

CIVIL MISCELLANEOUS

Before S. S. Dulat and S. K. Kapur, JJ.

M/S UNITED TAXI OPERATORS CO-OPERATIVE (URBAN)
THRIFT AND CREDIT SOCIETY LTD., AND ANOTHER,—Petitioners

versus

MUNICIPAL CORPORATION OF DELHI,—Respondent

C. W. 172-D of 1965

*Delhi Municipal Corporation Act (LXVI of 1957)—S. 2(3)—
Underground petrol storage tank with no structure over the ground—
Whether a building—Municipal Corporation—Whether has authority
to demolish such structure.*

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Held, that an underground petrol storage tank with no structure over the ground is a building as defined in sub-section (3) of section 2 of the Delhi Municipal Corporation Act, 1957, and the Municipal Corporation has the authority to demolish the same if it does not conform to the municipal regulations. The sinking of a storage tank does not differ in its essential features from any other building. This is as much a work of an artificial character constructed by man by putting together sheets of steel as would be an underground cellar constituted as a result of putting together of bricks and mortar.

Petition under Articles 226 and 227 of the Constitution of India, praying that the respondents be restrained by a writ of prohibition or any other similar writ, order or direction as this Hon'ble Court or any other similar writ, order or direction as this Hon'ble Court may deem fit and proper, directing the respondent not to dismantle or stop the consumer filling station of the petitioners located at E2/1 East Patel Nagar, New Delhi whether by dismantling the petrol pump or cutting of the electric connection or in any other manner whatsoever, and costs of these proceedings with such other and further relief as this Hon'ble court may deem fit be also granted to the petitioner.

PARKASH NARAIN, ADVOCATE, for the Petitioner.

R. N. TIKKU, ADVOCATE, for the Respondent.

ORDER

KAPUR, J.—The first petitioner, United Taxi Operators Co-operative (Urban) Thrift and Credit Society Limited, is a co-operative society of taxi operators, and the second

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petitioner is the Secretary of the said society. They have filed this writ petition praying for a direction to the respondent, Municipal Corporation of Delhi, restraining them from dismantling the petrol pump located at E. 2/1, East Patel Nagar, New Delhi, or from discontinuing the electric connection installed at the said petrol pump. It is alleged that in pursuance of an agreement entered into in 1960 between the said society and the Standard Vacuum Oil Company, now known as Esso Standard Eastern Inc., the said company obtained on lease a plot of land measuring 30' x 60' situate at E. 2/1, East Patel Nagar, New Delhi, on a monthly rent of Rs. 275 from one Dewan Siri Ram Puri. This lease was taken by the Esso Standard Eastern Inc. (hereinafter referred to as the Esso) for installing a petrol pump there and letting it out to the said society on the terms and conditions set out in the agreement, dated 20th October, 1960 (annexure 'A' to the petition). The Esso, therefore, approached the various authorities for permission to instal a consumer filling station for the society and permission was accorded by them as well as by the District Magistrate, Delhi, for such installation. After the accord of sanction, mentioned above, the Esso fitted an underground storage tank in the said area and installed a petrol pump thereon. Immediately thereafter, the Esso submitted an application to the respondent for supply of electric energy to work the petrol pump, which was granted and electricity connection given. It is further alleged that electricity is still being supplied at the petrol pump and bills therefor regularly paid. The allegations in the petition proceed that no building or shed was constructed on the said plot of land, that the petitioners from 1962 till date peacefully enjoyed the benefits of the said consumer filling station, that the officials of the respondents have been visiting the site and threatening the demolition of the installations on the ground that the same had been built in contravention of the building laws of the Municipal Corporation of Delhi, and that despite representations by the Esso the respondent has ordered dismantling of the petrol pump.

The matter came up for hearing before Shamsher Bahadur, J., who thought that the contention urged on behalf of the petitioners, namely, that the underground filling station with no structure over the ground is not a building as defined in sub-section (3) of section 2 of the Delhi Municipal Corporation Act, 1957, and, therefore,

they have no authority to interfere with the said structure, raised a point of importance, on which there was no direct authority and, therefore, should be decided by a larger Bench. It is in these circumstances that the writ petition has been placed before us for disposal.

Mr. Parkash Narain, learned counsel for the petitioners, has repeated the same contention, as urged before the learned Single Judge and says that the underground filling station is not a building within the meaning of sub-section (3) of section 2 of the said Act and, therefore, it is not competent to the respondent to demolish the same. It is said that the only structure involved in the filling station is a steel tank sunk in the ground with a petrol pump installed over it and, therefore, it is not a building. The argument proceeds that there has been no erection of any structure and the various provisions of the Act seem to suggest that only such structures, as are capable of use either for human habitation or for keeping of animals etc. can be termed as buildings. According to the petitioners, there is no erection of any buildings, because the storage tank is sunk in the ground, then filled on the sides with clay without involving any masonry work and the pump above the ground is only fixed with a few screws. Various instances have been given by Mr. Parkash Narain to show that if such a structure is held to be a building, it would result in diverse anomalies. One of the examples given by Mr. Parkash Narain is that if he sinks a small tin box in the compound of his house, it would not be a building and sinking of a petrol storage tank is nothing more than sinking a trunk of a larger size. 'Building' has been defined in sub-section (3) of section 2 of the said Act as under:—

"2. In this Act, unless the context otherwise requires,—

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(3) 'building' means a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud,

