1948

I. R. Stringham, et al. v. Salt Lake City : Petition for Rehearing

Utah Supreme Court

Richards and Bird; Attorneys for Appellants;

IN THE

Supreme Court

OF THE

State of Utah

I. R. STRINGHAM, et al.,
Appellants,

-vs-

SALT LAKE CITY, a Municipal Corporation
Respondent.

PETITION FOR REHEARING

Case No. 7162

RICHARDS and BIRD
Attorneys for Appellants

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The appellants respectfully petition for a rehearing in this cause based upon the following errors in the decision of the court dated January 17, 1949.

1. The court erred in stating and holding that Section 15-8-26, U.C.A., 1943, gives authority for regula-

tion of signs such as those involved in this proceeding, Section 15-8-23 being the section under which signs must be regulated.

2. The Court erred in holding that no aspect of unreasonableness or abritrary or capricious action appears from the pleadings herein, which specifically allege that there are no grounds or reasons for classifying the signs of the appellants on a reasonable or logical basis or on a factual basis.

3. Nowhere does the opinion of this court give any reason or indicate any basis for an alleged classification made by Salt Lake City which can be upheld by this Court.

ARGUMENT

I. THE COURT ERRED IN STATING AND HOLDING THAT SECTION 15-8-26, U.C.A., 1943, GIVES AUTHORITY FOR REGULATION OF SIGNS SUCH AS THOSE INVOLVED IN THIS PROCEEDING, SECTION 15-8-23 BEING THE SECTION UNDER WHICH SIGNS MUST BE REGULATED.

Under point 3 of its opinion the court refers to the statutory authority for regulating use of the streets and makes this statement:

> "It is under these Code sections that the City seeks to control the use of the streets and pass such an ordinance as Section 5720. There are, by the Code several classes of structures: Those covered by Sec. 15-8-26, include signs and signposts such as are involved here, as distinguished from overhead signs covered by Sec.

> 15-8-23, and incidentally by Sec. 5731 of the City Ordinances. The classification is one selected by the legislature."

Section 15-8-23 specifically relates to signs and signposts. In face of this specific statement of legislative policy, it is beyond the authority of Salt Lake City to regulate signs under another section of the statute which deals with obstructions.

Statutory language should be given its ordinary meaning if that is plain or reasonable. Nothing in the statutes suggests that signs can be obstructions rather than signs and therefore be regulated under Section 15-8-23 rather than 15-8-26. Section 26 provides as to cities:

> "Signs and Advertising Matter. They may regulate or prevent the use of streets, sidewalks, public buildings and grounds for signs, signposts, awnings, horse troughs or racks, or for posting handbills or advertisements."

Nothing in this language restricts this section to overhanging signs or to signs above the streets or otherwise. This is the section under which the signs of appellants should be either regulated or prevented upon a classification which is reasonable.

Section 15-8-23 plainly does not authorize the city to regulate these signs in the face of Section 26 which deals specifically with that subject matter. In fact,

Section 23 does not cover the problem at hand. The section reads as follows:

> "Cleaning Property, Streets and Sidewalks. They may regulate and control the use of sidewalks and all structures thereunder or thereover; and they may require the owner or occupant, or the agent of any owner or occupant, of property to remove all weeds and noxious vegetation from such property, and in front thereof to the curb line of the street, and to keep the sidewalks in front of such property free from litter, snow, ice and obstructions."

The first clause relates to use of sidewalks and structures thereunder or thereover. The signs of the appellants are in the parking area and not in the sidewalk area. The next clause deals with the area from the front of an owner's property to the curb line of the street, which covers the area where appellants' signs are located, but this authority is restricted to removal of "all weeds and noxious vegetation" which these signs plainly are not. The last clause again relates to sidewalks only and permits the city to regulate them so as to keep them "free from litter, snow, ice and obstructions." To classify the signs of appellants as obstructions to the sidewalks and torture the ordinance to come under Section 15-8-23 is simply to ignore the plain provisions of Section 15-8-26.

Another rule of statutory interpretation requires that sections of related laws each be given full force and

effect where that is possible. La Page v. United States, (CCA-8 1945) 146 F. 2d 536, 156 A.L.R. 965; Western Realty Co. v. City of Reno, et al., (Nev. 1946) 172 P. 2d 158, 161; Fuhr v. Oklahoma City, et al., 194 Okla. 482, 153 P.2d 115, 117-118; 50 Am. Jur. 371-372.

