
(1957) 09 CAL CK 0003
In the Calcutta High Court
Case No : A.F.O.O. No. 120 of 1956

Ashraf Ali Khan and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-09-1957

Acts Referred:

Bengal Municipal Act, 1932 — Section 145(1), 145(3), 146(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1958 Cal 219 : (1959) 1 ILR (Cal) 91

Hon'ble Judges : Chakravartti, C.J.;B.K. Guha, J

Bench : Division Bench

Advocate : Binayak Nath Banerjee and Arun Prokash Chatterjee, for the Appellant;Nirmal Chandra Chakravorty, (for Nos. 1, 2 and 3) and D.N. Basu, (for Nos. 4 to 21), for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—The appellants before us are seven hundred and eighty-four individuals and, strange it might seem, three inanimate objects. They, along with one other individual were petitioners in an application under Article 226 of the Constitution and by that application they challenged the formation of the Kharagpur Municipality by the State of West Bengal and the first tax assessment made by the Commissioners of the Municipality. As to the formation of the Municipality, it was complained that the area constituted into a municipality was not a town, that it was not a compact area and that the adjoining railway settlement had been unwarrantedly excluded. As to the tax assessment, it was complained that the assessment had not been made "by any qualified panel of assessors as provided u/s 145 of the Ben. Municipal Act". Accordingly the petitioners prayed for the issue of a writ of mandamus upon the State of West Bengal and the Joint Secretary of the State Government in the Department of Local Self-Government, directing them to forbear from giving effect to the notifications by which the constitution of the Municipality had been declared and also a writ of the same nature, directing them to forbear from realising taxes

"from the residents of the purported Kharagpur Municipality". Besides the State of West Bengal & the State Government's Joint Secretary in the Department of Local Self-Government, the District Magistrate of Midnapore and the commissioners of the Municipality were also impleaded as respondents to the petition. Against the District Magistrate, relief was claimed & the only prayer with respect to the Commissioners was for a writ in the nature of quo warranto, directing them to state to this Court under what authority they had been "usurping their offices as Commissioners of the purported Kharagpur Municipality"". It will be noticed that no mandamus was asked for as against the Commissioners directing them to forbear from realising the taxes imposed by them. Only an ad interim injunction was asked for against all opposite parties wherein the Commissioners had been included, by which they were sought to be restrained from realising the taxes during the pendency of the application. The substantive prayer for a writ of mandamus directed against the recovery of taxes was asked for only as against respondents Nos. 1 and 2 to the petition, that is to say, the State of West Bengal and the State Government's Joint Secretary in the Department of Local Self-Government.

2. The petition did not contain any averment that a demand for justice had been made. Apparently, that omission was pointed out by the learned Judge and on a subsequent date, a supplementary affidavit, affirmed by one of the petitioners, Dr. Jiban Krishna Dandapat, was filed. He claimed to be the President of a committee called the Citizens' Committee of Kharagpur and stated that on 7th of December, 1955, he had addressed a letter to the Chairman of the Municipality by which he had asked the Chairman "to cancel the whole assessment of tax for the Kharagpur people made on the basis of the valuation list" prepared by two incompetent assessors. It appears from the learned Judge's order that the learned Advocate appearing for the remaining petitioners, was not prepared even to say that those petitioners were members of the Committee of which Dr. Dandapat claimed to be the President. In that state of facts, the learned Judge treated the demand for justice as a demand made by Dr. Jiban Krishna, Dandapat alone. Obviously, the learned Judge took the view that the petition disclosed a case which the respondents should be called upon to answer and accordingly he directed the issue of a Rule as a Rule taken out by Dr. Dandapat alone. As no demand for justice was proved to have been made by the remaining petitioners, the learned Judge rejected their application. Thereafter those petitioners preferred the present appeal.

3. I may state here that the Rule issued by the learned Judge was limited to prayer No. 1 of the petition, but, it was not wholly a Rule in terms of that prayer. The terms as set out in the prayer, were suitably corrected and a Rule was issued on the opposite parties to show cause why a writ in the nature of mandamus should not issue on respondents Nos. 1 and 2, directing them to forbear from giving effect to the notification, declaring the constitution of the Municipality and to show cause why the opposite parties, that is to say, the whole body of them, should not forbear from realising taxes from the residents of the Kharagpur

Municipality.

