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**(1989) 04 CAL CK 0063**  
**In the Calcutta High Court**  
**Case No : C.O. No. 13111 (W) of 1988**

Abdul Rashid

APPELLANT

Vs

Calcutta Municipal Corporation and others

RESPONDENT

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**Date of Decision :** 03-04-1989

**Acts Referred:**

Calcutta Municipal Act, 1980 — Section 200(3), 218, 219, 517  
Calcutta Municipal Corporation Act, 1980 — Section 199, 200, 435, 436, 437  
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1  
Constitution of India, 1950 — Article 226  
Criminal Procedure Code, 1973 (CrPC) — Section 144(2)

**Citation :** AIR 1990 Cal 37 : (1990) 1 CALLT 127 : 93 CWN 799

**Hon'ble Judges :** K.M. Yusuf, J

**Bench :** Single Bench

**Advocate :** Altamas Kabir and S. Munshi, Jugal Porel, for the Appellant; Mukul Prokash Banerjee, Saktinath Mukherjee and M. Nizamuddin, for the Respondent

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## Judgement

1. The petitioner has moved this writ application for a direction upon the Calcutta Municipal Corporation to grant or renew the petitioner's trade licence for the year 1988-89 in respect of the Motor Car Repairing business at premises No. 1A, Gokul Boral Street. Calcutta-12, and also a direction upon the respondents 1 to 7 restraining them demolishing the petitioner's bamboo and tarpaulin shed at the said premises. The petitioner's case is that one Biswanath Dey Sarkar since deceased, the father of respondents 8 and 10 and the husband of respondent 9, was the owner of the aforesaid premises and the said Biswanath inducted the petitioner as monthly tenant in respect of two rooms, a covered shed made of bamboos with tarpaulin covering measuring 22" x 11" in Sept., 1971 and this portion was situated to the west of the main entrance of the said premises with an open space measuring about 40" x 70" and the aforesaid area was covered by the petitioner's tenancy at a rental of Rs. 248/- per month inclusive of electric charges. The premises was let out to the petitioner for starting a Motor Car Repairing Workshop. It is the further case of the petitioner that the landlord never issued any rent receipt to him, but he was regular in payment of rent since

induction as tenant first to Biswanath since deceased and thereafter to respondents 8, 9 and 10 who also did not grant any rent receipt. In spite of the fact that no rent receipts were granted, the petitioner had no difficulty in getting the trade licence right from 1974 up to March, 1988. But in Feb., 1988 the respondents Nos.8 to 10 refused to accept rent and the petitioner started depositing the same with the Rent Controller. The further case of the petitioner is that as the petitioner has been executing work orders for various reputed concerns, the refusal of the acceptance of rent by respondents 8 to 10 created difficulties for him. During petitioner's absence these respondents erased the name of the petitioner's firm (Rashid Motor Works) printed on the wall and also asked him to remove the covered shed. The petitioner had no way out but to rush to the Criminal Court and to take protection u/s. 144(2) of the Code of Criminal Procedure. The petitioner also filed a suit for declaration of his tenancy right in the premises with the prayer of temporary injunction in the City Civil Court being Title Suit No; 1088 of 1988 and the learned Judge, 7th Bench, directed the parties to maintain status quo. It is the further case of the petitioner that the Corporation u/s. 199 of the Calcutta Municipal Corporation Act, 1980 is to issue a professional, trade or calling licence as mentioned in Schedule IV of the Act on payment of tax as prescribed and there is no provision that the production of rent receipt is necessary. The petitioner contends that the Corporation authorities are not entitled to withhold the grant of trade licence on the ground that the petitioner is not able to produce any rent receipt and by this illegal and arbitrary act causing damage and destroying the source of livelihood of the petitioner under the influence of the respondents 8, 9 and 10 who are bent to forcibly evict the petitioner from the said premises.

