
(1967) 05 CAL CK 0016
In the Calcutta High Court

Panchanan Pal

APPELLANT

Vs

Commrs. of Champdany Municipality

RESPONDENT

Date of Decision : 10-05-1967

Acts Referred:

Evidence Act, 1872 — Section 74

Citation : 72 CWN 38

Hon'ble Judges : A.K. Dutt, J

Bench : Single Bench

Advocate : Sushil Kumar Dutta, for the Appellant; Ranjit Kumar Banerjee, for the Respondent

Final Decision : Allowed

Judgement

A.K. Dutt, J.—The Plaintiff, who is a medical practitioner carrying on his avocation within Champdani Municipality, brought the present suit for declaration that the imposition and recovery of professional tax for 1953-54 from him, is illegal and invalid and that on the basis of such imposition, no renewal licence may be granted by the Municipality and for compensation and damages.

2. Plaintiff's case briefly is, that he did not apply for taking out any licence for the year 1953-54 nor any licence was granted to him for carrying on with his profession as a medical practitioner for the said year; that a bill was served upon him in October, 1953 towards licence fee of Rs. 10/- for the year 1953-54 (Rs. 5/- for the first half of the said year); that this bill and a notice of demand in pursuance thereof are all illegal and invalid and they were not presented to him in accordance with law. According to Plaintiff, the imposition of licence fee and the entire recovery proceeding for alleged professional tax for 1953-54 is in complete violation of the provisions of Bengal Municipal Act. According to Plaintiff, a distress warrant was issued illegally and in execution of the said distress warrant, a Tax Collector of the Municipality, during his temporary absence from his dispensary, seized his cycle in parts and ultimately, sold the said parts on April 24,"55. Plaintiff has alleged, that as the Chairman of the said

Municipality was on inimical terms with him, he caused the issue of the said demand notice towards alleged licence fee for the said year. Plaintiff has further alleged, that no notice of sale was ever served on him. The Plaintiff has claimed compensation of Rs. 100/- on account of his cycle and Re.1/- per day as expenses incurred by him for being deprived of the use of the cycle and has also claimed damages for slander and libel.

3. The municipality, in its defence, contended, inter alia, that the imposition of professional tax upon the Plaintiff for the year in question being a renewal of the same from year to year, was legal and as the Plaintiff did not pay the tax in arrears on demand and upon presentation of bills, the Municipality was obliged to issue a warrant of distress which again was not discharged by the Plaintiff and accordingly, the Municipality with police help, had to execute the distress warrant by seizure of some old unserviceable cycle parts. It has been contended by the Municipality that it had no other alternative, but to seize the articles for sale and ultimately, after due proclamation of sale, the articles seized were sold and the Municipality realized its dues. The Municipality denied the allegation of Chairman's personal grudge or malice.

4. On behalf of the Plaintiff-Appellant, a number of points attacking the validity of imposition and realization of tax as also the procedure for recovery of tax and sale of seized articles have been raised. The contentions raised on behalf of the Appellant can be divided into two main heads. The first branch relates to the resolution imposing tax and the second branch relates to the procedure for the recovery of tax. It has been generally contended, that if the imposition is illegal, the entire procedure subsequent to the imposition is absolutely illegal and the Plaintiff is entitled to reliefs prayed for in the suit. It has been next argued, that if the imposition is even held to be legal, on any account, the procedure for recovery of tax in the instant case from the beginning to the end is contrary to the statutory provisions and the Plaintiff is entitled to the reliefs prayed for in the suit including compensation and special damages. The contentions raised by the Plaintiff was rejected by the two courts below and the Plaintiff's suit was dismissed.