4. The petition was ostensibly on behalf of seven hundred and eighty-eight petitioners and since one of them obtained a Rule and was not appealing, the number of appellants in the present appeal should have been seven hundred and eighty-seven. According to the memorandum of appeal, however, the number is seven hundred and eighty-eight, the same number as in the original petition. It was explained to us by Mr. Chatterjee, the learned Advocate who was responsible for the petition, that one of the appellants had been named twice in the memorandum of appeal by mistake. Mr. Chatterjee also explained that it was by a regrettable mistake that three holdings had been included among the petitioners to this Court and subsequently among the appellants. The real number of effective appellants before us is, therefore, seven hundred and eighty-four.

5. The memorandum of appeal sets out seventeen grounds, most of which are concerned with the merits of the controversy between the parties. The learned trial Judge had not dealt with the merits at all, but had thrown out the application of the petitioners on the preliminary ground that they had not satisfied an essential condition precedent to making an application for a writ of mandamus. Mr. Banerjee, who appeared for them before us, very properly limited his argument to the single ground on which the application of his clients had been rejected. In my view, in spite of the comprehensive character of the grounds taken in the memorandum which, I think, must have been taken under a misconception of the scope of the appeal, we have to consider only the single point regarding the necessity of a demand for justice.

6. On that point Mr. Banerjee contended that the rule which required a demand for justice to be made before one could apply to the Court for a writ of mandamus was not an absolute or Inflexible rule, but was subject to several exceptions. According to him, the exceptions were, first, that the making of a demand was not a matter of form, but of matter of substance -- which meant that if it appeared from the facts that in substance a demand had been made, the condition was satisfied; secondly, that the demand was not required to be a formal or even a demand asking specifically for something to be done or desisted from; thirdly, that where the default complained of was a default in the performance of a public duty, enjoined by a statute, no demand for justice was at all required; and, fourthly, that where it appeared that to make a demand for justice would be useless and that the respondent was pursuing the course complained of from a settled purpose, it was not necessary that a demand for justice should still be made before the Court could be moved for relief by way of a writ of mandamus. According to Mr. Banerjee, the present case fell within those exceptions.

7. The first two so-called executions enumerated by Mr. Banerjee are clearly no exceptions at all. They assume that a demand for justice has to be made, but only provide that, in making the demand, no particular form of a rigid or rigorous

character need be complied with. The soundness of the first two propositions of Mr. Banerjee may at once be conceded. As he rightly pointed out, the object of the rule requiring that a demand for justice should be made before a party moves the Court for a writ of mandamus is to ensure that the respondent got an opportunity of knowing what was required of him to do and for deciding whether he would do it of his own motion without being compelled by the Court. If that be the true reason of the rule, there can be no difficulty in assenting to the proposition that there would be sufficient compliance with it, if the respondent was made aware of the default or the irregularity complained of and that he was given an opportunity for rectifying the defect or omission, although no formal demand might have been made. What the rule requires is that before a person can be allowed to approach the Court with an application for writ of mandamus, he must make it appear that the person or party he wished to proceed against had been made aware of what was demanded of him & that having been so made aware, had yet failed and neglected to comply with the demand. If that appears from the facts, it can be no objection to the application for a writ that no formal demand had been made. Indeed, although the demand has come to be described as a demand for justice, it is really a demand for the performance of a duty or for the rectification of an error. If the person proceeded against has been reminded of the duty or apprised of the error in a sufficiently specific form so that he ought to have been able to understand what was required of him, a demand for justice has been made.

8. I do not, however, think that the first two of the exceptions enumerated by Mr. Banerjee call for any consideration in the present case. This is not a case where the contention of the appellants is that although they had not made a Formal demand by way of a notice or otherwise, yet they had made their demand known by some action or in some other manner. Typical of cases where a demand is made by conduct are cases where a party "resists execution of or compliance with an order which he impugns as illegal. The facts before us do not make out any such case.