2. The respondents 8 and 9 by an Affidavit-in-Opposition denied the allegations of the petitioner. According to the deponent, the respondent 8. Banibrata Dey Sarkar, his father the late Biswanath Dey Sarkar was the owner of the premises in question and used to live with family. The said Biswanath had a private car of his own and a taxi and the taxi is still there and the private car is kept in the said premises. In 1980 this respondent covered the open area with shed of shal post for the accommodation of the car and for the purpose of repairing the car and for this purpose the services of the petitioner were required who was a motor mechanic. The shal post of the covered shed had worn out and shed might collapse any day. Biswanath Dey Sarkar died in 1984 and on his death the respondent No. 8 became the owner of the property, his mother got life-estate and his sister, respondent 10, got no right or title in the said property. The respondent 8 became the owner of the taxi and the car. The petitioner used to repair the cars including the taxi of the respondent 8 and occasionally of the close relations of this respondent but it was surprising to him that sometime in Feb., 1988 on the front wall of the said premises the words "Rashid Motor Works" were printed for which this respondent strongly objected to. In April, 1988 he received a summons u/s. 144(2) of the Cr. P.C. against himself, his mother and wife alleging that the petitioner is running motor repairing garage at the said

premises since 1971 as a tenant and the private respondents are causing disturbances in running the said business of the petitioner and forcibly removed the sign board and threatened to take possession of the premises in occupation of the petitioner by force. It was also alleged in the criminal proceeding that the petitioner has got trade licence from the Municipal authority. On the basis of this disclosure the respondent 8 came to know about trade licence for the first time and immediately enquired from the Calcutta Municipal Corporation as to how the trade licence was issued in the name of Rashid Motor Works as the premises is a residential premises and also requested the Municipal authority not to issue any fresh trade licence to the petitioner. Thereafter in June, 1988 the petitioner instituted the Title Suit No. 1088 of 1988 before the learned 10th Judge, City Civil Court, Calcutta, for declaration that the petitioner is a monthly tenant and for permanent injunction restraining the private respondents from causing any disturbance in running his motor car repairing business in the area specified in the writ application. The petitioner thereafter obtained an interim order of status quo on 4th July, 1988. After institution of this suit the petitioner moved the Hon'ble High Court for a direction upon the Municipal authority to renew the trade licence and restraining the private respondents from demolishing the bamboo shed. Another application u/s. 144(2) of Cr. P.C. was also moved whereon the Ld. Magistrate directed the police to maintain peace and to take necessary measure against the said order of the Ld. Magistrate. The respondents moved the Hon'ble High Court against the Magistrate's order and obtained an ex parte interim order directing the private respondents herein to keep open the main gate of the premises between 7 a.m. to 9 p.m. This was not enough and the petitioner filed a criminal case against the respondents Nos. 8, 9 and 10 before the Judicial Magistrate, 1st Court, Sealdah, in Oct., 1988 being Case No. 186 of 1988 under various Ss. of the I.P.C. alleging that the accused (the private respondents herein) physically assaulted him on 11th Oct., 1988 at about 9 a.m. at 15/1, Noor Ali Lane within P. S. Beniapukur with fists and blows and damaged domestic articles on the refusal of the writ petitioner to withdraw the case moved u/s. 144(2) of the Cr.P.C.

3. It appears that the Calcutta Municipal Authorities have taken action against the writ petitioner and initiated legal proceedings. The case of the private respondents is that no motor repairing business can be carried out in the residential premises without taking a licence u/ s. 435 read with Schedule V, Part I Item 22(1), of the Calcutta Municipal Corporation Act and merely taking a trade licence u/s. 199 of the Calcutta Municipal Corporation Act, 1980 the petitioner is not absolved from taking a licence u/s. 435 of the Act. Further, such business can be carried on in a premises which is meant exclusively for non-residential purpose.

4. In the Affidavit-in-Reply the petitioner has reiterated what he has said in the Writ petition and further enforced his contention that his motor car repairing workshop is in existence since 1971 and a large portion of the premises is used as a warehouse for storing tractor parts and pans of other machineries of

massive proportions. It is further contended that as the premises in question is not exclusively used for residential purpose, the provisions of S. 435 of the Calcutta Municipal Corporation Act, 1980 has no application to the petitioner's motorcar repairing workshop as no objection was raised for the last 17 years to the existence of the workshop.

