

(1949) 05 CAL CK 0001
In the Calcutta High Court
In re : Nani Lal Ray

Date of Decision : 05-05-1949

Acts Referred:

Citation : (1949) 05 CAL CK 0001

Final Decision : Dismissed

Judgement

Banerjee, J.—This is an application u/s 45 of the Specific Relief Act for an order on the Respondent (1) to restore free of charge the filtered and unfiltered water connections to the market at premises No.180, Kalighat Road, Bhowanipore, and (2) to re-call and/or cancel the demand notices, dated respectively May 22, 1947 and June 21, 1948.

2. The facts are these. The Petitioner is one of the sons and heirs of the late Sm. Samarangini Ray Choudhurani (hereinafter called the owner), who was one of the recorded joint owners and occupiers of the said market and as such claims to have a right of property in the market.

3. It is alleged in the petition that the market was supplied with filtered and unfiltered water by the Corporation of Calcutta for domestic purposes and charges therefore were included in the consolidated rate and realised as such.

4. On or about May 22, 1947, the Corporation served a notice on the owner to the effect that at a meeting held on January 8, 1947, it had resolved that the "filtered water supply to markets and bazaars and the unfiltered water supply for cleansing the stalls, drains and streets (paths) of markets and bazaars" should be charged u/s 230 of the Act at the ordinary rates for supply of water for on-domestic purposes. In the notice the Corporation stated that the quarterly charge was Rs.312 and demanded payment of a sum of Rs.595-5-0 for the period from January 9, 1947 to June 30, 1947.

5. In reply on June 30, 1947, the owner wrote to the Corporation that the premises in question were assessed at a valuation of Rs.20,290 and filtered and unfiltered water connections were allowed for domestic purposes on the basis of the said amount for the use of the vendors, and added: "If under the present

Corporation Rules no domestic connections are allowed, we should have been given notice and should have been given the option either to retain or reduce the connection in case of payment. Your notice dated 2nd May, 1947, is barely a month old and we would request you to give us three months" time to arrange to reduce the connection."

6. The owner concluded by asking the Corporation not to charge the fees demanded, as no facilities had been given to the owner to make arrangement for reduction of the connection.

7. On July 7, 1947, the Corporation wrote to the owner that the filtered and unfiltered water supplies (except for privy and urinal flushing) in the markets being treated as supplies for non-domestic purposes, the question of privileges due to valuation of the premises did not arise. "If you consider the charges to be high, you may get them reduced by reducing the sizes of the existing connections through a licensed plumber."

8. The owner has requested to remit without delay the sum of Rs.596-5 to cover the charges from 9th January, 1947 to 30th June 1947.

9. The Corporation by its letter, dated July 29, 1947, made a demand again and said, "Please note that in default, provisions of the Act will be enforced."

10. Acknowledging receipt of the letters, dated July 7 and July 29, the owner wrote to the Corporation:

You have treated the water supply - both filtered and unfiltered - to premises No.180, Kalighat Road, as supplies for domestic purposes all along and would have charged fees if the supply has been for non-domestic purposes. If the Corporation now chooses to treat the supply of water to the market as supplies for non-domestic purposes, it is a new connotation that has been introduced and, therefore, the Corporation cannot, suddenly, without giving proper notice to the owners of the market, demand any sum for such supply as has been stated in your said letter.

11. After making two intermediate demands, the Deputy Executive Engineer, Water Works, on February 4, 1948, wrote to the owner : "I beg to invite your attention to this office letter . . . and request you to remit to this office the sum of Rs.1,532-5 without further delay."

12. There was a further demand on April 23, 1948, and again on May 18, 1948, when the Corporation requested the owner to remit the sum of Rs.1,844-5 on account of water supplies . . . as in default the connections were liable to be cut off without prejudice to the other rights of the Corporation.