9. The third exception of Mr. Banerjee was that where there had been a breach of a public duty on the part of the State or a Public Officer, affecting, by its consequence, the general interests of the public and where such duty was one imposed by a statute it was not necessary that a demand for justice should be made before the Court was moved for relief against the breach by way of a writ of mandamus. It was said that where a person sought relief against some invasion of his private interests by means of some action which he considered illegal, the law required him to make a demand for the termination of the invasion in order to lay the foundation for relief by mandamus. Not so, however, in a case where the default complained of was a default in the performance of statutory duties of a public nature which were incumbent upon a State or its Officers by virtue of its status or their office. In such a case, it was said, no prior demand for justice was required.

10. The doctrine contended for by Mr. Banerjee is undoubtedly a very attractive one and undoubtedly it has been widely applied by the American Courts. Mr. Banerjee drew upon High's "Extraordinary Legal Remedies" for material in support of his contention, but while the proposition formulated by him does occur in the book at various places, the cases cited in support are all cases decided by the various State Courts of America. But the doctrine or principle is also stated in the Corpus Juris and among the decisions cited there in support, there are decisions of the American Supreme Court as well. The Corpus Juris states the doctrine both generally and in relation to the writ of mandamus, as asked for against parties of different characters -- amongst them being public officers, boards and municipalities. Indeed, the doctrine is stated in each of the sections of the book's discussion of the writ of mandamus which is divided into several parts according to the status, office or character of the party proceeded against. In the course of the general discussion, the general rule that a person must first have demanded performance of the act or duty which he seeks to enforce by a writ of mandamus is stated and then what is added is as follows:

"But many cases place an important limitation on the general rule and hold that, where the duty sought to be enforced is of a public nature, affecting the people at large & there is no one especially empowered to demand performance, no demand is necessary as a condition precedent to the issuance of a writ of mandamus to compel performance". (See 38 Corpus Juris 1925 Ed. 577).

It has been felicitously said that, in such cases, the command of the statute is the demand and the failure to obey the demand is the refusal. The individual who seeks to enforce the duty which, the law enjoins need not add his own demand to the command of the law and if he can show that the law is not being carried out by compliance therewith, he shows that there has been a refusal to perform the duty enjoined by the law. In such cases, he can maintain his application for a writ of mandamus without showing that there had been a prior demand for justice, by him.

11. It does not appear that this doctrine has been applied in England. Neither Halsbury, nor any of the other works on the high prerogative writs, as they are issued in England, mention this doctrine as having been applied in any case. But the doctrine, in my view, should be judged by its merits and accepted or discarded according as it appears to be sound or unsound. It cannot be right to say that nothing ought to be done in this country which is not done in England, nor can it be a sufficient refutation of the doctrine to say that no English precedent can be found in its support. There are cases where, even as the writs are administered in England, a party has been granted what is called a peremptory writ, if it was proved that the occasion was emergent and no prior demand for justice could possibly have been made. That, however, is a different case, but it illustrates an exception to the rule that a demand for justice must first be made before a Court is approached for a writ of mandamus.

12. Very attractive as the doctrine is, I do not think that it applies to the present

case and, therefore, I do not think that it requires to be considered. What the position here is may be usefully recalled. The appellants were complaining of an act of the State Government and also complaining of another act by the Commissioners of the Municipality. It was in respect of those acts that they were asking for relief by way of a writ of mandamus. If the test for the applicability of the doctrine be that the duty concerned must be a public duty enjoined by a statute, the performance or non-performance of which affects the people at large, I am unable to see how the doctrine can apply in the present case. As to the State Government, the Bengal Municipal Act does not make it their duty to constitute a municipality, but only gives them power to constitute municipalities & if they do constitute municipalities, it requires them to follow certain principles and to proceed in a certain manner. In the present case, the State Government had exercised their power given to them u/s 6 (1) (a) of the Act of constituting a municipality and the complaint of the appellants was that the constitution of the municipality had not been in accordance with law, inasmuch as the area concerned was not a town nor a compact area, and inasmuch as the railway township of Kharagpur had been unjustifiably excluded. Assuming that the complaint of the appellants was a valid complaint, all that they were complaining of was that in exercising their power, as given to them by the statute, for the benefit of a section of the public, the State Government had proceeded in an erroneous manner. I am unable to see how any remissness of the State Government, assuming remissness had occurred, can be said to have been a breach or non-performance of a public duty laid upon them by a statute. If the contentions of the appellants were given effect to, by the State Government, they would have to proceed under clause (c) of Section 6 (1), that is to say, exclude from the Municipality "any local area comprised therein and defined in the notification," the area in the present case being the whole area, or proceed under clause (d) and include within the Municipality "any local area contiguous to the same and defined in the notification," that is to say, include the railway township of Kharagpur. They would thus have only to correct an error they had committed in the exercise of their power under the statute and not perform any statutory duty of a public nature which they had failed to perform and the non-performance of which was affecting the general interest of the public at large. I am, therefore, of opinion that the test which must be satisfied, if Mr. Banerjee's doctrine is to be applied, is not satisfied by the facts of the present case.

