

February, 1957, and nine years of petitioner's service as Divisional Inspector were effaced. The petitioner had even crossed the efficiency bar as Divisional Inspector on 25th of September, 1964 with effect from 21st of February, 1964 (Annexure I).

After giving anxious consideration to the matters canvassed in this case, I feel satisfied that the petition should be allowed. The petitioner is entitled to the issuance of a writ of *mandamus*, quashing office order No. WL/28/C.C.F., dated Chandigarh, the 6th January, 1966 (Annexure K) and order dated 7th October, 1966, under signatures of Shri B. B. Vohra, Secretary to Government, Punjab, Agriculture and Forest Departments (Annexure N). I order accordingly. There will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Tej Chand, J.

RAM SINGH AND OTHERS,—*Petitioners*

- *versus*

CHIEF COMMISSIONER (CHIEF ADMINISTRATOR) UNION TERRITORY OF CHANDIGARH AND ANOTHER,—*Respondents*

Civil Writ No. 1400 of 1967

October 30, 1967

Motor Vehicles Act (IV of 1939)—S. 76—Establishment of parking places or stands for taxis—Persons using a place as Taxi-stand—Whether entitled to notice for showing cause against the place being allowed to use as a taxi-stand—Motor Vehicles Rules (1939)—Rules 7.12 (2), 7.13 and 7.22(1)—“Permit”—Meaning of—Whether a synonym of acquiescence—“Squatter”—Meaning of—Whether any right in law vests in him.

Held, that section 76 of the Motor Vehicles Act, 1939 enables or empowers the authority concerned to determine parking places. It is not a statutory obligation in the sense that the Legislature commands the authority to provide parking places and carries no penalty if this is not done. Rule 7.22 of the Motor Vehicles Rules provides for the cancellation of orders for the establishment of stands. A

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District Magistrate may at any time revoke any order permitting the establishment of any stand if in his opinion any of the conditions had been contravened, etc. The order of the District Magistrate removing the petitioners' tents or of notifying certain places in the town as taxi-stands and not including the present place as a taxi-stand is administrative and partakes of an executive character. The place of the present stand is a part of the public street and the petitioners are neither owners nor lessees nor even licencees. They were just squatters; and as such, they are not entitled to any notice or opportunity to show-cause against the place not being allowed to be used as taxi-stand.

Held, that the word "permit" is generally used in two senses. It may mean giving a passive consent or just not hindering. 'Permit' has been used in certain contexts as meaning "to resign", "to suffer", "to put up with" and "not to prohibit". The words "permitting" used in Rule 7.12(2), "permission" in Rule 7.13, and "permitting" in Rule 7.22(1) of the Motor Vehicles Rules cannot be understood in the above sense of mere failure to object or as a synonym of acquiescence. The word 'permit' is a word of considerable elasticity and can be used as indicative of mere passivity or abstaining from preventive action. But in the context of the above Rules, 'permit' should be understood to be indicative of a formal consent, grant of authorisation or to giving of express licence.

Held, that a "squatter" is a person who settles or locates on land enclosed or unenclosed, with no *bona fide* claim or colour of title and without the consent of the owner. Such a person is merely an intruder; and no matter how long he may continue there, no right in law vests in him.

Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondents by which the petitioners are being ejected from the Taxi-stand (outside Bus-stop, Sector 17) against the respondent and ordering the respondents to act according to law and also restraining the respondents from forcibly removing the petitioners from the Taxi-stand.

KULDIP SINGH, ADVOCATE, for the Petitioners.

GOPAL SINGH, ADVOCATE-GENERAL (Pb.), for the Respondents.

ORDER

TEK CHAND, J.—This is a petition under Articles 226/227 of the Constitution for the issuance of an appropriate writ on behalf of

thirty petitioners who are owners and drivers of the taxis in Chandigarh. In 1957, when the bus stop was shifted from Bajwara to Sector 17, they also used the area outside the gate of entry of the buses in the bus stand as a taxi stand. They claim that they had been using it for over ten years and that there are about 50 taxis stationed there. This area is along the public road. There were four telephones on the premises installed in tents. They stated that the use of the place as a taxi stand by them had never been objected to by the authorities. Without a notice having been issued to them, a number of Policemen raided the taxi stand on 17th July, 1967, and demolished the tents and disconnected the telephone wires and they were required to remove their booths within three days failing which they would be forcibly removed and their taxis impounded. There were no written orders shown to the petitioners.