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metal or other material but does not include any portable shelter;"

The question really is whether it falls within the expression "or any other structure" in sub-section (3) of section 2. Read in isolation, the definition appears to be wide enough to include a structure of the type in question, but Mr. Parkash Narain refers to sections 331 to 336 of the said Act, and says that the definition should not be read in isolation but in a restricted manner after attending to the various other provisions of the Act which throw light on the meaning of the words "or any other structure". It is no use going into the various illustrations given by Mr. Prakash Narain, because the question will have to be determined on the facts and circumstances of each case. The magnitude of the structure will certainly have a bearing on the meaning to be attributed to the word 'building'. May be, Mr. Prakash Narain is right that if a small tin box is sunk in a house-compound, it may not amount to erecting a building, but I am here concerned with finding out whether a petrol storage tank with all its accessories is a 'building' or not. I cannot forget that the object of the Act is to regulate the matters of public convenience and compel public to conform to certain rules, the non-compliance whereof will result in dislocation or normal comforts, which such statutes are intended to assure. The sense of orderly living in cities and the aesthetic sense of a modern man will be shocked if such like structures are allowed to come up unregulated. Such statutes must be construed in such a manner as will best effectuate their purpose and protect their intended beneficiaries. That being so, one has to see whether or not a particular structure was intended to be covered by the statute. Merely because a tank is sunk does not mean that the process involves no erection of a building, as contemplated by section 331 of the said Act. There is no force in the contention of Mr. Prakash Narain that 'erection' must mean 'raising something from lower level to higher level'. Even according to the 'Chambers' Twentieth Century Dictionary', one of the meanings of the word 'erect' is 'to establish'. In any case, when the storage tank is sunk, the steel walls stand erected on a base and consequently, even in the light of restricted meaning sought to be placed on the word 'erect' by Mr. Prakash Narain, the process will fall within the expression 'to erect a building' in section 331 of the

said Act. The artificiality of Mr. Prakash Narain's argument would be best demonstrated by an illustration : suppose a person digs four underground cellars and plasters the same with cement from the top towards the bottom, it would be a full-fledged structure like a house and yet on the process of reasoning advanced by Mr. Prakash Narain it would not amount to erection of a building. That could not have been the intention of the legislature, for otherwise in constructing an underground house one may exclude it from the operation of the Act by following a different procedure of plastering the same. I cannot entertain any doubt that the sinking of a storage tank does not differ in its essential features from any other building. This is as much a work of an artificial character constructed by man by putting together sheets of steel as would be an underground cellar constituted as a result of putting together of bricks and mortar. There is also no force in the contention of Mr. Prakash Narain that such a tank not used for human habitation or for keeping of living beings cannot be termed as a building. Accepting that contention would amount to drawing a most artificial line, which will destroy the very object of the Act. In that view, a regular masonry underground cellar used for storing grains would be excluded from the purview of this Act if the grains are drawn with the aid of a suction pump and no human being or animal enters there.

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Mr. Prakash Narain then says that the pump was installed in 1960 and soon thereafter the respondent started supplying electricity and charging for the same. This, according to the petitioners, should estop the respondent from demolishing the structure. In my opinion, no question of estoppel arises in the circumstances of this case for two reasons : (1) the respondent Municipal Corporation of Delhi is a statutory body and obliged to conform to the regulations in giving or withholding sanction and mere supply of electricity cannot amount to according sanction for a buildings, and (2) the structure was installed before the respondent sanctioned the electric connection and nothing has been shown as to how on the representation of the respondent, the petitioner acted to their detriment.

Mr. R. N. Tikku, learned counsel for the respondent: has attacked the maintainability of this petition at the instance of the petitioner. He says that Esso are the lessees of

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the land, they have installed the structure and, therefore, the petitioners are not the persons aggrieved competent to maintain the writ petition. I am afraid, I cannot accede to this argument. It is the right of the petitioners to carry on trade that is being affected and if their contention that the structure is not a building be correct, the respondent will have no authority to interfere therewith. They can, therefore, legitimately claim to be the persons aggrieved and consequently entitled to ask for the relief.

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In the result, the petition fails and is dismissed with no order as to costs.

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S. S. DULAT, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before Harbans Singh, J.

HARI KISHAN AND OTHERS,—*Appellants.*

versus

MST. GAINDI AND OTHERS,—*Respondents.*

Regular Second Appeal No. 274 of 1958.

1966.
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Punjab Pre-emption Act (I of 1913) as amended by Punjab Pre-emption (Amendment) Act (X of 1960)—S. 31—Effect of, on pending suits and appeals—Suit of one rival pre-emptor decreed—Other rival pre-emptor filing appeal against decree but not the vendee—Amending Act taking away right of pre-emption of both the rival pre-emptors—Decree passed in favour of one of the pre-emptors—Whether has to be set aside—Code of Civil Procedure (Act V of 1908)—Order XLI Rule 33—Whether applicable.

Held, that the provisions of section 31 of the Punjab Pre-emption Act are retrospective and no decree can be passed which is inconsistent with the provisions of the Act. The Punjab Pre-emption (Amendment) Act, 1960, has taken away the right of pre-emption of both the rival pre-emptors and obviously any decree passed in favour of either of them would be inconsistent with the provisions of the Act. Even if the vendee has not filed any appeal against the decree the appellate