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PYARE LAL ETC.

v.

NEW DELHI MUNICIPAL COMMITTEE & ANR.

April 20, 1967

B [K. N. WANCHOO, C.J., V. BHARGAVA AND G. K. MITTER, JJ.]

Punjab Municipal Act 1911 (3 *of* 1911), *ss.* 173, 188—*Power to regulate sale of edibles on public streets—Street vendors whether have fundamental right to carry on their trade—Food Adulteration Act,* 1954 *and Rules made thereunder—Their effect on powers under s.* 173 *of Municipal Act.*

C The petitioners were vendors of potato chops and other edibles which they sold on public streets. The New Delhi Municipal Committee issued them licences for some time and later on tried to give them alternative sites for carrying on their trade. Finally however on 30th April 1965 it passed a resolution banning the sale of cooked edibles on public streets. The vendors filed a petition for writ in the High Court which failed. With special leave they appealed to this Court.

D It was urged on behalf of the appellants that: (i) in the absence of bye-laws framed under s. 188 of the Punjab Municipal Act the Municipal Committee had no power under s. 173 of the Act to prohibit their trade; (ii) After the passing of the Prevention of Food Adulteration Act, 1954 the powers under s. 173 could not be used to regulate the sale of food from the purity aspect; (iii) the power of the Municipality under s. 173 was only to regulate the trade but it could not be used to contravene the fundamental right of the petitioners to carry on their business.

E HELD: (i) The powers of the Municipality under s. 173 to allow encroachments on public streets and to permit sale of food or stalls to be set up was meant for special occasions like festivals, etc. Section 188 was not designed for the purpose of framing bye-laws to regulate the conditions on which persons like the petitioners could be allowed to carry on trade on public streets and thus create permanent unhygienic conditions. This should never have been permitted by the municipality.
F [753 H]

(ii) The object of the Food Adulteration Act was that food which the public would buy was prepared packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it. The rules made thereunder would override rules or bye-laws made by a municipality only if they covered the same field. Under s. 173(1) of the Punjab Municipal Act, however, it was open to the
G Municipal Committee to take steps to prevent sale of any cooked food however pure if the sale thereof on public streets would offer obstruction to passers-by or create insanitary conditions. [755 D-F]

(iii) Out of sympathy for the street hawkers and squatters the N.D.M.C. had permitted the continuance of the trade for a long time. But no objection could be taken to their exercise of power under s. 173 of the Punjab Municipal Act to eradicate the evil. The power was confined merely to preventing obstruction to traffic. Every person has a
H right to pass and repass along a public street. But he cannot be heard to say that he has a fundamental right to carry on street trading and particularly in a manner which is bound to create insanitary and unhygiene conditions in the neighbourhood. [758 A-B]

Roberts v. *Hopwood*, [1925] A.C. 578, *Pyx Granite Co.* v. *Ministry of Housing*, [1958] 1 All E.R. 625, *C. S. S. Motor Service* v. *Madras State*, A.I.R. 1953 Mad. 279 and *Westminister Corporation* v. *London and North Western Railway* [1905] A.C. 426, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 486-492 of 1967.

Appeals by special leave from the orders dated August 4, 1966 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeals Nos. 84-D, 70-D, 72-D, 73-D, 71-D, 55-D and 79-D of 1966 respectively. B

Madan Bhatia and D. Goburdhun, for the appellants (in all the appeals). C

Bishan Narain and *Sardar Bahadur*, for respondent No. 1 (in C. As. Nos. 486-488 of 1967) and the respondent (in C.A. No. 489 of 1967).

