
(1979) 07 KAR CK 0033
In the Karnataka High Court
Case No : WP. 476/79

Sujay Advertising

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-07-1979

Acts Referred:

Bangalore Municipal Corporation Act, 1949 — Section 2(29)
Karnataka Municipal Corporation Act, 1976 — Section 2(31)

Citation : (1979) 2 KarLJ 357

Hon'ble Judges : Puttaswamy, J

Judgement

1. In this writ petition under Art. 226 of the Constitution, the petitioner has sought for a writ or direction to respondent Nos. 1 to 3 from offering any objection or obstruction in the erection of advertisement hoardings.

2. The petitioner is a registered advertising agency engaged in the business of outdoor advertisement. In accordance with the provisions made by the City of Bangalore Municipal Corporation Act of 1949 (Kar. Act No. 69 of 1949) (hereinafter referred to as "the 1949 Act"), the petitioner has obtained permission from the Corporation of City of Bangalore-respondent No. 4 for erecting illuminated concrete advertisement poles inter-alia on a stretch of land adjoining the Mahatma, Gandhi Road. By its communication dated 25-9-1978 (Ext. D), respondent No. 4 has permitted the petitioner to erect 5 concrete poles on the Mahatma Gandhi Road at the places mentioned in that communication. On the basis of the said communication, the petitioner sought to erect the advertisement poles, which was obstructed or prevented by respondent Nos. 1 to 3, for which reason it has moved this Court for appropriate reliefs.

3. The petitioner has asserted that the land in between the Parade Grounds and the Mahatma Gandhi Road, is a public footpath and respondent No. 4 as its own owner, has permitted the erection of concrete poles, which cannot be interfered by respondent Nos. 1 to 3. It has asserted that on the very disputed land, there are many advertisements erected by others and the action of respondent Nos. 1

to, 3 in preventing it from constructing the advertisement poles, is discriminatory.

4. In their return, respondent Nos. 1 to 3 while tracing the history of the land, have asserted that the land in dispute is their property and does not belong to respondent No. 4 and therefore respondent No. 4 and the petitioner have no right to erect any advertisement poles on the land. On this allegation, respondent Nos. 1 to 3 have contended that the matter cannot be adjudicated by this court under Art. 226 of the Constitution. In para 5 of their return, respondent Nos. 1 to 3 admit that the land is used as a public footpath. At the hearing of the case also Shri S.A. Hakeem, Senior Standing Central Government Counsel, in my opinion rightly, did not dispute that the land is used as a public foot path.

5. Not unnaturally, respondent No. 4 has not denied the allegations made by the petitioner and has not contested its case, though it has entered appearance through Shri A. Jagannatha Shetty.

6. Shri V. Tarakaram, learned counsel for the petitioner, contended that the land on which permission has been granted by the Corporation, is a public foot path which vests in it and therefore respondent Nos. 1 to 3 have no manner of right to interfere and prevent the construction of advertisement poles on the land.

7. Shri Hakeem, in justifying the action of respondent Nos. 1 to 3, urged that the land though used as a public foot path, is owned by the Union of India and the Corporation had no right to permit the construction of advertisement poles and interfere with the ownership rights. He also urged that the dispute between the parties as to the title of the land cannot be decided by this Court under Art. 226 of the Constitution and that should be left to be decided by a Civil Court. In the event of my accepting the latter contention of Shri Hakeem, the question of examining the merits of the contention urged by the petitioner, would not arise. I, therefore, propose to examine the same first.

8. The claim of the petitioner is based on the plea that the land is used as a public foot path road, which fact is not disputed by respondent Nos. 1 to 3. So long as respondent Nos. 1 to 3 admit that the land is used as a public foot path, the rival claims of the parties can be examined solely on that basis and the legal incidents flowing thereto under the common law as also under the statute law. The controversy in the case does not relate to a dispute as to the title of the land, but one of determining the legal incidents on the admitted facts. For these reasons, I hold that there is no merit in the contention of Shri Hakeem and I reject the same.

9. Before I examine the statutory provisions, it is useful to bear in mind the legal incidents of a public foot path or a public road, which is concluded by a ruling of the Supreme Court.

10. In the C.S.S. Motor Service, Tenkasi v. The State of Madras, AIR 1953 Mad. 279, Venkatarama Iyer, J. on a review of the American, English and Indian

authorities, speaking for the Bench stated the legal position of a public foot path road in these words:

"24. The true position then is that all public streets and roads vest in the State but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled, to, impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally."