The petitioners then said that on 21st of June, 1967, the Deputy Commissioner of the Union Territory (respondent No. 2) had determined a number of places for use as taxi stands in the town under the provisions of section 76 of the Motor Vehicles Act, 1939. Apart from determining the places, no amenities or facilities had yet been provided. It was maintained that the order for the ejection of the petitioners from the taxi stand in question was *ultra vires* and unconstitutional and infringed their fundamental right under Article 19(1)(g) of the Constitution, that such a conduct was also contrary to the interests of the general public and that no reasonable notice whatsoever was given to the petitioners to remove their stand. They had asked for the issuance of a writ in the nature of *certiorari* quashing the order of respondents by which the petitioners had been ejected from outside the taxi stand. They also asked for a writ in the nature of *mandamus* being issued requiring the respondents to act according to law and restraining the respondents from forcibly removing the petitioners from the taxi stand.

The return is in the form of an affidavit by the Deputy Commissioner, Chandigarh. It was deposed that the taxi stand in question was unauthorised. There were authorised taxi stands in the town besides one inside the bus stand in Sector 17. The place which the petitioners used as taxi stand was actually located on the public street and could not be converted into a taxi stand. It was maintained on behalf of respondent No. 2 that on 14th of April, 1966, a notice,—*vide* Annexure R/1 was issued to the persons who were operating from the unauthorised taxi stand in question under section

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173 of the Punjab Municipal Act, 1911. As they had not complied with, they were asked to vacate the encroachment on the public street. Persuasion being of no effect, the unauthorised taxi stand was got removed on 31st of March, 1967.

After this, the petitioners met respondent No. 1, the Chief Commissioner, who let them continue to function at their present place temporarily till suitable taxi stands were made. A committee consisting of six officers and four representatives of taxi owners was formed to review the sites for taxi stands in the town to make its recommendations. In the meantime, the taxi operators were permitted to carry on their business at the sites from which they were operating,—*vide* Annexure R/2, dated 1st April, 1967. It was then said that a number of places had been determined as taxi stands under section 76 of the Motor Vehicles Act, 1939, and a notification, dated 21st of June, 1967 (Annexure R/3) was issued.

The grant of any writ was opposed on several grounds among others that no fundamental right of the petitioners had been violated and they were not prevented from pursuing their profession as taxi operators. They were offered alternative authorised taxi stands from where they could function. The petitioners, it was finally said, had no legal right which could be said to have been violated.

It may be said at the outset that section 173 of the Punjab Municipal Act, 1911, upon which reliance was placed by the respondents, has no applicability. Apart from the fact that there is no Municipal Committee in Chandigarh, the other provisions of the section are not attracted. This section refers to power to permit occupation of a public street and to remove obstruction. A Municipal Committee has the power to grant permission on certain conditions and also the discretion to withdraw the permission in respect of placing of any movable encroachment upon the ground level of any public street or taking up or altering the pavement or other materials for the fences or posts of any public street, or depositing of building materials or goods for sale or of making excavations, in or under any street or erecting or setting up any fence, post, stall or scaffolding in any public street. Sub-section 2 provides that commission of any acts forbidden by sub-section 1 referred to, without the written permission of the committee, shall be punishable with fine but this has to be done after giving reasonable opportunity to the owner to remove his material and in case of failure to

remove, the material may be caused to be removed by the Police. The notices which were claimed to have been sent to four persons under section 173 of the Punjab Municipal Act are not of any avail or significance. The important question in this case is whether any statutory provisions contained in the Motor Vehicles Act or Motor Vehicles Rules have been contravened.

The learned counsel for the petitioners has drawn my attention to section 76 of the Motor Vehicles Act, 1930, and to the Punjab Motor Vehicles Rules.

Section 76 provides that the State Government or any authority so authorised may in consultation with local authority determine parking places at which motor vehicles may stand. This is an enabling provision authorising the determination of parking places. According to Punjab Motor Vehicles Rule 7.7, all District Magistrates subject to the control of the Regional Transport Authority are authorised to make orders appointing parking places under section 76.

Rule 7.12(2) provides that the District Magistrate may in consultation with the local authority "make an order in the prescribed form permitting any place to be used as a stand, and without such an order, no place shall be so used:"

Under Rule 7.13, in deciding whether to grant permission for the use of any place as a stand, the District Magistrate shall have regard to certain matters having a bearing on the interests of the public, the suitability of the site, the avoidance of annoyance to the neighbourhood, etc.

