

## APPELLATE CIVIL.

*Before Dalip Singh and Agha Haidar JJ.*

RALLA RAM-DINA NATH (PLAINTIFFS)

Appellants

*versus*

SMALL TOWN COMMITTEE, CHUHARKANA  
AND ANOTHER (DEFENDANTS) Respondents.

Civil Appeal No. 988 of 1931

*Punjab Small Towns Act, II of 1922, sections 35, 41 (1) (e): Small Towns Committee—whether has power to lease a portion of a public street.*

*Held*, that the mere vesting of a public street in a corporate body does not necessarily give that body either ownership of the soil under the public street or a power to grant leases thereof.

*Held*, further, that a Small Town Committee is not empowered to grant a lease of any portion of a public street.

*Municipal Committee, Multan v. Tehlia Ram (1), distinguished.*

*Second Appeal from the decree of K. B. Sheikh Din Mohammad, District Judge, Lyallpur, dated 14th April, 1931, reversing that of Sardar Kirpal Singh, Subordinate Judge, 3rd Class, Sheikhpura, dated 26th January, 1931, and dismissing the plaintiffs' suit.*

NAWAL KISHORE, for Appellants.

DIN DAYAL KAPUR, for Respondent No. 1.

DALIP SINGH J. DALIP SINGH J.—The only question arising for decision in this appeal is whether a Small Town Committee has power to lease a portion of a public street. As pointed out in my order of the 16th October, 1931, the decision turns on the proper interpretation of the words in section 41 (1) (e) of the Small Towns Act.

Before proceeding to discuss these words it is necessary to clear certain preliminary points. It is mentioned in my order of the 16th October that the District Judge of Gujranwala had held that a Small Town Committee had no right to lease a portion of a public street and the appeal from that decision was dismissed on a preliminary hearing by a Division Bench of this Court. On a reference to the record of that case I find that the learned District Judge accepted the reasoning of the trial Court which was based solely on the decision in *Municipal Committee, Multan v. Tehlia Ram* (1). It is not possible to say what arguments, if any, were advanced by the learned counsel who appeared in the second appeal as the order of the Court is simply "dismissed." *Municipal Committee, Multan v. Tehlia Ram* (1), is a decision by a Single Judge of this Court holding that a Municipal Committee has no power to lease a portion of a street. The Municipal Act is no doubt *in pari materia* and if the words in the two Acts were the same or similar, the decision would no doubt be very helpful. But as the words in the Small Towns Act, section 41 (1) (e), have no corresponding or similar words in the Municipal Act, the decision either of the Division Bench or of the Single Judge does not throw much light on the case. One thing, however, appears to me to be clear that the mere vesting of a public street in a corporate body would not necessarily give the corporate body either ownership of the soil under the public street or necessarily give it a power to grant leases thereof. The actual words in section 41 (1) (e) are, however, difficult to construe. It is therein stated that a Committee may charge fees for a temporary or permanent occupation of any portion of a public street.

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On the one hand, as rightly pointed out by the learned District Judge, the word "fee" does not convey the same meaning as the word "penalty" or "fine." It suggests something charged by agreement or by operation of law. On the other hand the words "temporary or permanent occupation" are not by any means the same as the word "lease," and it is difficult to see why the Legislature could not have stated that the Committee might charge rent for the temporary or permanent lease of any portion of a public street, if they meant to convey such a power to the Small Town Committee.

In this connection it may be observed that in section 35, where a list is given of the powers of a Small Town Committee, there is no mention of any power of lease. In the corresponding section 169 of the Municipal Act there is a power given to lease but only on certain conditions, which admittedly are not fulfilled in the present case. Looking generally at the scheme of the Act it does not appear that the Legislature wished to confer more extensive powers on a Small Town Committee than on a Municipal Committee. Reading the section itself I notice that except for (e) and (f) all the other clauses refer to licences. It seems to me, therefore, that the sub-clause (e) was also meant to refer to fees charged for licences and that the real object of the section was to give the Small Town Committee power to charge fees from persons who were allowed to temporarily or permanently occupy any portion of a public street. The word "permanent" no doubt raises considerable difficulty but, it seems to me, the idea was that if in the course of a building a person had encroached to a small extent on a public street, the Committee was given a discretion instead of ordering its demolition, to recover a

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permanent charge from such a person. But from this it does not follow that the Legislature intended to give any power of giving leases of a public street to the Small Town Committee. No doubt it may be argued and with force that the objection is purely technical and the Small Town Committee may allow a person to occupy a portion of a public street and then, instead of removing him or removing the structure raised by him, agree to receive fees, but as pointed out by my learned brother at the time of hearing (to which the learned counsel for the Committee could give no answer) the positions of a licensee and of a lessee are by no means the same. For example a licensee cannot alienate his right while a lessee ordinarily can. I very much doubt if the Legislature contemplated a traffic in leases of portions of a public street.

The matter is by no means free from difficulty, but on the whole I would hold that the Small Town Committee is not empowered to grant a lease of any portion of a public street. In view of the difficulty of the point and the circumstances pointed out in the order above, I would leave the parties to bear their own costs throughout.

AGHA HAIDAR J.—I agree that the Small Town Committee could not grant the lease. But the position that the Committee may charge fees for the temporary or permanent occupation of any portion of a public street under section 41 (1), clause (e) remains unaffected.

P. S.

*Appeal dismissed.*