This position is given importance through a consideration of the ordinances of Salt Lake City. Section 5720 originally classified as structures all of the signs involved in this proceeding although they were located in the parking, and such signs were not prohibited but were regulated. Without any change in the facts (for such are the allegations of the complaint), the city attempted to amend the ordinance and classify signs as obstructions and prohibit them. If these signs were regulated under Section 15-8-23 along with other signs, in, on, over, or about the streets of Salt Lake City there would have to be a basis for classification. Appellants ask no more. We allege arbitrary and discriminatory action by Salt Lake City which is not denied but is in effect admitted by the demurrer. Appellants are entitled to a trial in this case so that the court can hear what reason or lack of reason Salt Lake City will advance for its allegedly arbitrary action in this matter, and if the reason given can be accepted by reasonable persons as a basis for classification or distinction, then the action of the city should stand. Appellants respectfully urge that neither Salt Lake City nor this Court has pointed out a basis for the so-called classification made by the city. And, what is more to the point, appellants believe no

legally sufficient basis can be advanced if the Court will recognize that this involves a regulation of signs and not the removal of obstructions.

II. THE COURT ERRED IN HOLDING THAT NO ASPECT OF UNREASONABLENESS OR ARBITRARY OR CAPRICIOUS ACTION APPEARS FROM THE PLEADINGS HEREIN, WHICH SPECIFICALLY ALLEGE THAT THERE ARE NO GROUNDS OR REASONS FOR CLASSIFYING THE SIGNS OF THE APPELLANTS ON A REASONABLE OR LOGICAL BASIS OR ON A FACTUAL BASIS.

Under point 3 the Court says:

> "We again call attention to the fact that the order in the case before us was to remove all signs from city parking, therefore no aspect of unreasonableness appears from any arbitrary or capricious action directed against some and not all owners of similar signs. The element of unreasonableness, if any, here involved is that claimed by the appellants by virtue of their allegations in their complaint that certain facts which might authorize and justify the removal of their class of signs do not exist."

Appellants allege in their complaint that no logical basis for classification exists and that none of the legitimate objectives of city government will be furthered by the action in question. The complaint also alleges in paragraph 11 (a) a number of uses, structures, and obstructions which are not prohibited by the ordinances of Salt Lake City, including overhanging signs in the congested portion of Salt Lake City which are not at-

tached to any buildings. Such signs are not distinguishable from the signs of the appellants on any logical basis. And in paragraph 19 the complaint alleges that Salt Lake City is acting arbitrarily and capriciously by compelling the removal of the signs of the appellants and not the removal of other signs which cannot be distinguished from the signs of the appellants on any reasonable basis.

III. NOWHERE DOES THE OPINION OF THIS COURT GIVE ANY REASON OR INDICATE ANY BASIS FOR AN ALLEGED CLASSIFICATION MADE BY SALT LAKE CITY WHICH CAN BE UPHELD BY THIS COURT.

If it is not necessary for Salt Lake City to support its action in this case by a reasonable classification or by action based upon reason, then appellants respectfully submit that this Court should say so and let the matter end there. The opinion of the Court discusses unreasonableness and classification and action in the best interests of Salt Lake City without once stating what the reason is, how the classification can be supported, or what interest of Salt Lake City can conceivably be furthered by the action of the respondent. The Court expresses the opinion that Salt Lake City will not act arbitrarily and also suggests that the city should draw the line in the almost innumerable uses that are being made of the public streets in Salt Lake City. A reading of the opinion impells the conclusion that arbitrary, capricious, and discriminatory action is not to be permitted by this Honorable Court. If

Salt Lake City can act arbitrarily with reference to signs, then appellants submit that the complaint in this case alleges such arbitary action.

The following cases cited in our original brief hold that cities cannot act arbitrarily and capriciously in the matter of regulating streets. Pickrell v. Carlisle, 135 Ky. 128, 131, 121 S. W. 1029; French v. Cooper, (1945) 133 N.J.L. 246, 34 Atl. 2d 880; Laura Vincent Co. v. City of Selma, 43 Cal. App. 473, 11 P. 2d 17; Breinig v. County of Allegheny, 332 Pa. 474, 482, 483, 2 Atl. 2d 842, 848, 849; People ex rel. Schimpff v. Norvell, 368 Ill. 325, 13 N.E. 2d 960, 961; 37 Am. Jur. 778.

CONCLUSION

Appellants respectfully submit that if the court will re-examine its opinion critically it will conclude that the opinion written is not satisfactory. The opinion places the regulatory power of Salt Lake City under the wrong statute and erroneously gets into a regulation on obstructions rather than a regulation on signs. Of course, obstructions can be removed and the complaint alleges plainly that the signs are not obstructions. If the Court will further consider whether Salt Lake City must act reasonably in the premises, this Court will find that no such basis for classification or discriminatory action appears in the Court's opinion and such basis is denied in the allegations of the complaint. The Court should grant a rehearing and upon

rehearing should reverse the judgment of the district court and require Salt Lake City to answer the allegations of discrimination and arbitrary and capricious action so that this Court can ultimately determine whether Salt Lake City has been acting and is threatening now to act arbitrarily, capriciously and in a discriminatory manner in the matters which affect appellants.

RICHARDS and BIRD

Attorneys for Appellants