13. The true scope of the rule invoked by Mr. Banerjee can be seen from the cases in which it has been applied and by which it is illustrated in the text books. Such are cases as where by the law constituting a municipality, it is required that as soon as the municipal debt exceeds a certain amount, the municipality must levy a tax for paying it off, but the municipality has failed to levy a tax although its debt has exceeded the statutory amount; or where the treasurer of a District School Board, being required by law to draw from the State funds the amount of an annual contribution, has taken no steps for doing so, although the time within which the contribution can be drawn is about to expire; or where a local body,

being required by law to hold an election within a certain time, appears disinclined to comply with the law, in such cases, the mandate of the law is unconditional and clear and since the respondent ought not to require to be told of it, no demand for compliance with the law is necessary. But where a statutory duty has been performed or a statutory power has been exercised and the complaint is that the performance of the duty or the exercise of the power has not been in accordance with law, the case "is not within the rule.

14. There seems to me to be another reason why the doctrine could not be applied. It is one of the well-settled principles that if the performance of the duty sought to be enforced is of such a character that it could not be expected to be performed unless it was demanded, a demand is essential; and so also is a demand essential where the proper mode of performance is doubtful and, therefore, a demand specifying the proper mode is required before mandamus can be granted. The reason underlying this principle is obvious, because where the default or irregularity does not lie on the surface and the breach complained of is not a clear breach but is a breach of controversial character which requires to be pointed out and established, it is but right that the party sought to be proceeded against should be given an opportunity for knowing what is the breach or irregularity that is being charged against him and an opportunity for rectifying it, if he is satisfied that there has been a fault or default on his part. In the present case, when the State Government constituted a number of villages surrounding the railway township of Kharagpur into a municipality, it is not shown, nor was it alleged that they did not proceed in the bona fide belief that a municipality could lawfully be constituted of the area selected by them. Whether or not the mouzas constitute or any part of them constitutes a town, whether or not they are contiguous or lie scattered and whether or not the Railway township could at all be included, are matters of opinion and, in any event, matters for argument. The irregularity, if any irregularity had occurred, required to be pointed out and it also required to be pointed out in what mode or manner the irregularity could be remedied. It thus appears to me that the present case is not one where the extreme doctrine of Mr. Banerjee that no demand for justice is at all required in certain cases is applicable. It is not applicable, first, because there has been no breach of a public duty and, at the worst only an irregularity in exercising the powers conferred by the Act and carrying out its purposes is alleged and, secondly, because the irregularity, and also the mode of its rectification were of a controversial character and, therefore, they required to be specified and pointed out by a demand made in that behalf.

15. If the extreme doctrine of Mr. Banerjee is not applicable, so far at least as the complaint against the State Government is concerned, it must be held that, as against them, the petition was bound to fail in any event. The notice relied on by the appellants was only a notice addressed to the Chairman of the Municipality and the only demand made by it was a demand for a cancellation of the assessment. With the assessment the State-Government had no concern and quite obviously a notice given to the Chairman of the Municipality or a demand

made of him could not possibly be a notice given to the State Government or a demand made of them. The case against the State Government need not, therefore, be further considered.

