
(1948) 02 AHC CK 0003
In the Allahabad High Court

Mt. Nawab Jan and Others	Vs	APPELLANT
The Notified Area Committee		RESPONDENT

Date of Decision : 17-02-1948

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 211

Citation : AIR 1948 All 273 : (1948) 18 AWR 339

Hon'ble Judges : Sapru, J

Bench : Division Bench

Judgement

Sapru, J.—The suit out of which this appeal arises was brought by one Mt. Mahtab Jan who died during the pendency of the appeal in the lower appellate Court and is now represented by her heirs and legal representatives, namely, Mt. Nawab Jan, Mt. Malka, Mt. Bindu and Mt. Sindu. The three latter are minors and are under the guardianship of Mt. Nawab Jan. The suit was for an injunction restraining the defendant, the Notified Area Committee, Auraiya, through its Chairman, from demolishing a chabutra which Mt. Mahtab Jan had constructed in front of her house and from interfering with her possession over the said constructions. This chabutra lies on a land, the original number of which was 860 but the present number of which is 400.

2. The plaintiff's case was that the land on which this chabutra was built was in the ownership of certain zamindars, that they had transferred it to her by a patta dated 28-7-1941, that the Notified Area Committee had no title to it and that consequently the notice given by that Committee u/s 211, U.P. Municipalities Act (2 [II] of 1916) was illegal and ultra vires. The defence to the suit was that the land on which this chabutra lies was a way, that is to say, a public street or a street and that for that reason the Notified Area Committee had a right u/s 211, UP Municipalities Act, to require the plaintiff to demolish the encroachment. It was also pleaded that Section 321, Municipalities Act, operated as a bar to the plaintiff's suit as the appeal which she had filed to the District Magistrate against the order of Notified Area Committee had been dismissed by him on 13th

November 1943.

3. The suit having been dismissed by both the Courts below, the plaintiff has now come up in appeal before this Court. The question in this, case is whether the order passed by the defendant, the Notified Area Committee, requiring the plaintiff to demolish the constructions which she had built in front of her house was an order which the Notified Area Committee was competent to pass u/s 211, Municipalities Act. The answer to this question depends on whether

(a) the land on which the chabutra lies is or is not a street in respect of which a valid order of removal could be served on the plaintiff u/s 211 by the Notified Area Committee, and

(b) if it be held to be a public street or a street the order of the District Magistrate in appeal serves as a bar to the present suit u/s 321, U.P. Municipalities Act.

The finding which the lower appellate Court has recorded on the question whether the land in dispute is a public street or a street is that it is, in any case, a street as defined in Section 2(23), U.P. Municipalities Act. The learned Civil Judge disagreed with the view of the learned Munsif that it was a public street but holds it to be, in any case, a street. A public street is defined by Section 2(19), Municipalities Act, which runs as follows:

"Public street" means a street-

(a) which is declared a public street by the board under the provision of Section 221, or

(b) which with the consent express or implied, of the owner of the land comprising the street, has been levelled, paved, metalled, channelled, sewered or repaired out of the municipal or other public funds.

The Notified Area Committee, Auraiya, has admittedly not declared it to be a public street under the provisions of Section 221. The finding of the lower appellate Court is that, even according to the case of the parties, the land has not been paved, metalled, channelled or sewered out of municipal or other public funds. As regards the contention of the defendant that it has been repaired out of the Notified Area Committee funds the view of the learned Civil Judge was that the culvert which connects the street with the Cawnpore Road and the wall which was constructed some five or six years ago to prevent the erosion of the land by water are not covered by the expression "repair of the street". For the purposes of the application of Section 211 it was not, however, necessary for the land to be a public street. It was enough if it could be held to be a street. Street is defined in Section 2 (23), U. P. Municipalities Act, in the following terms:

"Street" means any road, bridge, footway, lane, square, court, alley or passage which the public or any portion of the public has right to pass along and includes on either side, the drains or gutters and the land up to the defined boundary of