5. When the matter was heard at some length on 14th Feb., 1989 this Court appointed Mr. Durgadas Roy, a learned Advocate of this Court, as Special Officer to visit the premises at 1A, Gokul Boral Street at once and to see whether any business of motor car repairing is being carried on in the said premises, and whether any car is lying there for such repair other than the one; which belongs to the landlord. The Court also directed that the two rooms identified by the petitioner was also to be inspected by the Special Officer as to whether instruments and materials for repairs are lying in those rooms. The Special Officer was directed to submit report at 2 p.m. on the same day. The Special Officer inspected the said premises at 1.30 p.m. on 14th Feb., 1989 and his short report is reproduced below:--

"At the time of my said inspection Ld. Mr S. Munsri Advocate for the petitioner, and Mr. Banibrata Dey Sarkar, respondent 8 were present.

I found a thatched shed resting on six wooden polls just contiguous to the left of the iron gate of the entrance. I found one body of a Ford Car being No. DSD 3100 without engine and wheels just under the shed which belongs to one of the tenants of the respondents 8 and 9.

I found another old Fiat Car being No, WBG 6456 which belongs to the respondent 8.

Both the said two cars are in stand still condition. Another one Fiat Car No. DLV 1545 I found. It seems to be not in a bad condition.

I found no signs of stains on the floor of the shed which is usually could be found on the floor of the Regular Garage.

I found another two rooms approximately measuring more or less 8" x 6". In the rooms I found wooden rack. On the floor and in the rack I found some tools and parts of engine."

The petitioner by an affidavit raised objection to the report submitted by the Special Officer. The main objection is that the report does not give correct position. The petitioner was actually carrying on repairing of the Fiat Car No. DLV 1545 and the Ford Car No. DSD 3100 does not belong to any tenant but to one Shri Shah of Bhawanipur and was with the petitioner for repairs.

6. Mr. Kabir, the learned Advocate appearing for the petitioner, submitted that S. 199 of the Calcutta Municipal Corporation Act, 1980 is a tax of profession, trade or callings and this trade tax licence or certificate the petitioner is possessing for a long time. He emphasised that payment of tax u/s. 199 of the Act is not a

licence u/s. 435 of the said Act and non-obtainability of a licence u/s. 435 of the Act can only lead to penal action by the Corporation and nothing more. He referred to a bunch of work orders of some firms addressed to Ms. Rashid Motor Works annexed with the writ application and he wanted to substantiate by the annexed letters that the petitioner was carrying on motor repairing business at the said premises for a long time. He further submitted that rent receipt or no rent receipt there is no bar in obtaining a tax paying receipt for trades u/s. 199 of the Act. Mr. Kabir submitted that at the instance of the respondent Xo. 8 the Corporation stopped the renewal of licence u/s. 199 of the Act and this compelled the petitioner to file a suit for declaration that he is a tenant in respect of the suit premises and the suit is still pending. He further submitted that court should not pass an order in favour of the petitioner to allow him to something illegal which is contrary to statute. He also emphasised that the part of the premises was used for non-residential purpose always and it will be wrong to say on the part of the respondents 8 and 9 that the premises is never used for non-residential purpose. Mr. The Corporation of Calcutta and Others Vs. Dhirendra Nath Sen and Others, and Venode Kumar Jalan Vs. Calcutta Municipal Corporation and Others,

