

## APPELLATE CIVIL

Before Kapur, J.

MUNICIPAL COMMITTEE, DELHI—*Defendant-Appellant**versus*TILAK RAJ,—*Plaintiff*

AND

DELHI IMPROVEMENT TRUST,—*Defendant-Respondents*

Regular Second Appeal No. 4-D of 1952

*Punjab Municipal Act (III of 1911) Section 173—Permission to erect stalls on Municipal land on payment of monthly rental under section 173 granted—Position of stall holders whether of lessees or licencees.*

1954

April 12th

*Held*, that permission having been given under section 173(1) of the Municipal Act the plaintiffs can be nothing more than mere licencees which licencees can be withdrawn by the Municipal Committee. Subsection (2) of section 173 should be read in such a way that it does not lead to absurdity and the Municipal Committee was not precluded from taking action against the allottees of the land.

*Regular Second Appeal from the decree of Shri Tek Chand Vij, Senior Subordinate Judge with Special Appellate powers, Delhi, dated the 31st day of October 1951, reversing that of Shri Chandar Gupat Suri, Subordinate Judge, 1st Class, Delhi, dated the 11th May 1951, and granting the plaintiffs decrees for an injunction to restrain the Committee from taking possession of the stall or demolishing the same except under the lawful order of a civil Court.*

BISHAN NARAIN, for Appellant.

SUDARSHAN KAUL, for Respondent.

## JUDGMENT

KAPUR, J. This judgment will dispose of three appeals—Regular Second Appeals Nos. 4-D, 5-D and 10-D of 1952, which have been brought by the Municipal Committee of Delhi, defendant

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in the three suits, which were dismissed by the trial Court, but the decrees were reversed by the Senior Subordinate Judge and thus the suits of the plaintiffs for perpetual injunction against the Municipal Committee were decreed.

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In all the three suits the Municipal Committee served notices under section 173 of the Punjab Municipal Act, on the three respective plaintiffs calling upon them to remove the wooden stalls which had been erected and stating therein that the Committee had revoked the permission which had been given. The plaintiffs had brought suits for injunction on the grounds that the Committee had given on lease the areas in dispute and had allowed the predecessors of the plaintiffs construction of stalls and that the rent was being paid as *teh bazari* every month. They also alleged that section 173 was inapplicable because the stalls were old ones and the plaintiffs themselves had not erected the stalls, but they were sub-tenants of the persons who had taken the land on lease. The defendant-Committee pleaded that it had only transferred rights of occupation to the stallholders and this right was not transferable, that the plaintiffs could not sue and that the temporary permission granted to the original allottees had been rightly cancelled. Six issues arose out of the pleadings of the parties and the trial Court held that the plaintiffs had purchased the right of occupation of the stalls and that the *teh bazari* dues were being paid by the allottees, that the rights were not transferable and that the notices issued were legal because (i) under section 173(2) the defendant-Municipal Committee is entitled to remove all encroachments, (ii) the plaintiffs are not sub-tenants and no notice was necessary as there was no privity of contract between the plaintiffs and the Municipal Committee, and (iii) the fact that the stalls are old ones does not affect the legality of notices.

On appeal the Senior Subordinate Judge held that the plaintiffs were lessees and not licencees

of the Municipal Committee, that section 173(2) was not applicable and, therefore, section 111(h) of the Transfer of Property Act, was applicable and as that had not been complied with the notices were invalid.

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In a case *The Administrator Municipal Committee v. Milap Chand* (1), I had an occasion to examine the effect of section 173 of the Municipal Act and I there held that if the Municipal Committee had given permission to construct stalls on land belonging to the Municipality on payment of money to be paid every month the Committee had also the power to withdraw that permission and that the action of the Municipal Committee was not illegal. I also held that subsection (2) of section 173 should be read in such a way that it does not lead to absurdity and the Municipal Committee was not precluded from taking action against the allottees of the land. It is not necessary for me to repeat what I said in that judgment and in my opinion, it is an erroneous view of the legal position to place the plaintiffs on the pedestal of lessees. The permission having been given under section 173 (1) of the Municipal Act, the plaintiffs can be nothing more than mere licencees which licences can be withdrawn by the Municipal Committee and, therefore, the notices which were given by the Municipal Committee are, in my opinion, within the power given to the Committee under section 173(1) and (2) of the Municipal Act and the learned Senior Subordinate Judge has taken an erroneous view on this point. I would, therefore, allow these appeals, set aside the decrees of the Senior Subordinate Judge and restore those of the trial Court. I leave the parties to bear their own costs throughout.