

Before : V. K. Jhanji, J.

THE MUNICIPAL CORPORATION OF LUDHIANA,—Appellant.

versus

OSWAL SPINNING AND WEAVING MILLS LTD., LUDHIANA,

—Respondent.

Regular Second Appeal No. 405 of 1979.

3rd May, 1991.

Punjab Municipal Act, 1911—Ss. 3(13)(a), 3(13)(b)(i) and (ii), 172(2) and 220—Notice for removing encroachment on green belt—Ownership of Corporation not proved—Such vacant space—Whether falls under the definition of ‘Street’ or ‘Public street’.

Held, that a reading of both the definitions, ‘public street’ and ‘street’ makes it clear that every vacant space cannot be described as a ‘street’. It must be a vacant space where houses, shops or other buildings abut thereon and it is used by any person as a means, of access to or from any public place or thoroughfare 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. If the vacant plot satisfies that description, it can be considered as a ‘street’. However, every street cannot be said to be a ‘public street’. Before a street can be said to be a ‘public street’, it must have been levelled, paved, metalled, channelled, sewerred, or repaired out of municipal or other public funds or it must have been declared by the Committee or should have become, under the Act, a ‘public street’. These conditions have to be satisfied before a vacant plot can be identified as a ‘public street’.

(Para 6)

Regular Second Appeal from the decree of the Court of Shri D. R. Mahajan Addl. District Judge, Ludhiana, dated the 21st day of December, 1977 modifying that of Shri G. C. Summan Sub Judge IIInd Class, Ludhiana dated the 28th April, 1975 (decreeing the suit of the plaintiff, as prayed for, for perpetual injunction restraining the defendant not to interfere in peaceful possession of the plaintiff in the plot in dispute and leaving the parties to bear their own costs) to the extent of ordering that “Municipal Committee” defendant is restrained from demolishing or interfering with the possession of the plaintiff over the plot in dispute till the defendant-Municipal Committee establishes its better title with no order as to costs.

The Municipal Corporation of Ludhiana v. Oswal Spinning and Weaving Mills Ltd., Ludhiana (V. K. Jhanji, J.)

CLAIM : Suit for perpetual injunction restraining the defendant not to interfere in peaceful possession of the plaintiff in the plot measuring 4306-66 Sq. Yards (380' × 102) bounded on the north by the main building of the plaintiff company on the south Railway line and property belonging to Railway (Union of India) and on the East : the building of Oswal Woolen Mills Unit No. 3 and on the West the vacant plot belonging to the Defendant or P.W.D. and to be restrained for ever from demolishing the building built on the said plot as shown in the plan attached with the plaint.

CLAIM IN APPEAL : for reversal of the order of lower appellate court.

Dated the 3rd May, 1991.

T. S. Doabia, Advocate, with I. F. S. Dcabia, Advocate, for the Appellant.

Arun Jain, Advocate, for the Respondent.

JUDGMENT

V. K. Jhanji, J.

(1) Municipal Committee, Ludhiana (defendant) served notice on the plaintiff Under Section 172(2) of Punjab Municipal Act, 1911 (hereinafter referred to as the Act) calling upon the plaintiff to remove the encroachment made by them on green belt within two days. Thereafter a notice under section 220 of the Act was served to the effect that the plaintiff having failed to remove the encroachment within six hours from the service of the notice. The plaintiff challenged the said order by way of civil suit.

(2) The facts stated in the plaint are that the plot in dispute was lying between railway line on one side and the building of the plaintiff-Company on the other side. It was further stated in the plaint that the plot either belonged to the custodian department or public department and was being misused by some undersirable persons and the plaintiff-Company turned out those persons and took control and possession of the plot and have constructed some quarters for the use of their labourers in the year 1952. The plaintiff-Company challenged the service of the notice on the ground that the defendant-Committee has no right to serve notice under Section 172(2) of the

Act and to demolish the quarters of the labourers constructed by them. The suit was contested by the defendant on the ground that the plot in dispute is a part and parcel of the green belt being under the management and control of the defendant and falls within the definition of 'street' as given in Section 3(13)(a) of the Act. The committee also stated that the plaintiff had no right to encroach on the green belt and, therefore, the defendant-Committee was empowered to get the encroachment removed.

