

as possible. The costs of this reference will be costs in the cause.

Daryodh Singh
v.
Union of India
and others,

D. FALSHAW, C.J.—I agree.

Mahajan, J.
Falshaw, C.J.

S. K. KAPUR, J.—I agree.

Kapur, J.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

NEM CHAND—Appellant

versus

ROHTAK MUNICIPAL COMMITTEE,—Respondent

Regular Second Appeal No. 1337 of 1957.

Punjab Municipal Act (III of 1911)—S. 121(2)—Municipal Committee—Whether sole judge of the fact that a trade causes annoyance, offence or danger to persons residing in the immediate neighbourhood.

1965

Oct. 18th.

Held, that after the coming into force of the Constitution and in view of Article 19(1) (g) every person has a right to carry on his trade or business anywhere he likes, but that right is subject to reasonable restriction that may be imposed. Section 121(2) of the Punjab Municipal Act, 1911, imposes a reasonable restriction and the Judge whether such a restriction is reasonable or not is the Court. The only ground on which the plaintiff could have been refused the license was that his carrying on the business at the particular place would cause annoyance, offence, or danger to the persons residing in the area, where the lime-kiln is situate. If this fact stood proved, the license could have been withheld.

Regular Second Appeal from the decree of the Court of Shri Bahal Singh, Senior Sub-Judge, with Enhanced Appellate Powers, Rohtak, dated the 18th day of October, 1957, reversing that of Shri B. R. Guliani, Sub-Judge 3rd Class, Rohtak, dated the 31st January, 1951, and dismissing the plaintiff's suit with costs throughout.

GOKAL CHAND MITTAL, ADVOCATE, for the Appellant.

PREM CHAND JAIN, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—This second appeal is directed against the decision of the Senior Subordinate Judge, Rohtak, Mahajan, J.

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reversing on appeal the decision of the trial Court, decreeing the plaintiff's suit.

The plaintiff brought the present suit for a mandatory injunction directing the municipal committee to renew the plaintiff's license for running his lime-kiln. According to the plaintiff, he was running this lime-kiln for the last 10 or 12 years under a license granted by the municipal committee. The defendant committee refused to renew this license for the year 1956-57 and issued a notice directing him to remove the lime-kiln from its present site by the 31st of March, 1956. The trial Court came to the conclusion that the running of the lime-kiln at the place did not amount to a nuisance and, therefore, the committee was not justified in withholding the license. On appeal the learned Senior Subordinate Judge reversed the decision of the trial Court on the ground that the committee was the sole judge as to whether the lime-kiln was offensive or not and the decision of the committee could not be called in question in a suit irrespective of the fact whether that decision was right or wrong. It may be mentioned that in the notice issued to the plaintiff no grounds are stated why the license was not being renewed. It may also be mentioned that the step for the non-renewal of the license of the appellant was taken at the instance of one Sri Niwas, who has appeared as a witness for the municipal committee in these proceedings.

The short question that arises for determination is whether the municipal committee is the sole Judge as to whether the lime-kiln causes annoyance, offence or danger to persons residing in, or frequenting the immediate neighbourhood, of, the area where it is situate. The learned counsel for the appellant contends that the question whether the business in this case—the business of running a lime-kiln—causes annoyance, offence or danger to persons residing in the locality is justiciable. The learned counsel for the municipal committee, on the other hand, contends that this question has to be determined subjectively by the municipal committee and thus the committee's decision is not open to scrutiny by the Court. The learned counsel for the municipal committee relies on *The Municipal Committee, Rohtak v. Haji Harim-ud-din* (1). The

(1) 46 I.C. 571.

Municipal Committee, Sonapat v. Dindu (2), and *The Municipal Commissioners, North Barrackpur v. Provakar Prosad Singh* (3), in support of his contention. These authorities do support him, but they relate to pre-Constitution period. After the coming into force of the Constitution and in view of Article 19(1)(g) every person has a right to carry on his trade or business anywhere he likes, but that right is subject to reasonable restriction that may be imposed. Section 121(2) of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), imposes a reasonable restriction and the Judge whether such a restriction is reasonable or not is the Court. See in this connection *Chintamenrao v. The State of Madhya Pradesh* (4). The only ground on which the plaintiff could have been refused the license was that his carrying on the business at the particular place would cause annoyance, offence or danger to the persons residing in the area where lime-kiln is situate. If this fact stood proved, the license could have been withheld. On the present record, however, I find that this fact is not proved. The trial Court gave a definite finding on this matter, whereas the lower appellate Court omitted to decide this matter, because it took the view that this question could not be determined by the Court and its determination rested solely with the municipal committee, and the municipal committee had so decided.

Even if the argument of the learned counsel for the municipal committee is accepted that the determination of the question is purely subjective so far as the municipal committee is concerned, there is no such determination. The notice is entirely silent. It does not state the grounds for refusal of the renewal of the license. Beyond the notice we have no evidence on what grounds the Municipal Committee refused to renew the license. In this view of the matter the lower appellate Court has gone wrong in reversing the decision of the trial Court.

For the reasons given above, I allow this appeal, set aside the order of the lower appellate Court and restore that of the trial Court. There will, however, be no order as to costs.

B.R.T.

(2) 49 I.C. 881.

(3) A.I.R. 1948 Cal. 211.

(4) A.I.R. 1951 S.C. 118.

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