13. On June 21, 1948, the Executive Engineer, Water Works, again wrote : "I beg to request you to remit to this office the sum of Rs.1,844-15 on account of the filtered and unfiltered water supplies to the market within a week from date hereof, failing which the water connections will be cut off without further

reference and without prejudice to the other rights of the Corporation u/s 245 of the Calcutta Municipal Act. It may be noted that in the case of connections being turned off, the water supply may be restored in future on payment of all arrears due, in addition to the fees which may be due at the time of restoration and the usual restoration fee of Rs.5 for each connection."

14. The Corporation made a demand again on August 3, 1948. By that time according to the Corporation, the charges had amounted to Rs.2,136-5 for the period, 9th January, 1947 to 30th September, 1948. The Corporation said that the amount should be paid within a week from that date and that in default the water connections would be cut off without any further reference.

15. The last demand was made on November 3, 1948, in these terms : "Further to this office letter dated 3rd August, 1948, I regret to inform you that the sum of Rs.2,156-5 still remains outstanding to this department. However, if the above amount is not remitted within a week from the date hereof, the water connections will be discontinued under u/s 215 of the Calcutta Municipal Act without any further reference and without prejudice to the other rights of the Corporation and legal steps will be taken for realisation of all arrears due."

16. The owner did not pay any heed to the demands of the Corporation, and though in the letter dated June 30, 1947, had requested the Corporation to give three months" time "to arrange to reduce the connection", it appears, nothing was or has been done.

17. On or about November 27, 1948, the Corporation cut off the water connections.

18. On November 30, 1947, an advocate on behalf of the Petitioner wrote to the Executive Engineer, Water Works, Calcutta Corporation, "That without giving any previous notice or intimation to my said client or to other co-sharers you have wrongfully and illegally stopped the supply of filtered water at the aforesaid premises which water is used by the tenants and stall-holders and the market staff, the occupiers of the said premises, solely for their domestic use and they are legally entitled to get the said supply of filtered water in accordance with the provisions of the Calcutta Municipal Act. If the Corporation finds that any of the occupiers is using filtered water for any other purpose than the domestic use, the Corporation is legally entitled to stop the filtered water supply of such occupiers after giving previous notice and directions or making proper requisitions to such occupiers in accordance with the provisions of the Calcutta Municipal Act . . . I request you to restore the connection forthwith, as otherwise there is a chance of a serious epidemic, specially if the filtered water supply is allowed to be cut off suddenly in market without giving previous notice or intimation or allowing sufficient time to make adequate arrangements for the same (assuming, though denying that the Corporation has got such a right in the present case), and the occupiers are compelled to use the water of the Tolly's Nullah instead. If in spite of these facts you do not restore the filtered water supply at once, my client will

hold you liable for the consequences."

19. The charge against the Corporation that the connections had been cut off without previous notice or intimation or allowing sufficient time to make adequate arrangements is not true as will appear from the facts I have already narrated.

20. The Corporation did not restore the connection. So this application was moved before me on December 15, 1948, and I granted the rule.

21. There was a letter from the District Health Officer to the owner asking to restore with the sanction of the Corporation the water supplies within three days, failing which the District Health Officer said the regulations under the Epidemic Diseases Act of 1897, as promulgated by the Government of Wes Bengal would be enforced.

22. On December 20, 1948, the Corporation appeared before me. For fear of an epidemic breaking out in a congested area like Kalighat, I made an interim order on the Corporation to restore the connections without prejudice the rights and contentions of the parties. The Corporation has restored the connections.

23. In the petition after stating that the Corporation was not justified in making the charges and cutting off the connections, the Petitioner alleges that there was demand of justice and denial thereof - an averment necessary to get an order u/s 45 of the Specific Relief Act.

24. On behalf of the Petitioner two points have been taken in support of the rule: (1) the demands by the Corporation are ultra vires and illegal; and (2) cutting off the water connections is also ultra vires.