Sardar Bahadur, for respondent No. 1 (in C. As. Nos. 490-492 of 1967). D

R. N. Sachthey, for respondent No. 2 (in C. As. Nos. 486-488 and 490 to 492 of 1967).

The Judgment of the Court was delivered by

Mitter, J. These are seven appeals, by special leave, from a a judgment and order of the Punjab High Court in a Letters Patent Appeal from a judgment and order of a single Judge dated April 7, 1966. E

The facts in all these appeals bear a close resemblance and these cases were dealt with by a common judgment of the High Court. The facts in Appeal No. 486 of 1967 *i.e.* Pyare Lal's case, as laid in his petition, may be stated by way of specimen. By his petition dated October 12, 1965 Pyare Lal moved the Punjab High Court for the issue of a writ or direction restraining the New Delhi Municipal Committee from interfering with his right to carry on his trade at the site referred to in paragraph 1 of his petition, or, at any rate, without allotting an alternative site to him. He was a seller of potato chops and squatted at a site beside the service lane at the back of a shop off Janpath, New Delhi. There were other squatters who occupied sites in the same service lane. Although in the petition it was claimed that the site was not part of a public street, this was not pressed before the High Court and we will proceed on the basis that as a matter of fact, he was squatting on a public street. He claimed to have been carrying on his trade at the same site from before 1950 He became a member of an association of squatters within the area of New Delhi Municipal Committee known as the New Delhi Rehri Owners Association formed for the purpose of pressing F G H

A the demands of its members for grant of licences and other facilities by the said Municipal Committee. Reference is made in the petition to assurances said to have been given by the President and Vice-President of the Municipal Committee to the association in 1956 for giving the members of the association certain protection on conditions. It is said that the Vice-President of the Municipal Committee gave an assurance that if the squatters formed themselves into a co-operative society for preparation of edibles and built trolleys of specified designs and agreed to carry on their trade at places allotted, licences would be issued to them. In response to this, a co-operative society was formed and the Health Officer of the Municipal Committee informed the association of the sites which had been approved by the Municipal Committee for the purpose. Before the licences could be issued, the office bearers of the Municipal Committee were changed and the new incumbents sought to go back upon the assurances given by their predecessors. After a long spell of contest and uncertainty the then President of the Municipal Committee made a press announcement in May 1963 that all squatters and stall-holders within the area of the New Delhi Municipal Committee who had been squatting or holding stalls since 1957 would be granted licences for the same. This was followed by a survey of all squatters and a list of them including the petitioner was prepared. On December 20, 1963, the New Delhi Municipal Committee passed a resolution for the grant of licences to these squatters. The relevant portion of the same is as follows :—

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> "1. Temporary tehbazari permits would be issued to verified squatters/hawkers.
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> 2. The hawkers/squatters would be required to sit at the site as might be specifically allotted by the committee and during such hours as might be prescribed.
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> 3. The tehbazari fee would be charged from such squatters at the rates given in the scheme prepared by the SVP (senior Vice-President) dated 22-7-1962.
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> 4. The squatters should be required to pay three months' tehbazari fee in advance before the issue of the temporary tehbazari permit.
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> 5. . . . . .
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> 6. The conditions of the tehbazari permit as mentioned above were approved subject to the condition :
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> (a) Condition No. 7 be deleted.
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> (b) The word 'licencee' shall be substituted by "hawkers/squatters".

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(c) The last condition would be as suggested by the L.A. in his note dated 20-12-1963. A

