
(1924) 11 AHC CK 0029
In the Allahabad High Court

Banarsi Das

APPELLANT

Vs

Municipal Board of Amroha and Others

RESPONDENT

Date of Decision : 04-11-1924

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 321

Citation : AIR 1925 All 234 : 85 Ind. Cas. 761

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This is the plaintiff's appeal. His house abuts on a blind lane. He constructed a cornice projecting from the front wall of his house and over this lane. The Municipal Board gave a notice to the plaintiffs to remove the cornice. The plaintiff disputed their right to issue such notice and instituted the suit, out of which this appeal has arisen.

2. The Court of first instance decreed the suit, but a learned Subordinate Judge on appeal dismissed it. He held that maintenance of the suit was barred having regard to the provisions of Section 321 of the Municipalities Act, 1916. He also held that the Municipal Board were within their right in issuing the notice and that the lane in question was a public street within the meaning of Section 2, Clause 19 of the Municipalities Act.

3. In this Court it has been contended that the suit is not barred and that the finding of the Court below that the lane was a public street was not justified. There can be no doubt that the jurisdiction of the Municipal Board to issue a notice u/s 211 of the Municipalities Act would depend on whether or not the projection complained of overhangs a street. Where a projection does not overhang a street, but overhangs a private piece of property it may very well be urged that Municipal Board has no jurisdiction to pass an order and that if an order is passed without any jurisdiction that order may be called into question in

a Civil Court. The reason for this opinion is absolutely clear. The Municipalities Act was never meant to destroy private right that may exist in property. All that it seeks is to regulate the comfort and health of the public or portion of the public by restricting their rights to do as they please with respect to their own property. As an abstract question of law therefore I hold that the suit would be maintainable provided the lane over which the projection hangs be not a street or a public street within the meaning of Section 2 of the Municipalities Act.

4. Coming to the question as to the character of the lane the facts appear to be these. The lane is a blind one with houses on either side and at one end amounting in number to 14. 14 different people residing on either side of the lane have been impleaded in the suit by the appellant. It was stated in para. 2 of the plaint that the land covered by the lane belonged to the houses of the parties in the suit other than the Municipal Board. It seems from This admission of the plaintiff to follow that the lane is a street within the meaning of Clause 23 of Section 2 of the Municipalities Act. The word "street" in Clause 23 defined as "any road, bridge, footway, lane...which the public, or any portion of the public has a right to pass along, and includes, on either side....The 14 inhabitants on either side of the lane are "a portion of the public" and if they have a right of access to this place, viz., the lane, the lane becomes the street within the meaning of Clause 23. If the lane be a street it will attract the provisions of Section 211 of the Municipalities Act although it may be a public street. The learned Subordinate Judge has examined the evidence and has come to the conclusion that there is besides being a street, a public street within the meaning of Sub-clause (6) of Clause 19 of Section 2 of the Municipalities Act. He has found that as far back as 1904 the Municipal Board at its own expense constructed a drain on one side of the lane. He has further found that the lane was repaired about two years before the litigation arose, by the Municipality with public-funds. The finding is a finding of fact and is therefore binding on this Court. Whatever view may be taken there is no escape from the conclusion that the lane is a street and a public street and that, therefore, the Municipal Board had a right to regulate the construction of any building on either side of it.

5. If the Municipal Board were within their rights to pass an order u/s 211, the provisions of Section 321 will be attracted and the suit would not be maintainable.

6. The result is that the appeal fails and is hereby dismissed with costs which will include Counsel's fees in this Court on the higher scale.