25. By virtue of an Act called the Corporation of Calcutta (Temporary Supersession), Act, VIII of 1948, the Corporation of Calcutta has been superseded and an Administrative Officer appointed by the Provincial Government who exercises and perform all the powers, duties and functions which belonged to the Corporation under the Calcutta Municipal Acts, 1923. The Administrative Officer (and not the Corporation) is the Respondent, who for the sake of convenience is referred to in this judgment as the Corporation.

26. I am asked to make an order on the Corporation to do certain things specified in the rule.

27. One of the questions that emerges is whether such doing is under the law for the time being in force already incumbent on the Corporation.

28. It is said that under the statute, the Corporation is under a duty to supply the water. It had no power under the Calcutta Municipal Act to make the demand for supplying water or to cut off the connections in default of payment.

29. In support of the Corporation's claim to cut off the connections reliance is placed on Section 245 of the Calcutta Municipal Act, sub-secs. (b) and (c).

30. Section 245 gives power to the Corporation to cut off or turn off supply of water to premises in any of the cases specified in sub-secs. (a) to (i).

31. Sub-sec. (b) is as follows: "If, after receipt of a written notice from the Corporation requiring him to refrain from so doing, the owner or occupier of the premises continues to use the water or to permit the same to be used, in contravention of this Act or of any rule or byelaw made thereunder." I have not been referred to any rule or bye-law, unless the resolution of January 8, 1947, is regarded as a rule or a bye law. But that was not the contention of the Corporation. Even if it is assumed that this is a rule or a bye-law within the meaning of sub-sec. (b), nothing has been shown to me or suggested in the argument that a notice was given to the owner or occupier to refrain from using the water in a particular way, disobedience of which entailed the cutting off the water connections.

32. On the materials before me, I am unable to hold that sub-sec. (b) applies.

Sub-sec. (c) reads:

"If the occupier of the premises contravenes sec. 220, sub-sec. (2) or sec. 243, sub-sec. (2);

Sub-sec. (2) of sec. 220 provides:

"No person shall, without the written permission of the Corporation, use for other than domestic purposes filtered water supplied under this chapter for domestic purposes: provided that in case at emergency filtered water may be used for extinguishing fire."

33. Section 243 provides for supply of water to persons residing out of Calcutta or for "use without Calcutta." With this section we are not concerned in this application.

34. The expression "Domestic purposes" has been defined (if it can be called a definition at all) in Section 3 (24) of the Calcutta Municipal Act which so far as it is material for this application reads:

A supply of water for "domestic purposes" shall not be deemed to include a supply - (a) for animals or for washing carriages, where such animals or carriages are kept for sale or hire; (b) for any trade, manufacture or business

35. The contention of the Corporation appears from paragraphs 8 and 9 of its affidavit in answer.

34. Paragraph 8:

The use of water in markets and bazars being mainly not for domestic purposes within the meaning of Section 3 (24) of the Calcutta Municipal Act of 1923, the Corporation of Calcutta by a resolution dated the 8th January, 1947, resolved that the filtered water supply to markets and bazars and the unfiltered water

supply for cleansing stalls, drains and streets (paths) of markets and bazars should be charged u/s 230 of the Calcutta Municipal Act of 1923 at the ordinary purposes. A notice to that effect dated the 22nd May, 1947, was duly sent to the recorded owners of the Kalighat Market stating the fixed sums payable per quarter in respect of the said market for the regular supply of filtered and unfiltered water thereto and demanding payment of the sum of Rs.596-15 which would be due at the said rates from the 9th January, 1947 to 30th June, 1947

35. The relevant portion of paragraph 9 is:

I say that the Corporation of Calcutta was perfectly within its rights to charge for the supply of filtered and unfiltered water to markets and bazars for non-domestic purposes and that the said resolution dated the 8th January, 1947, was perfectly valid and proper.

38. The contention of the Corporation is, that the supply of water in markets and bazars by itself, must be for non-domestic purposes within the meaning of the Calcutta Municipal Act and as such chargeable with water rates. In my view that contention is clearly wrong.

