

(1962) 03 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 830 of 1961

Dalip Singh

APPELLANT

Vs

Nagar Panchayat (Nagar Sabha) of Kakrala and Others

RESPONDENT

Date of Decision : 13-03-1962

Acts Referred:

Pepsu Panchayat Raj Act, 2008 — Section 23

Citation : (1962) 03 P&H CK 0005

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : B.R. Aggarwal, for the Appellant; Narinder Singh and S.P. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—On 3rd August, 1958 the Nagar Panchayat of Kakrala, district Patiala, passed a resolution and issued a notice u/s 23 of the Pepsu Panchayat Raj Act to Dalip Singh to open the public drain, through which the water of the entire village used to flow, and which he had obstructed by constructing a house thereon. This led to the present suit by him for a declaration that the said notice issued by the Nagar Panchayat requiring him to demolish his residential house was null and void and beyond the jurisdiction of the Panchayat. An injunction was also claimed restraining the Nagar Panchayat from demolishing this house. He alleged that the drain never passed over the land on which he had built his house. The water used to pass through the gate of the village and was passing through it even then.

2. The suit was resisted by the Nagar Panchayat, which pleaded that the plaintiff had built his house by encroaching a portion of the public property and had thereby closed the public drain. It was stated that the Panchayat had jurisdiction to get the encroachment removed under the Panchayat Raj Act and the notice issued by it was valid and legal.

3. On the pleadings of the parties, the following issues were, framed-

1. Whether the Panchayat had no jurisdiction to issue the notice in question and hence this notice is valid?

2. Whether the plaintiff is entitled to the injunction prayed for?

3. Whether this Court has no jurisdiction to try the suit?

4. Relief.

4. The trial Judge came to the conclusion that the plaintiff had obstructed the flow of water in the public drain by building a house thereon; that the water used to flow over the land now occupied by the plaintiff; that the disputed property would be included in the definition of the word "public drain" and the Nagar Panchayat was well within its rights to issue the impugned notice u/s 23 of the Pepsu Panchayat Raj Act; that the Court had jurisdiction to try the suit; and that the plaintiff was not entitled to the injunction prayed for. On these findings, the plaintiff's suit was dismissed.

5. Aggrieved by the decision of the trial Court, the plaintiff went in appeal to the Senior Subordinate Judge, Patiala, who dismissed the same after confirming the findings of the trial Court. Against this decision, the present appeal has been filed by the plaintiffs.

6. Learned counsel for the appellant submitted that no finding was given by any of the Courts below that the site in dispute over which the alleged public drain used to pass did not belong to the plaintiff. His client had built the house on a site, part of which was his ancestral property and the remaining part was purchased by him from one Waryam Singh and thus the Nagar Panchayat had no jurisdiction to ask him to demolish any portion of this house, which he had built on his own property.

7. After hearing the counsel for the parties, I find that there is no merit in this contention. It was the case of the plaintiff that the water of the village never flowed over the site on which he had built his house and the same used to flow through the village gate. After discussing the entire evidence produced in the case, both the Courts below came to a concurrent finding of fact that the water of the village used to flow over a part of the site, which was now included by the plaintiff in his residential house. They held that there was a drain, which passed through the site in dispute and the water of the village used to flow therein. Shri Kaur Singh, Block Development Officer, who had gone to the spot, got the place dug out and found that there was a drain, which the plaintiff had now included in his baithak. u/s 23 of the Pepsu Panchayat Raj Act, a Nagar Panchayat is entitled to require the owner or occupier of any building or land to remove any encroachment made by him on a public way, place or drain. "Public drain" has not been defined in the Act and so it will have its ordinary meaning. It was held in (Panniyamkandi) Kelu Kutti Vs. Calicut Municipal Council, , that the words "public drains" were not confined to those drains which were provided and

maintained by Municipal Council. They had to be understood in their ordinary sense; and they included a watercourse, which had been long in existence for draining away storm water. Therefore, the site in dispute was rightly held to be a "public drain" by the Courts below, because the water of the village had been passing through the same for a very long time. Once it is held to be a public drain, the Nagar Panchayat was within its jurisdiction to issue the impugned notice u/s 23 of the Pepsu Panchayat Raj Act.

8. In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.