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MUNICIPAL COMMITTEE, KARNAL

v.

NIRMALA DEVI

NOVEMBER 24, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Haryana Municipalities Act, 1973 : Sections 2(21)(23), 61(1)(g) and 181(2).

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Municipal Committee—Power to demolish encroachments—Public street—Unauthorised construction of shop on—Demolition—Award of damages for—Held illegal.

Words & Phrases

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'Street'—'Public street'—Meaning of—Sections 2(21) and 23—Haryana Municipalities Act, 1973.

The respondent had constructed a shop on a portion of a public street. The appellant—Committee issued notice to the respondent calling him to demolish the shop. On respondent's failure to do so, the Committee got the construction demolished. The respondent filed a suit claiming damages but the Trial Court dismissed the same. The Appellate Court reversed the decree of the Trial Court and granted damages of a sum of Rs. 20,000. The High Court affirmed the judgment of the first Appellate Court.

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Allowing the Municipal Committee's appeal and setting aside the impugned judgment, this Court

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HELD : Under Section 61(1)(g) of the Haryana Municipalities Act, 1973 every street which is a public street vests in the Municipal Committee. If unauthorised construction is made by encroaching on its, after issuing the notice for demolition and service thereof, if the encroacher does not remove the same within the specified time, in addition to laying prosecution for contravention of the provisions of the Act, the Municipal Committee has power under section 181(2) to have the unauthorised encroachments and construction removed and to recover the costs thereof

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from him. Though the District Judge found that it is the private property

of the respondent, in view of the fact that it is on a public street, by operation of section 2(21), even the private property which forms part of public street, stands vested in the Municipal Committee. Thereby, the Municipal Committee has the necessary power to have the unauthorised construction removed and encroacher ejected. If the encroacher does not voluntarily remove the unauthorised construction, the Municipal Committee has power to have it removed by exercise of the power vested under section 181(2) of the Act. Since the Committee has exercised the statutory power, the award of damages is clearly illegal, unwarranted and unsustainable. [677-G-H; 678-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11583 of 1995.

From the Judgment and Order dated 27.1.94 of the Punjab & Haryana High Court in R.S.A. No. 173 of 1994.

Muni Lal Verma, S.K. Bagga, Ms. Tanuj Bagga and Mrs. S. Bagga for the Appellant.

Ujjagar Singh and Mrs. Naresh Bakshi for the Respondent.

The following Order of the Court was delivered :

Leave granted.

An area admeasuring 4 ft. x 6-1/2 ft. situated in Chaura Bazar near Rai Saheb Jogiwara, Karnal is claimed to belong to the respondent. The appellant asserted it to be part of public street. They found that the respondent had constructed a stop on the said portion of public street. Consequently, they issued a notice, after inspection, for demolition of the shop. Since the respondent did not demolish the shop, the appellant got the construction demolished necessitating the respondent to file the suit for damages. The Trial Court dismissed the suit by decree dated November 15, 1990. On appeal, the Additional District Judge by judgment and decree dated October 29, 1993 reversed the decree of the Trial Court and granted damages for a sum of Rs. 20,000. The High Court in Second Appeal No. 173/94 by order dated January 24, 1994 dismissed the appeal as usual *in limine*, which in recent past is getting changed by giving reasons which one hopes shall become a rule. Thus this appeal by special leave.

A The only question is whether the aforesaid disputed area is a public street. Section 2(23) of the Haryana Municipalities Act, 1973 (for short, 'the Act') defines "street" thus :

B "(23) "street" shall mean any road, footway, square, Court, public park, alley or passage, accessible, whether permanently or temporarily to the public, and whether a thoroughfare or not; and shall include 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 abut thereon, and if it is used by any persons as a means of access to or from

C any public place or thoroughfare, whether such persons be occupiers of such 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, verandah

D or other erection, up to the boundary of any abutting property not accessible to the public ;

Section 2(21) defines "public street" thus :

E "(21) "public street" shall mean any street -

(i) heretofore levelled, paved, metalled, channelled, seweraged 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

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(ii) which, under the provisions of section 180, is declared by the committee to be, or under any other provision of this Act becomes, a public street;

G Under section 61 (1)(g) of the Act, all public streets vested in the Municipal Committee which records thus :

H "61. Property vested in committee - (1) Subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature hereinafter in this section

specified and situated within the municipality shall vest in and be under the control of the committee, and with all other property which has already vested or may hereafter vest in the committee, shall be held and applied by it for the purposes of this Act, that is to say, -

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(g) all public streets, not being land owned by the State Government, and the pavements, stones and other materials thereof, and also trees growing on, and erections, materials implements, and things provided for, such streets."

Section 181 of the Act gives power to lay prosecution for encroachment on any street etc. Sub-section (2) of section 181 gives power to demolish the unauthorised construction thus :

"(2) Without prejudice to the provision of sub-section (1), the Committee may, by notice, call upon any person who has committed a breach of the provisions contained in the said sub-section, to stop the unauthorised construction forthwith and to remove or alter such immovable encroachment or overhanging structure as aforesaid within a period of seven days and if such person fails to show cause to the satisfaction of the Committee or the Chief Executive Officer or any person authorised by it or him shall proceed to remove the unauthorised construction and the costs of such removal shall be recovered from the defaulter. If the defaulter fails to pay the cost of removal or unauthorised construction on demand within fifteen days, the costs shall be recoverable from such person as arrears of land revenue and the Committee may also disconnect the water supply and sewerage connections, as it may deem fit."

It would thus be clear that every street which is a public street vests in the Municipal Committee. If unauthorised construction is made by encroaching on it, after issuing the notice for demolition and service thereof, if the encroacher does not remove the same within the specified time, in addition to laying prosecution for contravention of the provisions of the Act, the Municipal Committee has power to have the unauthorised encroachments and construction removed and to recover the costs thereof

- A** from him. It is seen that notice was in fact given to the respondent for removal of the construction. When the husband of the respondent was examined, he admitted that he constructed the shop after the purchase. Though the District Judge found that it is the private property of the respondent, in view of the fact that it is on a public street, by operation of
- B** section 3(21), even the private property which forms part of public street, stands vested in the Municipal Committee. Thereby, the Municipal Committee has necessary power to have the unauthorised construction removed and encroacher ejected. If the encroacher does not voluntarily remove the unauthorised construction, the Municipal Committee has power to have it removed by exercise of the power vested under section 181(2) of the Act.
- C** Since the Committee has exercised the statutory power, the award of damages is clearly illegal, unwarranted and unsustainable.

D The appeal is accordingly allowed. The judgment and decree of the appellate Court as confirmed by the High Court stands set aside and that of the Trial Court stands confirmed. But in the circumstances, no order as to costs in this Court and the appellate Court.

T.N.A.

Appeal allowed.