7. The selection and allotment of sites would be done by a sub-committee consisting of P.M.C., S.V.P. and J.V.P."

The petitioner was granted a licence to run his potato chops trade at a monthly fee of Rs. 25 and he was allotted a specific site mentioned earlier. Sometime in July 1964 the respondent-Committee sought to impose a condition to the effect that all hawkers/squatters should remove their stalls every day after sunset and re-establish them after sunrise. Various stall-holders challenged the aforesaid condition as unreasonable by way of writ petitions and civil suits. Thereupon, the Committee stopped accepting licence fee from these squatters/hawkers. Ultimately most of them withdrew their cases pending in court on assurance being given that they would not be disturbed in their trade. Thereafter, the New Delhi Municipal Committee called upon the squatters/hawkers to submit declarations that they had paid the tehbazari fee up to 30-6-1965 and that they had been allotted alternative accommodation by the respondent in lieu of the sites previously occupied. In return the Committee assured them that it would accept tehbazari fee from them and allow the occupation by them of the former sites held by them until allotment of alternative accommodation. It is stated that the petitioner submitted the desired declaration and the New Delhi Municipal Committee accepted the sum of Rs. 225 as licence fee up to 30-6-1965. In the matter of allotment of alternative sites however, the respondent practised discrimination and did not allot any site to the petitioner although it granted such facility to others. Further, the employees of the N.D.M.C. from time to time threatened the petitioner with removal of all his articles etc. with which he carried on his trade from the site occupied by him. The petitioner submitted that the N.D.M.C. was preventing him from carrying on his trade as a seller of potato chops unreasonably and in gross abuse of its power. It was submitted further that it was not open to the respondent to act arbitrarily and interfere with the petitioner's trade until the resolution granting the licence was annulled by a subsequent resolution. It was also submitted that the N.D.M.C. had no power under s. 173 of the Punjab Municipal Act to withdraw permission for encroachment on a public street unless reasonable prior notice was given. The grounds formulated in the petition were *inter alia* as follows :— B C D E F G

1. The N.D.M.C. has no power to take away the fundamental right of the petitioner to carry on his trade. It could only regulate the common law right of the petitioner to sell his wares on a public street under s. 173 H

A of the Punjab Municipal Act only so far as it was necessary in the interest of the safety or convenience of the public.

2. That no resolution having been passed annulling the grant of licence to the petitioner, the action of the N.D.M.C. was illegal and without jurisdiction.

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3. The action of the N.D.M.C. in preventing the petitioner from carrying on his trade without allotting an alternative site was discriminatory and unconstitutional.

C In the counter affidavit by the Secretary to the New Delhi Municipal Committee (hereinafter referred to as the N.D.M.C.) it was stated that the petitioner had no fundamental right of the kind mentioned in the petition and his right, if any, to carry on his business was subject to such reasonable restrictions as the N.D.M.C. might think fit to impose under the provisions of the Punjab Municipal Act. The restrictions actually imposed upon D the squatters/hawkers were reasonable and within the ambit of the powers of the N.D.M.C. The petitioner had been granted a temporary tehbazari permit under the temporary tehbazari permit scheme and according to condition No. 2 of the permit the N.D.M.C. reserved to itself the right to cancel the same without assigning any reason whatsoever. The permit did not confer any E right in property to the petitioner and his right to carry on business had been banned to his knowledge by resolution No. 36 dated 30th April, 1965 passed by the N.D.M.C. The petitioner was carrying on the business in violation of the resolution of the committee. On the merits of the case, it was stated that the N.D.M.C. had considered a scheme prepared by the senior Vice President regarding re-organisation of procedure about the issue F of licences to hawkers, squatters, etc. and by a resolution of 29th June 1962 it was resolved that in future a sub-committee would go into the matter of determining the persons or category of persons who would be given licences. After prolonged discussions and consideration, the resolution was passed on 20th December 1963. By this the terms and conditions of a permit to be granted G to hawkers/squatters were decided upon : a *pro-forma* of a temporary permit was also settled and on the reverse thereof the conditions regarding the grant of permit were incorporated. Due to violation of the provisions of the Punjab Municipal Act by the squatters and because of certain practical difficulties, the committee resolved on 13th March 1964 that temporary permits would H be issued to verified hawkers for the day-time only and that the sites occupied must be left clear during the night. A sub-committee consisting of several municipal officers went round to various places in New Delhi to inspect the sites already selected