16. Coming now to the complaint against the Municipality, I am of opinion that the extreme doctrine of Mr. Banerjee will not apply to that complaint either. Once again, it will be useful to recall the facts. After the Municipality had been constituted a new valuation list, which would indeed be the first valuation list, had to be prepared. Such a list is prepared by assessors and Section 145 (1) of the Act provides that the State Government shall prepare and maintain a list of persons who are in their opinion qualified to be appointed as municipal assessors. There was such a list in the present case. If the Municipality appointed Assessors from among persons borne on that list, their action would be in complete accordance with Sub-section (2) of Section 143 and no exception could at all be taken to what they had done. The allegation of the appellants, however, was that the two persons actually appointed by the Municipality were not persons borne on the Government's list or, as they phrased it, they were not "panelled assessors". With regard to the appointment of persons not borne on the Government's list of qualified Assessors, there are two provisions in the Act, one contained in Section 145 (3) and the other contained in Section 146 (2). Section 145 (3) provides that notwithstanding anything contained in the section, the State Government may at the request of the Commissioners appoint, or authorise the Commissioners at a meeting to appoint as an assessor or assessors any person or persons approved by the State Government. Section 146 (2), on the other hand, provides that if there is no person for the time being available for appointment as assessor from among the persons included in Government's list, the Commissioners at a meeting, or in case of default by the Commissioners, the State Government, may appoint any person approved by the State Government. Apparently, an appointment u/s 146 (2) can be made and is to be made only when no person from among the persons included in Government's list is available, whereas an appointment u/s 145 (3) can be made, even if such persons be available. The complaint of the appellants was that the two persons appointed as assessors were not persons borne on Government's list, and, therefore, the valuation list prepared by them and the assessments made on basis of that list were utterly void. But Section 145 (3) and 146 (2) to which I have just referred make it possible for the Municipality or the State Government to appoint persons outside Government's list of qualified assessors in certain circumstances. The facts in the present case appear to have been that on the 4th of November, 1954, the State Government sent to the Municipality a copy of the notification containing the names of persons qualified for appointment as municipal assessors and then added that in case suitable persons were not immediately available from that list, persons outside it might be selected by the Commissioners and the proposal for their appointment might be forwarded to Government. The Municipality, by a resolution passed on the 25th of December, 1954, placed it on record that no person from Government's list of approved

assessors was available and they resolved that two persons outside the list, named Sri P.N. Sarkar and Sri Puran Singh, should be appointed and they should commence their work from the 3rd of January. 1935. This appointment was forwarded to the State Government for their approval and by a letter dated 29th of March 1955, Government's approval was communicated. The original appointment was for a period of three months, but it appears that there were subsequent extensions of the period, with approval of the State Government in each case.

17. In their petition, the appellants relied upon the basic fact that the two persons appointed by the Commissioners were not borne on the list prepared by Government and they did not take into account either Section 145 (3) or Section 146 (2). Those sections, however, are there in the statute and the complaint of the appellants must be that the appointment of the two outsiders was not in accordance with either of those two provisions. During the course of the proceedings, the respondents appear to have always relied on Section 145 (3), but it is not clear to me why, in view of the language of Section 146 (2) and the language of the Municipality's resolution of the 25th of December, 1954, they should have done so. Be that as it may, if the case fell to be decided by Section 145 (3), the complaint of the appellants must be that the two persons had not been appointed by Government at the request of the Commissioners or that they had not been appointed by the Commissioners after the Commissioners had been authorised by the State Government to appoint them as persons approved by the Government. If the case fell to be decided by Section 146 (2), the complaint of the appellants must be that, under that sub-section, the Commissioners could only appoint a person approved by the State Government and not a person who had not been previously approved.

18. It appears to me that if such must have been the real complaint of the appellants and such the irregularity to which they objected, it was essentially necessary that notice of it should be given to the Municipality in specific terms. As in the other case, so in this, this irregularity, assuming there was an irregularity, did not lie on the surface. As to whether subsequent approval of Government is also approval within the meaning either of Section 145(3) or Section 146(2), there must necessarily be difference of opinion and the matter being one of a controversial character, the Municipality could not have known what was complained of against them, unless it was pointed out to them by a demand for the removal of the irregularity. This, therefore, does not seem to me to be a case where the extreme doctrine of Mr. Banerjee would apply even to the complaint of his clients against the Municipality.

19. I also think that this was not a case where there was "no one specially empowered to demand performance" and not also a case where no private rights were being affected and where no relief of a private nature was being pursued. The appellants were not merely interested as citizens in the proper observance of the law relating to assessment, but they were also interested in seeking relief

from the burden of tax which had been imposed upon them. It is perfectly true that while the Municipality had the right to tax them, they had equally a right to insist that they must not be taxed except in accordance with law, but the point which I am now considering is a point as to whether they were seeking protection or advancement of a private interest or of an interest of a public nature. I am clearly of opinion that the interest which they were trying to safeguard was their private interest and that is another reason why the operation of the extreme doctrine of Mr. Banerjee is excluded.