39. In Metropolitan Water Board v. Avery, (1914) AC 118 the House of Lords had construed a similar section of the Metropolitan Water Board (Charges) Act, 1907.

Section 25 of that Act reads (leaving out the immaterial portion), "In and for the purposes of this Act the expression "domestic purposes" shall be deemed to include water closets . . . but shall not include a supply of water for any of the following purposes namely (i) washing carriages or other vehicles . . . and (ii) any trade, manufacture or business

40. Lord Atkinson at page 126 after quoting Lord Loreburn's in Colley's case that the section is couched in slovenly and inaccurate language remarked:

It is impossible to discover what principle, if any, guided the framers of the Act in selecting the purposes excluded. According to the ordinary meaning of language, I take it that water supplied for domestic purposes would mean water supplied to satisfy or help to satisfy the needs, or perform or help in performing the services, which, according to the ordinary habits of civilised life, are commonly satisfied and performed in people's homes, as distinguished from those needs and services which are satisfied or performed outside those homes, and are not connected with, nor incident to, the occupation of them.

41. Lord Dunedin in his speech observed at page 124:

The test of the quality of the use in itself - so tersely put by Buckley, L.J., "The test is not whether the water is consumed or used in the course of the trade, but whether the user of the water is in its nature domestic" - is not only easy of application but is automatic in checking abuse, for purposes truly domestic cannot be amplified, and when the consumption on such heads is large it is

invariably attended by an increase in the rating value of the premises which brings with it an increased water rate.

42. In Halsbury's Laws of England (Hailsham Edition), Vol. 33, at p. 452, it is said:

In deciding whether water is supplied for any trade, manufacture, or business under this provision the test is not whether the water is consumed or used in the course of trade, manufacture, or business but whether the user of the water is in its nature domestic.

43. In *Kingston-upon-Hull Corporation v. Yuille*, (1939) 2 All ER 48, the Corporation was the undertaker for the public supply of water within the area prescribed by the Kingston-upon-Hull Corporation Act, 1897. A medical practitioner residing in the District used his residence also as a surgery and dispensary, where he was visited by patients, to whom he supplied medicine as required. Water was laid on to both hot and cold taps in a part of the surgery which was partitioned off. It was admitted that the water was used for cleaning and disinfecting surgical instruments and similar articles and for washing purposes. The water from the cold tap was used for household drinking purposes and for diluting medicines. The Corporation claimed that, in addition to the rate for domestic supply, the practitioner was liable to a charge for the use of water for purposes other than domestic.

44. Held: The water was used for a domestic purpose and it made no difference that it was used in a dispensary or surgery in the course of the doctor's professional duties, either for diluting medicine or for washing his instruments.

45. The test, therefore, in all cases is not whether the water is consumed or used in the course of a trade or business but whether its user is in its nature domestic.

46. It does not appear to me that the Corporation has maintained this distinction suggested in the cases I have referred to above. It is common case that the supply of water was to the market. But there is no definite evidence before me as to its user.

47. But assuming that the Corporation in cutting off the connections acted in excess of its powers and it is incumbent on the Corporation to restore it the question is, is the Petitioner entitled to the orders asked for?

48. Conditions (a) to (e) of the proviso to Section 45 are cumulative and no order can be made under the section unless all the conditions are satisfied. One of these conditions is that the applicant has no other specific and adequate legal remedy. It follows, therefore, that if the Petitioner has any other specific and adequate legal remedy, the application must fail.

49. In this case it was contended on behalf of the Petitioner that he had no other specific and adequate legal remedy and reliance was placed on *Manick Chand Mahata v. The Corporation of Calcutta*, ILR (1921) 43 Cal 916 . At page 924,

Greaves, J., said,

I think "specific and adequate remedy" in sub-section (d) of Section 45 of the Specific Relief Act refers not to a general right of suit which must, unless expressly barred, always exist, but to some specific remedy expressly given by a particular Act

50. On this authority it is said that in this case there is no specific legal remedy given in the Municipal Act, 1923. So mandamus must go.