In *Saghir Ahmad v. State of UP*, AIR 1954 SC. 728, the Supreme Court speaking through B.K. Mukherjea, J. as he then was while approving the above statement of law, observed thus:

"(9). It is not disputed that the Bulandshahr-Delhi route is a part of the Grand Trunk Road which is a public highway. According to English law, which has been applied all along in India, a highway has its origin, apart from statute, in dedication, either express or implied, by the owner of land of a right of passage over it to the public and the acceptance of that right by the public (*Vide Pratt & Mackenzie on law of Highway's*, 19th edn., page 13). In the large majority of cases this dedication is presumed from long and uninterrupted user of a way by the public, and the presumption in such cases is so strong as to dispense with all enquiry into the actual intention of the owner of the soil and it is not even material to enquire who the owner was (*Ibid* page 28). The fact that the members of the public have a right of passing and repassing over a highway does not mean however that all highways could be legitimately used as foot passages only and that any other user is possible only with the permission or sufferance of the State. It is from the nature of the user that the extent of the right of passage has to be inferred and the settled principle is that the right extends to all forms of traffic which have been usual and accustomed and also to all which are reasonably similar and incidental thereto. (*Ibid* page 35). The law has been stated in *Halsbury's laws of England* (*Vide* Vol. 16 page 185):

"Where a highway originates in an inferred dedication, it is a question of fact what kind of traffic it was so dedicated for, having regard to the character of the way and the nature of the user prior to the date at which they infer dedication; and a right of passage once acquired will extend to more modern forms of traffic reasonable similar to those for which the highway was originally dedicated, so long as they do not impose a substantially greater burden on the owner of the soil."

"But the right of the public to use Motor vehicles on the public road cannot, in any sense, be regarded as a right created by the Motor Vehicles Act. The right exists anterior to any legislation on this subject as an incident of public right over a highway. The, State only controls and regulates it for the purpose of ensuring safety, peace, health and good morals of the public. Once the position is

accepted that a member of the public is entitled to ply motor vehicles on the public road as an incident of his right of passage over a highway, the question is really immaterial whether he plies a vehicle for pleasure or pastime or for the purpose of trade and business. The nature of the right in respect of the highway is not in any way affected thereby and we cannot agree with the learned Advocate General that the user of a public road for purposes of trade is an extraordinary or special use of the high way which can be acquired only under special sanction from the State."

The legal position that is firmly established by the above ruling is that whoever might have been the owner of a public foot path before, once, a land is used as a public foot path, the rights of the previous owner if any thereon stand extinguished and the same vests in the State and every member of the public has a right to use the same subject to the rights of others and the law regulating traffic etc. On the application of the above legal principles, the Corporation being the local authority for the City of Bangalore and charged with the duty of maintaining the public foot paths, can permit the installation of advertisement poles and regulate their erection. With this background it is useful to examine the statutory provisions.

11. S. 3 (29) of the 1949 Act and the corresponding S. 2(31) of the Karnataka Municipal Corporation Act of 1976 (hereinafter referred to as "the 1976 Act") which has replaced the 1949 Act, the language of which is identical, defines a "Public street" in comprehensive terms as meaning any Street, road, square, court, alley, passage or riding-path over which the public have a right of way whether a throughfare or not. It also includes (a) a road way over any public bridge or causeway (b) the foot-way attached to any street, public bridge or causeway, and (c) the drains attached to any street, public bridge or causeway and the land whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private property or property belonging to the Government or the Corporation. According to the above, exhaustive definition, the public have a right to use a "public street" in the Corporation limits as of right. S. 212 of the 1949 Act and the corresponding S. 265 of the 1976 Act though in the latter Act, the word "not" does not appear by an obvious mistake, declares that all the public streets in the City not reserved under the control of the State Government including the pavements and other objects mentioned in those sections shall vest in the Corporation. Under the above provisions, the ownership of a public street and its appurtenances whenever might have been the owner at any time without reference to the process and the reasons by which it became a public street, is declared to vest in the Corporation and the Corporation as its owner is entitled to use the same and permit the construction of advertisement poles subject to the rights of the public and the provisions of the Act. The word "Government" in the 1949 Act and the 1976 Act has been defined as "the State Government". The word "under the control of the Government" occurring in S. 212 of the 1949 Act and S. 265 of the

1976 Act refers to the control of the State Government, and has no reference to the Union Government. In these circumstances, the claim of respondent Nos. 1 to 3 that they are the owners of the land and are entitled to prevent the Corporation and the petitioner from constructing the advertisement poles is misconceived and cannot be accepted and the petitioner is therefore entitled to succeed as under.

12. In the light of my above discussion, I hold, declare and direct:

(i) declare that the land abutting the parade grounds of the Mahatma Gandhi Road used as a public foot path vests in the Corporation of the City of Bangalore-respondent No. 4 and the same has the power to permit the construction of advertisement poles thereon to the petitioner and such others as it may decide, and (ii) direct respondent Nos. 1 to 3 not to interfere with the construction of the, advertisement poles on the land by the petitioner in accordance with the approval accorded to it by the Corporation of the City of Bangalore-respondent No. 4.

13. Rule issued is made absolute.

14. In the circumstances of the case, I direct the parties to bear their own costs.