Rule 7.22 provides for the cancellation of orders for the establishment of stands. A District Magistrate may at any time revoke any order permitting the establishment of any stand if in his opinion any of the conditions had been contravened, etc. It was first urged on behalf of the petitioners that it was the statutory obligation of the authorities under section 76 of the Act read with the above-mentioned rules to provide the taxi owners with a stand. The language of the appropriate section and the Rules does not warrant such a conclusion.

Section 76 enables or empowers the authority concerned to determine parking places. It is not a statutory obligation in the

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sense that the Legislature commands the authority to provide parking places and carries no penalty if this is not done. This argument of the learned counsel has no bearing on the real question at issue. Moreover, in this case a notification under section 76 had been issued by the District Magistrate on 4th of June, 1967, determining a number of places as taxi stands, etc. The next contention was that before notification of stands under rule 7.12 could be issued, it was incumbent to issue a notice to the petitioners whose existing stand was not included in the notification. The District Magistrate under Rule 7.12(2) is authorised to make an order permitting any place to be used as a stand, and "without such an order, no place shall be so used". It is clear that no place can be used which is not included in the notification as a stand.

The next point which was urged was that Rule 7.22 had been violated by the District Magistrate in so far as no opportunity of being heard was accorded to the petitioners which he was required to do when revoking any order permitting the establishment of any stand. The argument which contains a fallacy, is, that the petitioners had been permitted to run the establishment of taxi stand and before its revocation, they were entitled to an opportunity of being heard. No "permission" was ever granted to the petitioners to use the places in question outside the entry gate of the bus stand to use it for parking their taxis. The word 'permit' is generally used in two senses. It may mean giving a passive consent or just, not hindering, 'Permit' has been used in certain contexts as meaning "to resign", "to suffer", "to put up with" and "not to prohibit". I do not think that the words "permitting" used in Rule 7.12(2), "permission" in Rule 7.13, and "permitting" in Rule 7.22(1) can be understood in the above sense of mere failure to object or as a synonym of acquiescence. The word 'permit' is a word of considerable elasticity and can be used as indicative of mere passivity or abstaining from preventive action. But I do not think that the word has been used in that sense here. In the context 'permit' should be understood to be indicative of a formal consent, grant or authorisation or to giving of express licence. Rule 7.7 refers to District Magistrates being authorised "to make orders appointing parking places for motor vehicles under section 76 of the Act." This obviously implies the making of a specific order and not just a passive acquiescence or mere inaction. Under Rule 7.12(2), the District Magistrate while notifying stands is required "to make the order in the prescribed form permitting any place to be used as a stand".

It is further emphasised that "without such an order, no place shall be so used". The mere use of the place by the petitioners as a taxi stand in the absence of an order in the prescribed form is expressly prohibited by the Rule.

Similarly Rule 7.13 specifically uses the words "to grant permission" for the use of any place as a stand. Thus, permission to the use of a place as a taxi stand wherever used refers to an express or conscious permission and not merely to acquiescence. The petitioners at no time had any permission to use the place as a taxi stand and in the absence of any notification, no place can be so used. No right to use the place in question as a taxi stand vests in the petitioners simply because during the last several years, they have used it as such without hinderance or objection. The provisions requiring the service of notice or giving of opportunity are not attracted in the circumstances of this case. Reliance has been placed by the learned counsel for the petitioners upon a Division Bench decision of Madras High Court in *Ebrahim Saheb v. The Regional Transport Authority* (1). By a resolution, the Transport Authority of Tanjore had declared a certain private bus stand as unsuitable and had fixed a new one without notice to the lessee of the land which had previously been used as a bus stand. The lessee felt aggrieved from the resolution of the Regional Transport Authority. It was felt that the resolution of the Regional Transport Authority was of a quasi-judicial body. Whatever the peculiar facts of that case be, the order of the District Magistrate removing the petitioners' tents or of notifying certain places in the town as taxi stands and not including the present place as a taxi stand is administrative and partakes of an executive character. The place of the present stand is a part of the public street and the petitioners are neither owners nor lessees nor even licensees. They were just squatters, and as such, they are not entitled to any notice or opportunity to show cause against the place not being allowed to be used as taxi stand.

A "squatter" is a person who settles or locates on land enclosed or unenclosed, with no *bona fide* claim or colour of title and without the consent of the owner. Such a person is merely an intruder; and no matter how long he may continue there, no right in law vests in him. The position of the petitioners is no different.

In my view, the petition is devoid of merit and deserve to be dismissed. There will, however, be no order as to costs.

K. S. K.

(1) A.I.R. 1951 Mad. 419.