51. In *Lady Dinbai Petit Vs. M.S. Noronha*, , (Kania, C.J. and Chagla, J.), at p. 422, Chagla, J., made the following observations:

The other important and interesting question which arises in this appeal is whether the right of a suit is a specific remedy contemplated by Section 45, sub-clause (d), Specific Relief Act. Mr. Munshi has strenuously contended that the specific remedy must be a remedy given by a statute and not merely a remedy by way of a suit. I see no reason to restrict the meaning of the expression "specific and adequate legal remedy" to merely a remedy given by a statute and not an ordinary right of suit. The question which the Court has to consider in every case is whether the alternative remedy, whether it be a right of suit or a specific remedy given by a statute, is as convenient, as beneficial and as effectual as the remedy which the Court can grant u/s 45, Specific Relief Act. I do not think it is possible to urge that the right of suit is not specific and adequate legal remedy as contemplated by Section 45, Specific Relief Act. In the three English decisions to which our attention has been drawn *The Queen v. Charity Commissioners for England*, (1897) 1 QB 407 at 411, *Reg. v. Leicester Union*, (1899) 2 QB 632 at 638-9 and *King v. Vicar and Churchwardens of Dymock Ex parte Brooke*, (1915) 1 KB 147 at 153 the right of a suit was considered as an alternative remedy to the writ of mandamus. With respect to the learned Judges of the Calcutta High Court, I do not think that the opinion given by Greaves, J., in *In re : Manick Chand Mahata v. The Corporation of Calcutta*, 21 QBD 131 at 186 (1888) that the mere right of suit is not the specific remedy contemplated by sub-clause (d) of Section 45, Specific Relief Act, is the correct view.

52. No doubt when a decision of a single Judge on the Original Side of this Court is produced before another Judge, he is bound to treat it with respect and ordinarily to follow it if it is applicable to the circumstances of the case before him. But this does not imply that he cannot examine the matter and that it is not competent to him to take a contrary view, if he is convinced that the decision is erroneous [*Virgibun Dass Moolji v. Bissesswar Lal Hargovind*, 24 CWN 1082 at p. 1038 (1920)].

53. Is it correct that the "specific and adequate remedy" in sub-section (d) of Section 45 means what Greaves, J., said? I proceed to examine the question.

54. In *Ricket v. Metropolitan Railway Co.*, (1887) 2 HLO 175 it was remarked at

p. 202 : "When an act is done by a Company in excess of its powers or in a wanton and careless use of them, there is an injury for which the sufferer retains a remedy by an action at common law, or by suit in equity for an injunction."

55. If, therefore, in this case the Corporation has exceeded its jurisdiction which has been entrusted to it, the law gives the Petitioner a right of action and in a proper case to obtain an injunction.

56. It is well-established that the jurisdiction of the High Court to make orders u/s 45 of the Specific Relief Act is entirely discretionary, and in dealing with an application under Chapter 8 of the Specific Relief Act the principles applicable to a writ of mandamus should, generally speaking, be followed - In re : Provas Chandra Roy, ILR 40 Cal 588 (1913) and Manjindra Chandra Nandi v. Provas Chandra Mitter, ILR (1924) 51 Cal 279 .

57. We therefore, can refer to the English cases for the meaning of the expression "specific and adequate remedy." In 1780, King v. The Bank of England , 2 Douglas 524 (1780), it was held: "The Court will not grant a mandamus to the Bank to transfer stock, because there is a remedy by an action on the case, if they refuse." Lord Mansfield in the course of his judgment observed at p. 526:

Where there is no specific remedy, the Court will grant a mandamus that justice may be done. But where (as in this case) an action will lie for complete satisfaction equivalent to a specific relief, and the right of the party applying is not clear, the Court will not interpose the extraordinary remedy of a mandamus.

58. It appears that Lord Mansfield held that a remedy by an action in law which gives complete satisfaction to an aggrieved party is equivalent to a specific remedy.