for allotment to hawkers/squatters. They were unable to select any further new sites and made a report to the President of the Committee. As many as 264 squatters out of 725 were allotted the sites approved. The progress of the allotment of approved sites was not appreciable as many of the squatters did not find the new sites to their choice. The Committee by its resolution dated 17th July 1964 decided that temporary tehbazari permit fees should be deposited by the verified squatters who had not been allotted sites till then on condition that "site to be fixed" was to be mentioned in the permits of such squatters. 483 squatters deposited requisite charges upto the period ending 30th September 1964. It was noticed however that the squatters were not complying with the conditions of the temporary tehbazari permit scheme. In order to enforce these conditions, day and light raids were conducted and tarpaulin sheds of various squatters were removed as also goods of those who stayed on the sites at night. Ultimately, by reason of non-compliance of the conditions of the temporary permit scheme by hawkers, the scheme itself was suspended with effect from 1-9-1964. The sale of cooked articles of food gave rise to such insanitary conditions that a resolution was passed by the committee on the 30th April 1965 banning the sale of cooked food including, tea, kulcha, choley, dahi bara, etc.

It was submitted in the counter affidavit that the petitioner as a holder of a temporary tehbazari permit had no right or interest in the land belonging to the N.D.M.C. and that his right was subject to permission by the N.D.M.C. to carry on his trade. The petitioner had submitted a declaration to the effect that he had ceased to squat in the N.D.M.C area. He never made an application for allotment of a platform at Ramakrishnapuram (a facility granted to many) but applied for change of trade from potato chops dealer to that of a general merchant. He was informed on 2nd December 1964 about the cancellation of the temporary tehbazari permit granted under s. 173 of the Punjab Municipal Act. He had never been granted any licence. He along with the other squatters were carrying on a business which tended to create slums on some of the important roads in New Delhi and as such the temporary tehbazari permit scheme had to be suspended and permission for sale of cooked food was withdrawn.

The contentions of the petitioner were turned down by the learned single Judge and his appeal in common with that of a number of appeals of other squatters and hawkers to the Division Bench met with the same fate. The first contention pressed before us in this appeal was that it was not open to the Municipal Committee to stop the petitioner and others from carrying on their trade by a resolution under s. 173 of the Punjab Municipal Act. The relevant portion of the section runs as follows :—

A "(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—

B (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 watercourse or any movable overhanging structure projecting into such public street at a point above the said ground level.

C (b) . . . . . .

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

(d) . . . . . .

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

. . . . . ."

It was argued that s. 173 only made general provisions but it was open to the N.D.M.C. to frame bye-laws under s. 188 and in the E absence of such bye-laws a resolution under s. 173(1) could not be passed so as to affect the petitioner's rights. S. 188 provides that a committee may, and shall if so required by the State Government frame bye-laws. The nature of the bye-laws is specified in cls. (a) to (v) of s. 188 and cl. (u) reads :

F "regulate the conditions on which and the periods for which permission may be given under sub-section (1) of section 172 and sub-section (1) of section 173, and provide for the levy of fees and rents for such permission;"

It was urged that so long as bye-laws are not framed under the above clause, the conditions on which and the periods for which G permission could be given under s. 173(1) could not be altered. In our opinion the bye-laws under s. 188(u) had to be made for an altogether different purpose. Ss. 172 and 173 are generally aimed at preventing any encroachments over public streets which cause obstruction thereon. The expression "goods for sale" in cl. (c) of s. 173(1) or "stall" in cl. (e) of s. 173(1) have to be H read in that connection. The placing of goods for sale or erecting stalls in public street may be allowed by the municipality on stated occasions as in the case of some festivals etc. Again it may be necessary to seek the permission of the municipality to make

holes or excavation on any street or remove materials from beneath any street or to take up or alter the payment or deposit building materials thereon for the purpose of erecting a new building or making an alteration to an existing one and the power to regulate the conditions for grant of permission and the fees to be paid in connection therewith by bye-laws under s. 188 has that object in view. S. 188 was not designed for the purpose of framing bye-laws to regulate the conditions on which persons like the petitioner could be allowed to carry on trade on public streets and thus create permanent unhygienic conditions thereon. This should never have been permitted by the municipality and the fact that it has by resolution under s. 173 purported to stop that practice cannot go against it.

