
(2013) 08 P&H CK 0373

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2732 of 1995

Yadav Rai and Others

APPELLANT

Vs

Municipal Committee and Others

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Punjab Municipal Act, 1911 — Section 172, 173

Citation : (2013) 08 P&H CK 0373

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : C.B. Goel and Manoj Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for permanent injunction restraining the defendants not to recover Teh-Bazari (License Fee) from the plaintiffs u/s 173 of the Punjab Municipal Act, 1911 (for short "the Act") and a decree for mandatory injunction directing the defendants to assess Teh-Bazari in accordance with Section 172 of the Act was dismissed. The plaintiffs are the occupants of the municipal land over which they have constructed cemented platforms about 20 years before the filing of the suit. The assertion of the plaintiffs is that they have been paying fee u/s 172 of the Act, whereas now the Municipal Committee is demanding fee u/s 173 of the Act.

2. The defendants, inter alia, asserted that Section 172 of the Act provides for punishment for encroachment, whereas Section 173 of the Act provides for payment of fee on account of permission to occupy the public street etc., therefore, the fee is payable only in terms of Section 173 of the Act.

3. After considering the evidence on record, the learned trial Court returned a finding that the construction raised by the plaintiffs are movable and, therefore, fee is payable u/s 173 of the Act and consequently dismissed the suit. In appeal

against the said judgment and decree, the learned first Appellate Court returned a finding that encroachment in question is of movable character and the Municipal Committee is charging the requisite fee u/s 173 of the Act and that the assertion of the plaintiff that encroachment is of immovable character is not substantiated by the evidence.

4. In the present second appeal, the appellant has not raised any substantial question of law. However, for deciding the present appeal, relevant Sections i.e. 172 & 173 of the Act, as in existence on the date of filing of suit, are extracted hereunder:

172. Punishment for immovable encroachment or overhanging structure over street-

(1) Whoever without the written permission of the committee makes any immovable encroachment on or under any street, or on over or under any sewer, or watercourse, or erects or re-erects any immovable overhanging structure projecting into a street at any point above the said ground level, shall be punishable with imprisonment of either description which may extend to one month and shall also be liable to fine which may extend to one thousand rupees.

(2) The committee may, by notice require the owner or occupier of any building to remove or alter, within a specified time not exceeding six weeks, such immovable encroachment or overhanging structure as aforesaid, and no compensation shall be claimable in respect of such removal or alteration;

Provided that if a period of more than three years has elapsed from the completion of the encroachment or over hanging structure, no prosecution shall lie under sub-section (1)-nor shall such encroachment or overhanging structure be required to be removed or altered without payment of reasonable compensation.

173. Power to permit occupation of public street and to remove obstruction:-(1) The committee may grant permission in writing, on such conditions as it may deem fit for the safety or convenience of persons passing by, or dwelling or working in the neighbourhood, and may charge fees for such permission, and may at its discretion withdraw the permission, to any person to-

(a) place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer drain or water-course or any movable overhanging structure projecting into such public street at a point above the said ground level.

(b) take up or alter the pavement or other materials for the fences or posts of any public street, or

(c) deposit or cause to be deposited building materials, goods for sale, or other articles on any public street, or

(d) make any hole or excavation on, in or under any street, or remove materials

from beneath any street, so to cause risk of subsidence, or

(e) erect or set up any fence, post, stall or scaffolding in any public street.

(2) Whoever does any of the acts mentioned in sub-section (1) without the written permission of the committee shall be punishable with fine which may extend to five hundred rupees and the committee or the secretary of the committee or the Medical Officer of Health or any person authorised by the committee may-

(i) after reasonable opportunity has been given to the owner to remove his material and he has failed to do so, remove or cause to be removed by the police, or any other agency, any such movable encroachments or overhanging structures and any such materials, goods or articles, of merchandise and any such fence, post, stall, or scaffolding.

(ii) and take measures to restore the street to the condition it was in before any such alteration, excavation or damage.

(3) If the material specified in clause (i) of sub-section (2) has not been claimed by the owner within a fortnight of its having been deposited for safe custody by the committee or if the owner shall fail to pay to the committee the actual cost of removal or deposit in safe custody, the committee may have the material sold by auction at the risk of the owner, and the balance of the proceeds of such sale shall after deduction of the expenditure incurred by the committee be paid to the owner, or if the owner cannot be found, or refuses to accept payment the balance shall be kept in deposit by the committee until claimed at the risk of the person entitled thereto and if no claim is made within two years the committee may credit the amount to the municipal fund.

5. A reading of Section 172 of the Act shows that it provides for punishment for encroachment of immovable nature or overhanging structures over the street. It provides for prosecution and punishment for such encroachment or the removal of such encroachments. It did not deal with the fee payable for use of public land. On the other hand, Section 173 of the Act permits the Committee to grant permission and charging of fee for such permission to any person to place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer, drain or water-course. It is in the event of doing such acts without the permission of the Municipal Committee, the punishment is provided under sub-section (2) of Section 173 of the Act. In view thereof, Teh-Bazari is chargeable only in terms of Section 173 of the Act for use of municipal land by the plaintiff when the Committee grants permission to place any movable encroachment.

6. In view of the said fact, the claim of the appellant that the Municipal Committee can charge fee only in terms of Section 172 of the Act is not made out from the scheme of the Statute.

7. Consequently, I do not find that any substantial question of law arises for

consideration in the present appeal. Dismissed.