59. Explaining this passage in In re : Nathan, 12 QBD 461, 473 (1884), Brett, M.R., observed:

The rule governing the discretion of the Queen's Bench Division seems to me to have been clearly laid down by Lord Mansfield in Rex v. Bank of England. There he says, "When there is no specific remedy the Court will grant a mandamus that justice may be done." The construction of that sentence is this : Where there is no specific remedy and by reason of the want of that specific remedy justice cannot be done unless a mandamus is to go, then a mandamus will go.

60. In that case the aggrieved party had a remedy by a petition of right, the question was ought a mandamus to issue? His Lordship held that it ought not to issue. At p. 475, his Lordship said: -

Where there is no specific remedy by which justice can be done, the Court will grant a mandamus, but where there is a specific remedy by which the subject will get justice by a judicial decision of the Courts, then it is within the reason of the rule, that if there is such a remedy a mandamus ought not to issue.

61. In *Re. Barlow*, (1861)30 LJ (QB) 271 , Hill, J., said: -

It is well-settled that where there is a remedy equally convenient, beneficial and effectual, a mandamus will not be granted.

62. In *Reg v. Leicester Union*, (1899) 2 QB 632 at 638-9, Darling, J., adopting the words of Hill, J., observed: -

"Now I take it that the kind of remedy spoken of is the kind of remedy referred to by Lord Ellenborough in *Rex v. Archbishop of Canterbury*, 15 East 117, 186 (1812) where he says : -

"There have been many dicta of Judges from none of which am I prepared to differ, or to deny to any of them their proper weight and authority: the result of them is in effect this, that this Court, in the exercise of its authority to grant the writ of mandamus, will render it as far as it can the supplementary means of substantial justice in every case where there is no other specific legal remedy for a legal right." What other "specific legal remedy for a legal right, is suggested in this case? I can see none. The legal wrong is that the guardians will not perform their statutory duty. What legal right or way of compelling the guardians to perform that duty is there except this? There is none. What is suggested is, not that there is another remedy to compel the guardians to do their duty, but that there is another means of getting done that which the guardians have refused to do, or something which will do as well. That is not, however, the same thing as another "specific legal remedy for a legal right" to have the guardians do that which the statute has ordered them to do. It seems to me, therefore, that an appointment by the Local Government Board after the guardians have failed to do their duty is not a remedy in the sense of any of the judgments cited. With regard to this, I should like to adopt the words of Hill, J., in *Re. Barlow*, (1861)80 LJ (QB) 271 "It is well settled that where there is a remedy equally convenient, beneficial and effectual, a mandamus will not be granted. This is not a rule of law, but a rule regulating the discretion of the Court in granting writs of mandamus, and unless the Court can see clearly that there is another remedy equally convenient, beneficial and effectual, the writ of mandamus will be granted, provided the circumstances are such in other respects as to warrant the granting of the writ." In my opinion this alternative power of appointment by the Local Government Board is not strictly speaking a remedy at all; it is not *remedium juris*. I do not think that it is a remedy in the sense in which Lord Ellenborough used the words "specific legal remedy for a legal right"; but, even if it were, I should have to inquire whether it was a remedy equally convenient, beneficial and effectual."

63. The same learned Judge about 15 years, later, in *King v. Vicar and Churchwardens of Dymock, ex parte Brooke*, (1915) 1 KB 147 at 153, in connection with an application for a writ of mandamus, said (p. 153) :

There is another ground on which the application fails, namely, that mandamus is not the only remedy open to the applicant. If he is entitled to the office of sexton

as a freehold for life he can bring an action to recover the fees.

64. It seems, therefore, that Darling, J., did not adhere to the opinion he previously expressed that the remedy should be equally convenient, beneficial and effectual.