7. Mr. Banerjee, the learned Advocate appearing for the respondents 8 and 9 submitted that at no material time the petitioner was a tenant under his Clients but in fact was repairing car of his clients father and after the death of his father he continued to repair his client's car. To the best of his client's knowledge there was never any licence granted to the petitioner to carry on any motor repairing business in the said premises nor any tenancy is given to him at any stage of time. When the respondent 8 came to know that the petitioner has obtained trade tax receipt on payment of fee us. 199 of the Act he at once wrote to the Corporation authorities taking serious objection thereto as the petitioner has no business to take any trade tax receipt from the Corporation on payment of lee as required u/s. 199 of the Act as he has no locus standi of any nature whatsoever in the premises in question. In addition to that Mr. Banerjee argued that without obtaining a licence u/s. 435 read with Schedule V. Part I. Item 22(i) of the Calcutta Municipal Corporation Act, 1980 no one can carry such a business in a residential premises and according to Mr. Banerji this premises is exclusively used for residential purpose. He further said that violation of obtaining any licence u/s.435 exposes the petitioner to penalty as specified under Schedule VI of the Act which amounts to a fine of Rs. 3,000/- or six months imprisonment or both and a daily fine of Rs. 200/-. He also contended that the Corporation has already taken action u/s. 517 of the Act against the petitioner for removal of the nuisance. Apart from the decision reported in Venode Kumar Jalan Vs. Calcutta Municipal Corporation and Others, upon which both sides rely. Mr. Banerji has cited S.R. Varma Vs. Emperor, and Jadunath Basak Vs. Mritunjoy Sett and Others, in support of his contentions.

8. The learned Advocate appearing for the Corporation placed the report of enquiry of the Corporation and submitted that appropriate action in accordance with law has already been taken against the petitioner by the Corporation for the

nuisance and the Metropolitan Magistrate, 2nd Court, has already been moved in this regard.

9. I have considered the facts of the case and the submissions advanced by the learned Advocates of the parties as well as perused the papers. One thing stands out clear from the petition and affidavits filed by the parties that the petitioner has hopelessly failed to establish his tenancy right in the portion of the premises in question at 1A, Gokul Boral Street. Only in 1988 he rushed to the City Civil Court to file a suit for declaration of his tenancy right in the said premises with an application for temporary injunction relating thereto. This too when the Calcutta Municipal Corporation refused to renew the trade tax u/s, 199 of the Calcutta Municipal Corporation Act, 1980. The petitioner has annexed only two challans of deposit of rent for the months of Jan., 1988 and April, 1988. The rent of Rs. 248/- per month, as claimed by the petitioner, for the month of Jan.. 1988 was deposited on 27th April, 1988 and that of April, 1988 on 16th June, 1988. This itself shows how diligent and sincere the petitioner is in establishing his right of tenancy in the said premises. Of course a bunch of trade licence of the Corporation have been annexed with the writ application right from 1974. These bunch of trade licences is a sad commentary on the performance of the Calcutta Municipal Corporation and demonstrates how callously these trade licences are issued to those who just throw the required fees at the Corporation's counter and thereby create documentary evidence in support of profession or trades or callings; and the Corporation merely issues the tax licences without compliance of sub-s. (3) of S. 200 of the Act. Another set of annexures with the writ application is some order to M/s. Rashid Motor Works but these orders cannot conclusively establish the fact that the petitioner was carrying on his motor car repairing business at this very premises or he merely used to receive the communication at this address and carry out the orders at some other place. In support of the contention that no rent receipt is granted by the respondent 8 as a rule to his tenants an affidavit by one Kedar Prasad of 1A, Gokul Boral Street affirmed before a Notary Public on 31st June, 1988 was also annexed with the writ application, the relevant portion of which is that the said Kedar Prasad is also a tenant induced by Beswanath Dey Sarkar but no rent receipts are granted to him as well. This affidavit cannot be relied upon as the said Kedar Prasad has signed in Hindi and it does not appear from the body of the affidavit that the text of this document in English was explained to him by anybody. Apart from the civil suit several criminal proceedings were also initiated by the petitioner and the one being Case No. 186 of 1988 is a blatant example of the petitioner's sense of vengeance and mean mindedness. The petitioner under various sections of the Indian Penal Code filed a complaint before the learned Judicial Magistrate at Sealdah that at about 9 o'clock at night on 11th Oct., 1988 the respondent No. 8 along with his wife and the old mother and another accused person went to his residence at 15/1 ,Noor Ali Lane within P. S. Beniapukur and forcibly trespassed into the petitioner's room, physically assaulted the petitioner with fists and blows, ransacked the articles within a "twinkle of eye" and broke mirror fitted in

