court judgment on the first point is only of academic interest. The point does not arise on the facts of this case and as such we do not wish to go into the merits of the controversy arising from the first point.

The crucial question for determination is whether the verandah in
H dispute was a "street" in terms of section 3(13)(a) of the Act. Once it is

held to be a "street", then the right of public to use the same is irreversible. A

Sections 3(13)(a) and 171(4) of the Act are reproduced hereunder: –

> "3(13)(a) "street", shall mean any road, footway, square court, alley, or passage, accessible, whether permanently or temporarily to the public, and whether a thoroughfare or not; and shall include B every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings but thereon, and if it is used by any person as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such C buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons, from using as aforesaid;
>
> and shall include also the drains or gutters therein, or on either side, and the land, whether covered or not by any pavement, D verandah or other erection, up to the boundary of any abutting property not accessible to the public."
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> "171(4). A committee may at any time, by notice fixed up in any street or part thereof not maintainable by the committee give intimation of their intention to declare the same a public street, E and unless within one month next after such notice has been so put up, the owner or any one of several ovwners of such street or part of a street lodge objection thereto at the Municipal office, the Municipal Committee may, by notice in writing, put up in such street, or such part, declare the same to be public street vested in F the committee."

We agree with the learned counsel for the appellant that before a space can be held to be a "street" under the Act, there must be a dedication by the owner to the public. It is contended that there is no evidence on the record to prove *animus dedicandi.* G

It would be useful to refer to the following paragraph from Halsbury's *Laws of England*, 3rd Edition, vol.19 at page 49: –

> "The fact that a way has been used by the public so long and in such a manner that the owner of the land, whoever he was, must H

A have been aware that the public believed that the way had been dedicated, and has taken no steps to disabuse them of that belief, is evidence (but no conclusive evidence) from which a Court or Jury may infer a dedication by the owner."

B The trial court and the lower appellate court on appreciation of the evidence came to the conclusion that the verandah was a passage accessible to the public. The courts below found as a fact that the verandah was being used for about two decades by the public for passing and repassing . It was held that the verandah was a "street" in terms of section 3(13)(a) of the Act. The Division Bench of the High Court upheld the findings of the C courts below on the following reasoning :–

"It has been held in this case by all the three courts that the plaintiffs' verandah was a "street" and it had been so used since the very beginning. On evidence all the courts have come to the D conclusion that the verandahs were a passage accessible to the public. These were used by members of the public as a means of access and the owners had no "right at all hours to prevent other persons from using" this space. The plaintiff Jagdish Pershad appeared in the witness box. He deposed that there was no dedication of verandahs to the public use and the owners could E always stop any passerby from using the same. In cross-examination he admitted that the owners never stopped any body from passing and repassing through these space. This course of conduct on the part of the owner is inconsistent with any other theory then that he intended a dedication. This is a reasonable inference of intent F that may be drawn from evidence. On evidence the courts have found that the public used these verandahs without any let or hindrance.....

In our opinion the question whether a particular place is a G "street" or not is essentially a question of fact. Long user can be evidence of dedication. Dedication can be inferred from public uninterrupted user for a substantial period of time. A way shall be presumed to have been dedicated as a street where it has been used by the public for twenty years as in this case. The public have availed themselves of this dedication and have used verandahs as H streets because these were thrown open to the public use tacitly,

if not expressly. From user of long duation an inference of dedication to the public would naturally arise. It is true that "single act of interruption by the owner is of much more weight upon a question of intention, than many acts of enjoyment" *Pools* v. *Huskinson,* (1843) 11 M & W 827 - 152 L.R. 1039 per Baron Parke). But in this case there is not a single instance where there was an interruption by the owner which can be said to be a negation of the idea of dedication... That the land was devoted to the public use is the finding of all the courts. The presumption arising from long uninterrupted user of a way by the public is so strong as to dispense with all inquiry into the actual intention of the owner of the soil, and it is not even material to inquire who the owner of the soil was... On evidence the courts have uniformly come to the conclusion that the public has a right to pass and repass in the verandahs in question and the same are "streets" within the meaning of the term as defined in section 3(13)(a). The plaintiffs cannot be allowed to contest this finding of fact in this fourth court."

We see no ground to differ with the concurrent findings of the courts below and hold that the appellant has dedicated the Verandah in dispute to the public-use. It is being used for passing and repassing by the public at large and as such is a "street" in terms of section 3(13)(a) of the Act. The appellant has, thus, surrendered his rights in the property for the benefit of the public. The user of the property is and always shall be with the public. Any space, passage, verandah, alley, road or footway dedicated to public by the owner for passing and repassing, partakes the character of a "street" and no longer remains under the control of the owner. The owner has no right at all times to prevent the public from using the same. When the owner of the property has, by his own volition permitted his property to be converted into a "street", then he has no right to claim any compensation when the same property is made a "public street" under section 171(4) of the Act. The "streets" are meant for public use. It is necessary that the "streets" which are being used by the public are frequently repaired and are also saved from public abuse. It is common knowledge that in the absence of any regulatory control, the hawkers and squatters are likely to occupy the "streets" thereby creating nuisance for the public. In a situation like this it is necessary for the Committee to step in and exercise its powers under section 171(4) of the Act. The Committee exercises regulatory control and is responsible for the repair and upkeep

A of the "public streets". The verandah in dispute is a "street". It has been declared as a "public street" for the better enjoyment of the public-right in the said street. We hold that when a "street" is declared as 'public street' the owner, of the property comprising the said "street", has not right to claim compensation.

B So far as third point is concerned, the courts below have found as a fact that notices prescribed under section 171(4) of the Act were put up in the verandahs. We see no force in this contention and reject the same.

We, therefore, dismiss the appeal with costs. We quantify the costs as Rs.11,000.

G.N. Appeal dismissed.