
(1990) 07 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 3132 of 1988

Shankar Ladia

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 2(71), 347, 353, 355

Citation : AIR 1991 Cal 125 : 95 CWN 352

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

1. It is the case of the writ petitioner who is a resident of 19/1, Camac Street, Calcutta that a notification was issued on 23rd April, 1988 by the Deputy Commissioner, Calcutta Municipal Corporation, whereby it was notified for the information of the Public that the Calcutta Municipal Corporation was pleased to grant fee car parking licence for realisation of car parking fees in respect of the footpath of Camac Street and carriage way of its two adjoining roads, viz. Victoria Terrace and Albert Road in favour of M/s. Fee Car Parking Employees Cooperative Society Ltd. of 3, Sreemanta Dey Lane, Calcutta 12 for a period of two years with effect from the date of notification in the newspapers after closing the portion of the abovementioned Streets/roads u/s 355 of the Calcutta Municipal Corporation Act, 1980. The petitioner has two fold objections to such notification. Firstly it has been contended that the footpath cannot be used as a car parking zone or area. Moreover rate of fees prescribed for the said car parking area is exorbitant, unreasonable and discriminatory in character. It has been submitted on behalf of the petitioner that even in the office areas near Dalhousie Square and Park Street the parking fee is Rs. 0.60. per hour for the 1st half an hour and Rs. 1/- for subsequent one hour and hours. The Camac Street, Victoria Terrace and Albert Road are comparatively less congested by traffic and has been charged with Rs. 2/- for the first 30 minutes or part thereof for the next 30 minutes or part thereof are Rs. 3/- and for every subsequent hour after the 1st hour or part thereof are Rs. 5/- respectively. Such fixation has been made

without any rational basis and is totally arbitrary in character.

2. There cannot be any doubt that footpath is "meant for pedestrians only" and if cars, vans and other vehicles are allowed to be parked in the said footpath the said footpath shall cease to be footpath and it will cause serious difficulties for the pedestrians to move on foot and to use the same as footpath. The dictionary meaning of "footpath" is a path or way for pedestrians only". In this connection relevant sections of the Calcutta Municipal Act, 1980 may be considered. Section 2(71) defines public street as follows:--

"Section 2(71): "Public Street" means any street, road, line, gully, alley, passage, pathway, square or courtyard, whether a thoroughfare or not, over which the public have a right of way and includes.

(a) the roadway over and public bridge or causeway;

(b) the footway attached to any such street, public bridge or causeway and;

(c) the drains attached to any such street, public bridge or causeway and where there is no drain attached to any such street, shall unless the contrary is shown, be deemed to include all lands up to the outer wall of the premises abutting on the street, or, where a street alignment has been fixed and the area within such alignment has been required by the Corporation and the alignment has been demarcated or is capable of being demarcated up to such alignment."

From the said section it appears that the public street includes also the footway attached to any such street, public bridge or causeway. Section 347 of the said Act provides for compulsory provision of footpaths in the Act as follows:--

"Section 347:-- Compulsory provision of footpaths (1) Notwithstanding their present availability the Corporation shall ensure within a reasonable time and subject to the availability of resources that all public streets under category I, category II and category III have raised footpaths adjoining the same.

2. Notwithstanding the existing situation the Mayor-in-Council shall specify different minimum widths for footpaths which are adjacent to the public streets under category I, category II and category III so as not to be less than 1.5 metres on each side in any case.

Provided that more than one minimum width may be specified for the footpath abutting each category of public street so as to provide for different requirements owing to different abutting land uses.

Provided further that while prescribing or revising any regular line of a public street, it shall be stipulated that the minimum width specifications for footpaths shall be complied with.

3. The minimum width referred to in subsection (2) may be revised by the Mayor-in-Council."

Under the said Section 347 it is the duty of the Calcutta Municipal Corporation to

ensure that footpaths have been raised in the adjoining street. The other relevant provision will appear in this connection from Section 353 of the Act which states as follows:--

"Section 353 permanent closure of public street, park square or garden and disposal of land;--

1) The Municipal Commissioner may with the previous sanction of the Mayor-in-Council and subject to the approval of the State Government permanently or temporarily close the whole or any part of a public street, park square or garden in the public interest or for the purpose of carrying out the provisions of this Act.

Provided that the Municipal Commissioner will give a public notice of such closure by insertion in at least three local newspapers and the notice shall specify the date on and from which the closure shall be effected.