an almirah. I wonder whether such a carnage can be enacted by two ladies of which one is an old widow and another her daughter-in-law and that too far away from their residence at such a late hour of night. No sensible person can believe this cock and bull story but I leave this matter for the learned Magistrate to decide.

10. Now I come to the vital question in dispute in this writ application relating to the issuance of trade tax licence, actually Certificate of Enlistment, u/Ss. 199 and 200 of the Calcutta Municipal Corporation Act, 1980 (previously u. Ss. 218 and 219 of the Calcutta Municipal Act, 1951) and the one u/s,435 of the said Act of 1980. The petitioner has failed to establish before this Court that he is a tenant in respect of a portion of a premises in question at 1A, Gokul Boral Street and that this premises is used for non-residential purpose. His right of tenancy cannot be accepted by this Court until he succeeds in the suit pending in the Civil Court. So far the plea of carrying on motor car repairing business under the name and style of "Rashid Motor Works" is concerned, the Special Officer who visited the spot on 14th Feb., 1989 has specifically mentioned in his report that he did not find any signs or stains on the floor of the shed which is usually found on the floor of a regular garage. Also nowhere in the report there is any mention that the workers or mechanics of the petitioner were performing work in the said garage. The objection taken by the petitioner to the report of the Special Officer is yet another attempt to confuse the whole issue. I find no reason why I should disbelieve the report of the Special Officer. Obtaining the Certificate of Enlistment u/s. 199 of the Act is a mystery altogether which I think even the Corporation authorities cannot explain and, in fact, failed to explain. The Corporation failed to produce any document which will legitimise the issuance of such a certificate to the petitioner. I do not think any procedure is followed by the Corporation when certificate of tax on trades, professions or callings under this particular section is granted to any one bin as is generally known the rent receipt of the pre- misses where the business is carried on is at least insisted upon and required to be produced before the authority concerned. But in this case that question does not arise. Over and above this, obtaining of a licence u/s. 435 read with Schedule V, Part I, Item 22(i) of Calcutta Municipal Corporation Act, 1980 is condition precedent for carrying on trade or business of car repairing and that municipal licence u/s. 435 of the Act can only be granted in the premises not meant for residential purpose and non-obtaining of such a licence and using the residential premises for the purpose contrary to the provisions of the statute mentioned hereinbefore is punishable under Schedule VI of the Act. It is strange how the Corporation authorities allowed the petitioner to carry on if at all, his car repairing business without any proper authority u/s. 435 of the Act.

11. Mr. Kabir has cited a Division Bench decision of Calcutta High Court reported in The Corporation of Calcutta and Others Vs. Dhirendra Nath Sen and Others, which relates to the "right of occupancy. The Division Bench held, that in order to be entitled under Art. 226 of the Constitution to relief against interference with his property the petitioner must establish a legal right to the property in