any abutting property, notwithstanding the projection over such land of any verandah or other superstructure." The view of the learned Civil Judge, as has been stated before, was that it was a street, if regard is had to the definition given in the Municipalities Act. Being a street, it was competent for the " Notified Area Committee u/s 21X to order Mt. Mahtab Jan to demolish the constructions which she had built. This view is supported by a case, reported in Banarsi Das Vs. Municipal Board of Amroha and Others, , which lays down that "the jurisdiction of the Municipal Board to issue a notice u/s 211, Municipalities Act, would depend on whether or not the projection complained of overhangs a street." The facts on the strength of which the lower appellate Court has come to the conclusion that the land on which the construction lies is a street may be stated shortly. In a place called Auraiya, there is a sarai of which Mt. Mahtab Jan is the owner. Plot No. 860, the present number of which is 400, is part of shamlat patti No. 28. It lies to the east of the sarai. To the west of the aforesaid land is a goshala. Between the sarai and the goshala there is some land and the width separating them is 34 feet. On the north side near the house of one Harlal Dhanuk the width of this land is only about 7 or 8 feet. The Cawnpore road runs to the south of the land and there is a culvert which is about 4 feet 9 inches wide connecting the land with the road. It appears that Mt. Mahtab Jan applied to the Notified Area Committee for permission to make certain constructions on this plot. This permission was granted to her on 30th July 1941. It further appears that the land to the east of the sarai was acquired by Mt. Mahtab Jan from the zamindar on 28th July 1941. The permission which the Notified Area Committee had granted on 30th July 1941 was revoked on 9th August 1941. It, however, appears that the constructions for which permission had been granted by the Notified Area Committee were built by Mt. Mahtab Jan without any delay so that the position was that on the date that she received notice of revocation the constructions were already in existence. On discovering that the constructions had already been built by her, the Notified Area Committee gave a notice to her u/s 211, Municipalities Act. By this notice she was required to demolish the constructions which she had built on the strength of the permission which had been granted to her by that Committee on 30-7-1941. On receipt of this notice Mt. Mahtab Jan made an appeal to the District Magistrate. This appeal was dismissed by him on 13-11-1943. After the order of the Notified Area Committee had been upheld by the District Magistrate, Mt. Mahtab Jan instituted a regular suit for an injunction restraining the Notified Area Committee from demolishing the constructions. This suit was dismissed by the trial Court and an appeal against that order was dismissed by the lower appellate Court. The present appeal, as I have said above, is directed against that judgment and decree of the lower appellate Court. I have recited these facts to show that the land in dispute admittedly, lies between buildings on either side. It is according to the finding of the lower appellate Court used as a passage by a large section of the public, of Auraiya. The learned Civil Judge has come to the conclusion that there can be no doubt that the land in suit has been used as a way to mohallas Phoolganj and Khirki Sahib Rai. The Cawnpore Road passage being a longer route, the shorter

route through the land on which the constructions lie is very much in demand. Its width is, according to the learned Civil Judge, immaterial. The lower appellate Court has also come to the finding that though there is no evidence of dedication by the zamindars to whom the land belonged, the fact that for very nearly 50 years the land had been used as a street by the public would vest the public of Auraiya with a right to pass over it. In view of the findings to which attention has been drawn above, the conclusion at which I have arrived is that the view of the learned Civil Judge that the land in suit is a street is correct. This being so, the Notified Area Committee had authority u/s 211, U.P. Municipalities Act to order the plaintiff to demolish the constructions.

4. It was urged that the notice given by the Notified Area Committee, came u/s 186 and not u/s 211, U.P. Municipalities Act. Section 186, U.P. Municipalities Act is reproduced below:

The board may at any time by written notice direct the owner or occupier of any land to stop the erection, re-erection or alteration of a building or part of a building or the construction or enlargement of "a well thereon in any case where the board considers that such erection, re-erection, alteration, construction or enlargement is an offence u/s 185 and may, in like manner, direct the alteration or demolition as it deems necessary of the building, part of a building, or the well, as the case may be." It will be seen that there is no question in this case of erection, no erection or alteration of a building or part of a building or the construction or enlargement of a well. Section 186 has, therefore, no application to the facts of this case. Inasmuch as the order of the Notified Area Committee was a valid one, the plaintiff can have no grievance against the Notified Area Committee in law.

5. There remains for me to consider the question whether, the civil Court was or was not competent to entertain Mt. Mahtab Jan's suit. The view of the learned District Magistrate to whom Mt. Mahtab Jan had appealed against the order of the Notified Area Committee was that the land formed a street and that for that reason the Notified Area Committee had a right to issue a notice u/s 211. At the same time, he appears to have been of the view that she was entitled to seek from the civil Court an adjudication on the point whether the land in suit was a street or not. The finding of the learned Civil Judge is that the conclusion of the learned District Magistrate declaring it to be a street is correct, and that for that reason the order of the District Magistrate is final and is not open to question in a civil Court. I agree with the view of the law that the learned Civil Judge has taken. For determining whether the land in suit is or is not a street, the question of the width of the passage is irrelevant. It is not for the civil Court to consider what width will be sufficient for the passage.

6. The result is that I dismiss this appeal. I refrain from making any order as to costs as, in my opinion, the conduct of the Notified Area Committee has not been above reproach. On 30.7-1941 it granted permission with open eyes. It revoked that permission on 9-8-1941. This permission was utilized by the plaintiff for

building a construction and she can justifiably say that she was put to loss by the inefficient handling of her petition by the Notified Area Committee. I, therefore, direct the parties to bear their own costs.