A B C

It was then urged that s. 173 in so far as it purported to give the municipality power to prevent the sale of cooked food was repealed by the provisions of the Prevention of Food Adulteration Act, 1954 and the Rules framed thereunder. Our attention was drawn to ss. 23, 24 and 25 of the Prevention of Food Adulteration Act. S. 23(1) of this Act gives the Central Government power to make rules subject to certain conditions. Under sub-cl. (a) such rules may specify articles of food or classes of food for the import of which a licence is required prescribe the form and conditions of such licence, the authority empowered to issue the same and the fees payable thereunder. Under cl. (c) such rules may lay down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of articles of food which the Central Government may, by notification in the Official Gazette, specify in this behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such article or class of articles. Under cl. (g) such rules may also define the conditions of sale or conditions for licence of sale of any article of food in the interest of public health. S. 24(1) empowers the State Government, subject to certain conditions, to make rules for the purpose of giving effect to the provisions of this Act in matters not falling within the purview of s. 23. S. 25(1) provides that :

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> "If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed."

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Rules have been framed under this Act known as Prevention of Food Adulteration Rules, 1955. R. 50(1) of the rules provides that no person shall manufacture, sell, stock, distribute or exhibit

A for sale any of the articles of food specified therein except under a licence. Such articles include "sweetmeats and savourly". Our attention was also drawn to sub-rr. (5), (10) and (11) of r. 50. Under sub-r (5) the licensing authority must inspect the premises and satisfy itself that it is free from sanitary defects before granting a licence for the manufacture, storage or exhibition of any B of the articles of food in respect of which a licence is required. Under sub-r. (10) no person can manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated from any privy, urinal, sullage, drain or place of storage of foul and waste matter to the satisfaction of the licensing authority, and under sub-r. (11) all vessels used for the storage or manufacture of the articles intended for sale must C have proper covers to avoid contamination. It was argued on the strength of the above that these rules covered the field of sale of cooked food at stalls on public streets and therefore the provisions of s. 173(1) of the Punjab Municipal Act which might otherwise have empowered the municipality to proceed thereunder stood repealed on the promulgation of these rules. This argument is D fallacious. The object of s. 23(1) and the different sub-rules under r. 50 was entirely different from that behind s. 173(1) of the Punjab Municipal Act. The object of the Food Adulteration Act, as its preamble shows, was to make provision for the prevention of adulteration of food and adulteration in this connection had a special significance under s. 2 of the Act. The object of E this Act was to ensure that food which the public could buy was *inter alia* prepared, packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it. The rules framed thereunder would only over-ride rules or bye-laws, if any, made by any municipality if they covered the same field. Under s. 173(1) of the Punjab Municipal Act it is open to a municipal committee to take steps to prevent sale of any cook-F ed food however pure if the sale thereof on public streets would offer obstruction to passers-by or create insanitary conditions because waste matter was bound to be thrown on the street and washing up of articles used in the trade introduce unhygienic conditions in the neighbourhood and create nuisance. We cannot accept the contention that s. 173(1) had only the object of ensur-G ing the free passage of persons and traffic along the public street and so long as there was no such obstruction powers under s. 173 could not be utilised for any oblique purpose like preventing persons from carrying on a lawful trade.

It was further argued that s. 56(1)(g) of the Punjab Muni-H cipal Act showed that "all public streets, not being land owned by Government and the pavements, stones and other materials thereof and also trees growing on, and erections, materials, implements and things provided for such streets" vested in and were under the

control of the committee. According to the learned counsel this only empowered the committee to regulate trade on public streets and not altogether prevent the same.

Our attention was drawn to Halsbury's Laws of England, Vol. 33 (Third Edition), article 998 at page 586 headed "regulation of street trading". The learned author thus summarised the law in England :—

> "Subject to certain exceptions it is unlawful for any person to engage in street trading in or from a stationary position in any street within a metropolitan borough, or to engage in street trading in any designated street whether or not in or from a stationary position, unless he is authorised to do so by a street trading licence.....
>
> Nothing in the foregoing provisions (1) restricts the right of any person to carry on the business of a pedlar or hawker in accordance with a pedlar's certificate or hawker's licence which he holds; or (2) applies to the sale or exposure or offer for sale of newspapers or periodicals by any person who does not use in connection with the sale, etc., any receptacle which occupies a stationary position in a street, other than a receptacle which is exclusively used in connection with the sale etc., . . ."