question. If the petitioner asserts a right which prima facie establishes a legal right and which requires adjudication then the Court must inquire into that right and if the right is established, then interference with that right in appropriate cases should be prevented by appropriate orders under Art. 226 subject to other conditions of that article. If, however, the petitioner's right is not established or is not found to be tenable, then the petitioner is not entitled to any relief under Art. 226. In my opinion in the instant case the petitioner has miserably failed to establish any legal right in respect of the premises in question either as a tenant or as one who is carrying on his business of car repairing in the said premises under any statutory authority. This case, thus, does not help the petitioner. Another case cited on the point is a decision reported in Venode Kumar Jalan Vs. Calcutta Municipal Corporation and Others, Though it is held in this case by Susanta Chatterjee, J. that the Corporation authorities cannot sit upon judgment for eviction and recovery of possession of a property, the facts of this case differ with the instant case. In the case of Venode Jalan the Corporation authorities appeared and submitted that they have no objection in granting of tax certificate under S. 199 of the Act, whereas in the instant case the Corporation authorities have already taken action against the petitioner and filed complaint before, the Municipal Magistrate under Ss. 435 and 517 of the C.M.C. Act, 1980 this act itself of the Corporation also clearly indicates that sub-sec, (3) of S. 200 of the Act was not complied with by the Municipal Commissioner at the time of the issuance of the trade tax certificate under the Act to the petitioner. When no action has been taken in accordance with law, it is futile to discuss the ambit of enquiry under S. 200(3) of the Act. It has further been specifically decided in the case of Venode Jalan that a certificate of enlistment under Ss. 199 and 200 of the Act, can be obtained to run a business provided one complies with other, formalities as prescribed under the statute. Obviously the "formality" required under S. 435 which is condition precedent for carrying on a business of the nature which the petitioner is carrying on was not at all complied with by the petitioner and this is the admitted position. In my view this case, too, fails to help the petitioner. In the light of the discussion aforesaid I am not in a position to agree with the arguments advanced by Mr. Kabir.

12. Mr. Banerji has specifically pointed out to the Annexure "I" of the Affidavit-in-Opposition filed by the respondents Nos.8 and 9. This is a Memo No. 2H/598 dt. 17th Dec., 1985 written by the District Health Officer, District No. II, to the, respondent No. 8 which I like to reproduce below :--

"Re : Nuisance due to motor car repairing workshop at 1 / A, Gokul Boral Street.

In pursuance of your complaint dt. 24-5-88 received by this office on 3-6-88 the following actions have already been taken by this office against the nuisance alleged:

(1) Notice under S. 517 of C.M.C. Act, 1980 have been issued to Abdul Rasid and Salim on 20-9-88;

(2) Letter issued to O.C., Muchipara P. Sf Cal. on 22-11-88.

(3) Finally summon application u/s 433 and 517 C.M.C. Act have been submitted in the 2nd Mpl: Magistrate Court on 28-11-88."

The issuance of notice by the Corporation under-S.517 of the Act is regarding the removal or abatement of nuisance. The section reads: "Where the Municipal Commissioner is of the opinion that there is a nuisance on any land or building, he may, by notice in writing, require the person by whose act, default or sufferance the nuisance arises or continues or the owner, lessee or occupier of the land or building or any one or more of these persons to remove or abate the nuisance by taking such measures in such manner and within such period as may be specified in the notice." This section indicates that a notice is issued by the Municipal Commissioner only after forming an opinion that a nuisance is taking place in a particular land or building. The Municipal Commissioner is not only satisfied as regards the nuisance created by the petitioner in the premises but also filed a complaint under this particular section as well as under S. 435 of the Act before the learned Municipal Magistrate. Mr. Banerji, too, has relied upon the case of Venode Kumar Jalan (*supra*) to bring home the point that if someone has Wrongfully entered into possession or clouded the right of the "owner or landlord by making some allegations he cannot of course be evicted without due process of law but this does not ipso factor confer upon such person any right to obtain a certificate from the Calcutta Municipal Corporation Authorities under Ss. 199 and 200 of the Act without establishing his bona fides, as the rightful possession. This case elucidates that though an occupier of a property unless evicted in due course of law is entitled to remain in the property by obtaining a trade token but he at the same time had to comply with other formalities as prescribed under the Calcutta Municipal Corporation Act. This makes abundantly clear that without complying the provisions of S. 435 read with Schedule V, Part-1, Item 22(i) of the Act the writ petitioner has no legal authority to carry on the motor car repairing business. But this gentleman is carrying on this business in utter violation of law by somehow procuring a so-called trade licence under S. 199. The sanction given in this case law to an occupier is engulfed with a big limitation and that limitation as pronounced by his Lordship very much goes against the writ petitioner. Mr. Banerji has referred to the case of S.R. Varma Vs. Emperor, based on Calcutta Municipal Corporation Act of 1923 to bring home the point that the granting or refusal of licence in the interest of public order or morality after proper consideration of relevant circumstances is perfectly within the jurisdiction of the Corporation. This decision itself is based on the decision in the case of Municipal Corporation of the City of Toronto v. Virgo by the Judicial Committee reported in (1896) AC 88. The case of Jadunath Basak Vs. Mritunjoy Sett and Others, in my opinion directly helps the private respondents so far as the principle laid down in this case, and not the fact, is concerned and this very principle is hotly contested by the petitioner. Their Lordships of the Division Bench held in unequivocal term that it is not disputed that neither permission under S. 436 nor a licence under S. 437 of the Calcutta Municipal Corporation Act