(3) The trial Court as well as the appellate Court found that the Committee has failed to prove that the plot in dispute was transferred to the defendant-Committee or the same vests in municipal committee. However, the appellate Court while dismissing the appeal of the Committee, modified the decree of the trial Court to the extent "Municipal Committee is restrained from demolishing or interfering with the possession of the plaintiff over the plot in dispute till the defendant-committee establishes its better title."

(4) This is second appeal by the defendant challenging the judgment and decree of the Courts below.

(5) The only contention raised by Mr. T. S. Doabia, learned counsel for the defendant-committee is that even if the committee had failed to prove that defendant-committee is the owner of the plot in dispute, even then the defendant-committee was entitled to get the encroachment removed as the vacant plot vested in the defendant-committee and falls within the definition of 'street' as given in Section 3(13)(a) of the Act. He further submitted that both the Courts below have not considered this aspect of the matter.

(6) After hearing learned counsel for the parties, I find that the contention of learned counsel for the defendant-committee has no substance. In order to see whether the property in dispute vested in the defendant-committee, we have to look to the provision of the statute under Section 56 of the Act. The property, in order to vest in the defendant-committee, must be a 'public street'. A public street has been defined in Section 3(13)(b)(i) and (ii) which reads as under:—

"Public street" shall mean any street—(i) heretofore levelled, paved, metalled channelled, sewered or repaired out of municipal or other public funds, unless, before such work

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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."

The definition shows that a public street as defined by Section 3(13) (b) (i) and (ii) is a street which has been "levelled, paved, metalled, channelled, sewered, or repaired out of municipal or other public funds," or is a street declared by the Committee under Section 171 of the Act. 'Street' has been defined in Section 3(13)(a) of the Act which reads thus:—

" '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 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 person as a means of access to or from 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 or other erection, up to the boundary of any abutting property not accessible to the public."

A reading of both the definitions, 'public street' and 'street' makes it clear that every vacant space cannot be described as a 'street'. It must be a vacant space where houses, shops or other buildings abut thereon and if it is used by any person as a means of access to or from any public place or thoroughfare 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. If the

vacant plot satisfies that description, it can be considered as a 'street.' However, every street cannot be said to be a 'public street'. Before a street can be said to be a public street, it must have been levelled, paved, metalled, channelled, sewerred, or repaired out of municipal or other public funds or it must have been declared by the Committee or should have become, under the Act, a 'public street'. These conditions have to be satisfied before a vacant plot can be identified as a 'public street'.

(7) In the facts of the present case, the defendant-committee has completely failed to prove that any other building, shop or house abut on the plot in dispute. Moreover, it is also not the case of the defendant-committee that the plot has been levelled, paved, metalled or has been repaired out of municipal or public funds. Therefore, the contention of learned counsel for the defendant-committee that the plot in dispute being a street vested in the municipal-committee, cannot be accepted. No other point has been urged by learned counsel for the defendant-committee.

(8) As a result thereof, this appeal is dismissed but with no order as to costs.

P.C.G.

Before : A. L. Bahri & S. S. Grewal, JJ.

STATE OF PUNJAB,—Appellant.

versus

GULSHAN RAI,—Respondent.

Criminal Appeal No. 277-DBA of 1983.

9th May, 1991.

Prevention of Food Adulteration Act (37 of 1954)—Ss. 2(ia)(m), 7 & 16—Prevention of Food Adulteration Rules, 1955—Rls. A. 19 & 17.19—Complaint stating that the medium used in the preparation of laddoos i.e. palm oil was sub-standard as per report of Director, Central Food Laboratory—No standard prescribed for laddoos under the Act or Rules—Sample of medium used for preparation of laddoos not taken—in the absence of prescribed standard, accused cannot be convicted under the Act.