It would appear that street trading is regulated by certain statutes in England and we have nothing of the kind here. On the basis of the above passage, it cannot be said that persons in India have a lawful right to pursue street trading and such trading may be regulated but not altogether prevented. On the authortiy of *Roberts* v. *Hopwood*(1) it was argued by learned counsel that s. 173 at best gave a discretion to the Committee to regulate street trading and therefore the same has to be exercised reasonably and could not altogether be prevented. Reference was also made to *Pyx Granite Co.* v. *Ministry of Housing*(2) where it was held that the planning authority under the Town and Country Planning Act, 1947, was not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest. In our view, none of these decisions have any bearing on the question before us. There was no ulterior object behind the resolution of the N.D.M.C. in this case. Clearly the presence of the stall-holders on public streets and sale of cooked food was against public hygiene and s. 173(1) could be availed of to stop the same. Learned counsel also cited the case of *C. S. S. Motor Service* v. *Madras State*(3). There it was argued that the

(1) [1925] A.C. 578. (2) [1958] 1 All E. R. 625.
(3) A.I.R. 1953 Madras 279.

A petitioners had a right to carry on motor transport business and that this was a right guaranteed under Art. 19(1)(g) of the Constitution. It was held that the regulation of motor traffic must be determined with the object of serving the interests of the public. Further it was held that a system of licensing which had for its object the regulation of trade was not repugnant to Art. 19(1) B (g). We do not think that the observations in that case are of any assistance to the appellants before us.

As a branch of the above argument it was also contended that the resolution under s. 173 on which the municipal committee relied in this case gave uncontrolled power to the committee to do what they pleased.

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It was argued that under the guise of regulation the committee sought to take away the right of the petitioner and others to carry on their trade at their sweet will. Reliance was placed in this connection on a judgment of the House of Lords in *Westminster Corporation* v. *London and North Western Railway*(1). There it was observed that a public body invested with statutory powers D must take care not to exceed or abuse them and that it must act in good faith and reasonably. We do not think that these observations help the appellants because it has not been shown to us that there was any bad faith which prompted the N.D.M.C. to pass the resolution complained of, nor did they act unreasonably.

E It was argued however that the counter affidavit of the respondent as regards the allocation of alternative sites was not correct and comment had been made thereon by the learned single Judge of the High Court. However that may be, it is apparent from the judgment that not all the squatters applied for alternative accommodation and not all of them approved of the F sites which were allotted to them. It was beyond the jurisdiction of the N.D.M.C. to provide persons like the appellants with sites at Ramakrishnapuram. That was under the jurisdiction of the Director of Estates and it appears that this authority had been approached for helping persons like the appellants. Further, no question of discrimination can arise because all the hawkers squatters did not apply for such sites or could not be provided G with such sites. The resolution of 30th April 1965 clearly showed that the N.D.M.C. was out to stop the sale of cooked food including tea, kulche choley etc., inasmuch as the sale of cooked food presented an exceptionally difficult problem because facilities like running water, sewer connection etc. necessary for the minimum standard of sanitation could not be made available.

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It appears to us that this series of litigation was the result of the N.D.M.C. allowing trade of a kind on public streets which it

(1) [1905] A. C. 426.

should have never allowed. Out of sympathy for them the N.D.M.C. had permitted the continuance of the trade for a long time. But no exception can be taken to their exercise of power under s. 173 of the Punjab Municipal Act to eradicate the evil. After all every person has a right to pass and re-pass along a public street. He cannot be heard to say that he has a fundamental right to carry on street trading and particularly in a manner which is bound to create insanitary and unhygienic conditions in the neighbourhood.

The appeals therefore fail, and are dismissed.

G.C. *Appeals dismissed.*