was obtained for running the workshop. Both the sections bar a person to establish and run a workshop with machine in a premises without the permission and licence as required respectively under the aforesaid sections. Their Lordships further held that obtaining a professional licence under S. 218 of the Calcutta Municipal Corporation Act, 1951 would not dispense with the requirements of permission and licence under Ss. 436 and 437 of the Act. The principle laid down in this case law directly hits the petitioner's case as he has miserably failed to obtain any licence under S. 435 and, as such, mere obtaining of a professional trade certificate from the Corporation will not exonerate him from the guilt he has been committing according to his own confession. The arguments advanced by Mr. Banerji have substantial merits.

13. As the petitioner has failed to obtain the required licence under the law for his motor car repairing business at premises No. 1A, Gokul Boral Street he has no locus standi to carry on his said business in the said premises and also it is patently clear from the report of the Special Officer that in fact he is not carrying on any such business in the said premises. When the petitioner is not carrying on any motor car repairing business in accordance with the provisions of the Calcutta Municipal Corporation Act, 1980 he has no claim whatsoever to obtain any Certificate of Enlistment under Ss. 199 and 200 of the Act from the Calcutta Municipal Corporation. For what purpose trade licence should be issued if no business is carried on there? And if such a business is carried on there illegally in utter violation of law then such Certificate under Ss. 199 and 200 should not be issued at all by the Municipal authorities. Mere possession of a part of the premises in dispute does not entitle him to obtain a Certificate of Enlistment under Ss. 199 and 200 of the Act to carry on a business illegally without compliance of other provisions of law. The Corporation is directed to take all steps to penalise the petitioner for violation of the provisions of law in the light of this judgment.

14. In the circumstances this application fails and stands dismissed. There will be no order as to costs.

15. Before I part with the judgment I must point out the mushroom growth of motor car repairing workshops (big and small) in the city of Calcutta causing nuisance and health hazard much to the annoyance of citizens and the poor citizens are but helpless spectators. The question is whether the Calcutta Municipal Corporation at all cares to see and check that these motor car repairing workshops or garage have any legitimacy of existence in the eye of law and how many owners or proprietors of those workshops actually possess the licence as required under S. 435 read with Schedule V, Part-1, Item 22(i) of the Calcutta Municipal Corporation Act, 1980; or a mere payment of tax and obtaining a Certificate of Enlistment under Ss. 199 and 200 of the Act is sufficient to carry on any kind of business activity. It is the bounden duty of the Corporation authorities to strictly enforce the provisions of the Calcutta Municipal Corporation Act, 1980 and bring to book the deliberate violators of law and inflict punishment

upon them as prescribed in Schedule VI of the Act. It is the duty of the police authorities as well to check such unauthorised motor car repairing workshops and take appropriate action.

16. The Registrar, Appellate Side, is directed to send copies of the judgment to the (1) Mayor and (2) the Municipal Commissioner of the Calcutta Municipal Corporation and (3) the Commissioner of Police, Calcutta, for perusal and necessary action in the light of the observations made in para 15 of the judgment.

17. The learned Advocate for the petitioner prays for stay of this judgment. The prayer is refused.

18. Application dismissed.