20. The third exception of Mr. Banerjee is, therefore, of no assistance to him either in regard to the relief sought as against the State Government or in regard to the relief sought as against the Municipality.

21. The fourth exception contended for by Mr. Banerjee raises a point which is not unknown to the law of the high prerogative writs, as administered in England. The broad proposition is that where it appears from the facts of a case that the respondents are already aware of the illegality charged against them and they are pursuing it as of set purpose, it would be a useless formality to make a demand for justice and, therefore, in such a case, no prior demand is required in order that a person may sustain an application for a writ of mandamus. The reason for this principle is clear, because the object of the demand for justice is to apprise the person intended to be proceeded against of what is wanted of him and to give him an opportunity for doing it, if he would. It was said that in the circumstances of the present case, it would be useless for the appellants before us to make individual demands for justice after one of the taxpayers Dr. Jiban Krishna Dandapat, had made a demand but had not received any response of any kind from the municipal Commissioners. This contention has to be examined.

22. I may refer here in passing to a subsidiary point sought to be made by Mr. Banerjee in the course of his argument. At one stage he contended that the notice given by Dr. Dandapat should be deemed to have been given in a representative capacity and if it could be so deemed no question of the remaining petitioners not having made a demand for justice could arise. I have already stated that, before the learned trial Judge, the learned Advocate for the appellants would not take the responsibility of even saying that they were members of Dr. Dandapat's committee. When reminded of that circumstance. Mr. Banerjee referred to the prayer made in the petition for leave to represent all inhabitants of the Khargpur Municipality under Order 1, Rule 8 of the Code of Civil Procedure. I confess I cannot really follow what Mr. Banerjee intended to contend. The prayer for leave under Order 1, Rule 8, as made in the petition, was a prayer that the 785 petitioners before the learned Judge might be allowed to represent all the remaining tax-payers of the Municipality. It was not a prayer and could not be a prayer that one of the petitioners. Dr. Dandapat, might be granted leave under Order 1, Rule 8 to represent the remaining petitioners. Even in the impossible event of Dr. Dandapat being given leave under Order 1, Rule 8

to represent the rest of the petitioners, I am unable to see how that could avail Mr. Banerjee with regard to the present point, if Dr. Dandapat had not, when he had served the notice on the Municipality, served it on behalf of all the petitioners so that the notice by him could be taken as a notice by them as well. The leave granted to him would be leave granted long after the service of the notice. I do not think I need pursue this point further.

23. The real point of Mr. Banerjee, however, is that although the demand by Dr. Dandapat was not and could not be a demand by the remaining petitioners as well still, there having been that demand and there having been a non-compliance with it, it would be useless for the remaining petitioners to make demands of their own, since the demand they had to make was precisely the same demand as Dr. Dandapat had made. It is undoubtedly true that where it appears that it would be useless to make a demand, either because the determination of the respondent to disregard any demand that could be made was clear or because a similar demand had been made by another party similarly circumstanced and had not been complied with, a demand is not an essential prerequisite of an application for a writ of mandamus. I do not, however, find myself able to hold in the facts of this case that Dr. Dandapat's demand made further demands by the remaining petitioners unnecessary.

24. If one looks at the actual demand made by Dr. Dandapat, one finds that all that he alleged was that the two persons appointed by the Municipality were not "panelled assessors" as required u/s 145 of the Bengal Municipal Act, 1932, and all that he said was that the whole assessment made "on the strength of that" should be cancelled. Disregarding for the time being the circumstance that the objection is limited to the fact that the two persons appointed were not persons borne on Government's list and that it is not even alleged that the procedure prescribed by Section 145 or Section 146 for the appointment of outsiders had not been complied with the objection is plainly an objection to assessment made on the basis of the valuation list prepared by the two persons, said to have been illegally appointed. It is only the tax on holdings or what is called the property tax which is assessed on valuation. It is surprising that the petition made no reference to assessment of tax on holdings and that only in the supplementary affidavit was it stated that the Municipality had imposed on the residents taxes at the rate of 20 per cent, of the valuation of holdings, as holding tax and conservancy tax combined. The relevant statement in the petition is contained in paragraph 18 which runs as follows :

"That after the creation of the aforesaid Municipality, the opposite parties have imposed upon the residents of the purported Kharagpur Municipality including your petitioners several taxes, namely, the professional tax, cart tax, rickshaw tax and other taxes."