65. Are there two remedies equally convenient, beneficial and effectual? How to measure and determine this equality, and efficacy? What is the test? This expression must have some practical meaning. In my humble judgment, the meaning has been correctly stated in *The Queen v. Registrar of Joint Stock Companies*, (1888)21 QBD 131 at 186, Wills, J., said: -

But it is a well established rule of practice, as to which there can be doubt, that a mandamus ought not to be granted where there is another appropriate remedy. I do not wish to put it so high as to say that the other remedy must be as convenient, for I think that if no reasonable objection can be taken to the alternative remedy a mandamus ought not to be granted. It would be unfortunate if a rule of practice which has prevailed for a great number of years were lightly cast aside.

66. I have underlined the words which appear to me to be the crux of the matter.

Phillimore, J., in *Reg. v. Leicester Union*, 2 QB 632 at 638-9, expressed himself thus:

For the purposes of this case, I will assume that the board have power to appoint a vaccination officer if the guardians fail to do so. Is that a reason why a public body should not be compelled to perform a statutory duty? The cases which have been cited are all cases where an application has been made by a private individual in order to compel a person, no doubt holding a public office, to discharge his duty, and the Courts have found that by some other legal method of procedure the same result can be arrived at. To put the point shortly, where there is a *remedium juris*, a writ of mandamus; but where there is no *remedium juris*, no other way in which the Courts can act, then it is the duty of the Court to grant a mandamus.

67. In this case there was a duty imposed upon the guardians of an union to appoint a vaccination officer for a certain parish. There being a vacancy, the guardians were asked to make the appointment, but they did not make the appointment, though it was pointed out to them that under the Act it was their duty to do so. By an Act called the Poor Law Amendment Act, 1868, it was provided eight days after a requisition from the Local Government Board to appoint an officer whom they were lawfully required to appoint, such appointment may be made by an order by the Local Government Board. The guardians having failed to appoint, a rule was obtained by the Board for a mandamus on the guardians to make the appointment.

68. It was contended on behalf of the guardians that the mandamus should not be granted where there were any other lawful means open to the applicant of

obtaining the same result. That it was not necessary that the alternative remedy should be by any form of legal procedure, but the rule applied where the same result could be attained by any lawful act of the applicant.

69. It is clear, therefore, that if there are any remedy at law to which no reasonable objection can be taken, an order u/s 45 of the Specific Relief Act should not be made.

70. In this case if the Corporation has acted in excess of its powers the Petitioner has a remedy by action and he can get complete satisfaction thereby, e.g., he can file a suit for mandatory injunction against the Corporation for restoration of the water connection.

71. Section 538 of the Calcutta Municipal Act, 1923 says: -

No suit shall be instituted against the Corporation until the expiration of one month next after written notice has been delivered or left" as provided in sub-section (1) to (4).

72. But sub-section (5) says : -

Nothing in foregoing sub-sections shall apply to any suit instituted u/s 54 of the Specific Relief Act, 1877.

73. Section 54 of the Specific Relief Act deals with perpetual injunctions and provides:

Subject to the other provisions contained in, or referred to, by this Chapter (Ch. X) a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication".

Section 55 says:

When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite act.

74. In *Lahore Municipality v. Manir-ud-din*, AIR 1941 Lah 200, after an exhaustive review of authorities, it was held that in a proper case a mandatory injunction can be granted against the Corporation when it acts illegally or in excess of its powers. That judgment was upheld in a Full Bench case of the Lahore High Court [AIR 1945 81 (Lahore)], where it has been said:

Where a public body such as a municipality under pretence of authority which the law does give it to a certain extent exceeds its authority and assumes to itself a power which the law does not give it and thus acts without legal authority it becomes like all other individuals, amenable to the jurisdiction of Civil Courts by injunction. The Civil Court can in such cases issue injunction against the public body u/s 55.

75. In this case if the Corporation was under an obligation to supply and maintain the water connection, it would be a breach of an obligation on its part to cut off the water connections. The Petitioner, therefore, would file a suit and get the necessary relief.