2) For the purpose of carrying out any development work in any public street, park, square or garden or any part thereof such public street, park, square or garden or the part thereof or the sub-soil thereunder may be dealt with or settled or transferred, as the case may be, either temporarily or permanently by way of grant of lease or licence, as the case may be, and on such terms and conditions and for such period as the Municipal Commissioner may with the prior approval of the Mayor-in-Council and subject to the approval of the State Government, determine and for such development work the public street, park square or garden or any part thereof may be closed temporarily or permanently as the case may be, and in such case a public notice shall be given in the same manner as in sub-section (1) specifying the date from which the closure shall be effected;

Provided that the site of so much of the roadway or footpath as would not be required for refusing as a public road or public thoroughfare by reason of providing "better and alternative public road or public thoroughfare including footpath shall be dealt with or settled or transferred on lease or licence.

Explanation: For the purpose of this section "development work" shall include all works for development and improvement by way of proper and adequate or better utilisation either underground or on the surface or a public street, park square or garden."

3. It is clear from the proviso of the said section that so much of the roadway or footpath as would not be required for using as a public road or public thoroughfare by reason of providing better and alternative public road or public thoroughfare including footpath shall be dealt with or settled or transferred on lease at licence. It is not possible therefore to convert the entire footpath into a car parking zone which would in effect mean that the said street will be without any footpath at all and will be contrary to Section 347 of the Calcutta Municipal Corporation Act, 1980. Even though the Calcutta Municipal Corporation is the owner of the public street including footpath, its power is restricted and such

power has to be exercised under the provisions of the Calcutta Municipal Corporation Act for the purpose of discharge of certain obligations under the Act. In the case of *Girija Singh v. The Corporation of Calcutta* reported in (1972) 76 Cal WN 613, it has been held by Sabyasachi Mukharji, J. as His Lordship then was that the pathway attached to a road is a part of the public street. The Corporation has a right to close such public street being the owner of such public street but from the scheme of the Calcutta Municipal Act, it appears that the Corporation has been discharging the same as statutory function. It is not the owner of its properties in the absolute sense of the term, that is to say that it cannot deal with the properties as it thinks in any manner destructive of the purpose of the Act. The Corporation has a right of ownership only for the purpose of discharging its different functions in terms of the provisions of the Calcutta Municipal Act. Applying the principles so decided in the aforesaid case, in my opinion the Calcutta Municipal Corporation cannot be allowed to exercise its right in any manner or to discharge its functions relating to the property, namely that of the public street in any manner which will be inconsistent with the provisions of the statute and also cause hazards to the pedestrians. In the case of *Sree Shree Madhusudan Mills Ltd. Vs. Corporation of Calcutta and Others*, , the Division Bench of this Court while interpreting the relevant provisions of the Calcutta Municipal Act, 1951, held that although the Calcutta Corporation is the owner of public street, its ownership cannot be equated with the ownership of the private individual over his own property. The Corporation cannot do whatever it likes. It cannot infringe the rights conferred under the Act on the members of the public. In a public street the public have a right of way, a right of user as pedestrians or otherwise which they are entitled to exercise without obstruction but that does not mean that the Corporation, in the exercise of its right of ownership cannot grant licences for the putting up of hoardings for advertisement so long as the Corporation does not interfere with the public user of footpath or pavement. The Corporation, it was held must not use the public street in such a way as to be destructive of the purposes of the Act or being in derogation of the unobstructed right of the public to use the public street for passing and repassing. The impugned Act of the Calcutta Municipal Corporation in the instant case whereby it has converted the footpath into a fee car parking zone amounts to interference with the right of public to use the public street and of the footpath which has been converted under the provisions of the Calcutta Municipal Corporation Act, 1980. Under such circumstances the said impugned Act appears to be highly improper and violative of the provisions of the Act and the said notification has accordingly to be set aside. Accordingly the petitioner succeeds in the writ petition.

4. Under the circumstances there will be an order directing the respondents, their agents, servants and subordinates to ensure that the footpath of Camac Street, Calcutta is used for the convenience and safety of the pedestrians only to the exclusion of any scooter, motor cycles, cars mini buses and other means of transport. There will also be direction in the nature of prohibition commanding

the respondent, their agents, servants and subordinates from proceeding further or any further in accordance with the said notification dated 23rd April, 1988, issued by the Calcutta Municipal Corporation. Ad interim order of injunction passed in this matter also stands confirmed. This order will however, not prevent the Calcutta Municipal Corporation from taking necessary steps, in accordance with law, to use the footpath or road way as may be necessary for the purpose. The writ application is disposed of. There will be no order as to costs.

5. Order accordingly.