25. It need hardly be pointed out that neither of the taxes specified in paragraph 18 was a tax which could have been assessed on the basis of any valuation list. The petition alleged that those taxes also had been imposed on the "petitioners"

but assuming that by "petitioners" was meant some of the petitioners, it was not stated who they were. It was sought to be stated before us that all the petitioners were owners or occupiers of property and thus affected by the imposition or the holding tax, but neither the petition nor the supplementary affidavit, by which alone the matter must be judged contains any statement to that effect. It must not be forgotten that what we are considering is whether the learned Judge, having before him the materials which he had, was justified in holding that absence of a demand for justice was fatal. He had before him only the petition and the supplementary affidavit and indeed we also have before us no further material. In those circumstances, it was by no means dear that there were not among the petitioners several persons on whom, only a profession tax or a cart tax or a rickshaw tax had been imposed and if they were complaining of the imposition of those taxes, it is perfectly clear that by Dr. Dandapat's demand no such complaint was conveyed to the Municipality. He was complaining of assessment of taxes based! upon the valuation made by unauthorised persons. At the most, the demand made by him and the non-compliance therewith could be said to have made unnecessary a further demand by those among the petitioners who were affected by the imposition of the holding tax. But it could by no means be said to have made unnecessary a demand by such of the petitioners as were affected by the only taxes mentioned in the original petition, namely, the profession tax, the cart tax and the rickshaw tax. It is quite true that there was another omnibus expression "other taxes", but no one knows what taxes were being thought of. Since there was nothing before the learned Judge and there is nothing before us to show that there were not persons among the petitioners who were affected only by the imposition of a profession tax or a cart tax or a rickshaw tax and since the averment in the petition strongly suggests that there were such persons among the petitioners and since there is no indication anywhere as to which of the petitioners were in that position, it was impossible to maintain the application in the case of any of the appellants before us on the basis that he too, like Dr. Jiban Krishna Dandapat, was complaining of the holding tax and, therefore, a further demand by him was unnecessary. I am, therefore, of opinion that in the facts of the present case, Mr. Banerjee's clients cannot take advantage of even his fourth exception.

26. In the course of the argument I had occasion to enquire why, since the only reason for which the application of the appellants had been thrown out was the absence of a prior demand for justice, they could not have made such a demand and come forward with a fresh petition, if they were so advised. I am aware of the principle laid down repeatedly in English cases that if an application for a writ of mandamus is once rejected on the ground that no prior demand for justice was made no second application is entertained in any circumstances, even though, since the rejection of the first application, a demand for justice may have been made. This rule has been applied by English Judges inexorably on the principle that the remedy by way of a writ is a remedy of an extraordinary character and whoever approaches the Court for such a remedy, must come after

having fully complied with all the conditions precedent and must come, even in the first Instance, with all the materials on which he wishes to rely. If he does not do so, the Court will not indulge him to make successive applications. (See Ex parte Thompson (1845) 6 Q. B. 721 (A) and The Queen v. Boomin Corpn. (1892) 2 QB 21 (B)). Mr. Banerjee, however, stated that this rule was not followed in practice in this Court and if that be so, it becomes all the more inexplicable why this appeal was being pursued

27. The appellants, however, had every right in law to test the soundness of the view taken by the learned Judge and I do not make it a point against them that they have preferred an unnecessary appeal. On the facts of this case, however, I feel constrained to hold that this was not 3 case where no prior demand by the present appellants was necessary, nor a case where the demand made by another person had made a further demand by the appellants redundant. The view taken by the learned trial Judge was, therefore, in the facts of this case, right

28. For the reasons given above this appeal is dismissed.

28. The Injunction pendente lite will stand automatically dissolved.

30. There will be no order as to costs.

B.K. Guha, J.

31. I agree.