76. It would be interesting to note here a case, *Hayward v. East London Water Works Co.* (1884) 28 Ch.D. 188 in which a question arose as to whether there could be an injunction against a Corporation in the following circumstances. A dispute arose between the Plaintiff and the Defendant Corporation as to the basis of which a certain water rate ought to be calculated. The Plaintiff, before the writ was issued, tendered to the Corporation the full amount payable, according to his contention as to value, for the rate up to a certain date, the tender being for the rate in advance. The Defendant Corporation refused to accept the amount and threatened to exercise the power conferred on it by the statute and to stop the water supply unless the full amount claimed by the Corporation for the rate in advance up to that date was forthwith paid. Chitty, J., said at pp. 146-7:

Before the passing of the statutes conferring on the Court of Chancery jurisdiction to determine questions of leg right, it was the constant practice of the Chancery Court to intervene by injunction in proper cases for the protection of the Plaintiff in equity pending the trial of the legal right and until that right could be determined at law. But the intervention was temporary, and the Court required that proceedings should be taken to obtain the decision at law. It seems to me that the principle involved in that practice would apply to the present case. It was argued for the Defendants that the damage to the Plaintiff by cutting off the water would not be irreparable. But I am satisfied that that argument by itself could not prevail. The supply of water to the inhabitants of London now depends almost entirely on the water companies, and in the present case there are no less than 150 persons dwelling in the Plaintiff's houses. I should have no hesitation in saying that the cutting off the supply of water for domestic purposes would be damage of that grievous nature that would have fallen within the principle of the decision of the Court of Chancery as to irreparable damage before the passing of the Judicature Act, and that, at all events, it would fall within the Judicature Act, 1873, Section 25, sub-section 8.

77. I think, therefore, that in this case, the Petitioner has an appropriate remedy and an order u/s 45 of the Specific Relief Act should not be made.

78. Assuming that I am wrong in what I have said, even so, the Petitioner is not entitled to the order as a matter of right. It is a matter for the discretion of the Court. The order may be refused not only upon the merits but also by reason of the other circumstances of the case. *R. v. All Saints Wigam (Church Wardens)*, (1876) 1 AC 611.

79. In this case I cannot for a moment understand why the Petitioner did not pay a very small sum demanded at the beginning under protest, and file a suit to recover it. I do not understand why the owner in spite of repeated demands did

not take any step to prevent the breach of duty (if any) on the part of the Corporation, or to arrange for reduction of the connection , if it was thought there was no such duty. Practically, for a whole year, the Corporation went on making demands and issuing threats.

80. An order under this section is made only when justice requires it. I do not see that justice requires that any order should be made in this case in favour of the Petitioner.

81. Though the Petitioner was remiss, I do not approve of the conduct of the Corporation in taking the extreme step of cutting off the water connections.

82. If the Corporation wanted by this Act to put pressure on the Petitioner for the realisation of its dues, it has failed. The Corporation knew, at any rate it ought to have known, that the Petitioner or his family did not live in the bazar or in the market. The cutting off the water connections could not affect their health or convenience. Who would suffer? The multitude of people who come to the bazar from outside Calcutta to sell vegetables and fish. These people come before the sun rises and got out after the sun sets. They remain the whole day in the bazar and in the market. They must have filtered water to cook and to drink. By cutting off the connections it is this suffering multitude who were inconvenienced.

83. It seems that the parties failed to see or did not see that they had simpler remedies for the adjustment of their rights. A money suit by the Corporation was quite adequate, just as a suit by the Petitioner for injunction against the Corporation was the appropriate remedy. But this did not appeal to the parties. One must take the drastic step of cutting off the water connections, the other must resort to Section 45 of the Specific Relief Act.

84. I will assume for the sake of argument that the Corporation did have the power to cut off the connections. That did not necessarily imply that it should have exercised the power; particularly in a case where the health and convenience of so many people were involved.

85. Though I have been compelled to make these observations, they do not make any difference to the conclusion I have reached.

86. That conclusion is that under the circumstances, the application must be dismissed. I do not see any merits in the Petitioner's application and he must pay the costs.