5. Certain facts may be stated here before considering the arguments advanced on behalf of the Appellant in support of this appeal. It appears that the Defendant Municipality held a special meeting on 21st of May 1948, wherein a resolution was passed and tax on trade, professions and callings was imposed with effect from 1st of April 1948 and the Chairman was authorized to take necessary steps for the said purpose. It appears that on that very date, namely, 21st of May 1948 there was an ordinary meeting of the Commissioners of the Municipality held subsequent to the said special meeting. The Municipality has contended that the proceedings of the two meetings namely, one the special meeting and the general meeting held on 21st of May 1948 were duly confirmed at the general meeting of the Commissioners of the Municipality held on 18th June 1948. On 13th October 1953 a bill for Rs. 10/- was served upon Plaintiff

and thereafter on 11th December 1953 a notice of demand was issued. According to Municipality, on 5th March 1954 certain properties for the Plaintiff were attached, but those were ultimately released. After such release a fresh attachment was made on 20th of March 1954 and certain cycle parts were seized from the Plaintiff's dispensary and were sold on 24th April 1954.

6. With regard to the validity of the imposition of tax, Mr. Dutt has raised two-fold contentions. He has first contended that the imposition of tax made by the Municipality at the special meeting held on 21st May 1948 is bad, because, it purported to fix or impose tax with retrospective effect, namely, from 1st of April 1948. It has been next contended, that as the proceedings of the said meeting was not confirmed in the next general meeting as required under the provisions of the statute and as there has been no confirmation at all according to law, no effect could be given to the said resolution imposing tax for trade or profession and the notice of demand issued by the Municipality for professional tax upon the Plaintiff is illegal.

7. Mr. Dutta, in support of his first branch of argument, namely that tax has been imposed by the Municipality with retrospective effect, has referred to and relied upon Section 123 and Section 182 of the Bengal Municipal Act. u/s 123(1)(f) of the Bengal Municipal Act, the Commissioners of the Municipality has power to impose rates, taxes, tolls etc. subject to the provisions of the Act, on trades, professions and callings, specified in schedule IV of the Act. Schedule IV of the Act is headed as "Tax on trades, professions and callings" and the Municipality is to grant licences and the persons applying for such licences are required to pay half yearly. A tax not exceeding the amount specified against each class of categories in the third column of the table to the said schedule. Mr. Dutta has contended, that though the Act permits the Municipality to impose rates or tax inter alia upon the persons carrying on profession like Medical practitioners, the Municipality cannot impose tax with retrospective effect, because a taxing authority can tax only prospectively, unless the relevant statute permits imposition of tax with retrospective effect. He contends that in the Bengal Municipal Act, there is no provision which authorizes the Municipality to impose tax with retrospective effect and since all impositions of tax are prospective, the Municipality's resolution dated, 25th of May 1948 imposing tax with effect from 1st April 1948 may be held to be illegal. He contends that u/s 182 of the Act persons engaged in trades, professions and callings are liable to take out licence and to pay tax, after there has been a determination about imposition of tax and all determinations have prospective effect. Section 182 of the Bengal Municipal Act is to the following effect:

When it has been determined that a tax shall be imposed on profession, trade, etc. shall take out a half yearly licence and pay the tax imposed under Clause (f) of Sub-section (1) of Section 123.

Relying upon this provision, Mr. Dutta has urged that as determination in the present case was made on May 21, 1948 with effect from 1st April 1948, the

determination has retrospective effect. According to Mr. Dutta, though there is a prospective element in the determination and/or imposition, the prospective and retrospective part being mixed up together, the entire thing is illegal.

8. Mr. Banerjee, appearing on behalf of the Municipality has argued that the above contention of the Appellant has no substance. He contends that it is not a case of imposition of tax with retrospective effect, because the Municipality had the power to impose tax u/s 123 of the Act and the various sub-secs. Of Section 123, suggest that the Municipality could impose such tax either on annual basis or on a half yearly basis and accordingly, if an imposition is made at any time during any year or half year of the Municipality, the said imposition would be operative for the entire year or half year as the case may be and would thereafter continue to be operative and as such, the imposition made in 1948 being in the year 1st of April 1948 to 30th March 1949 is for current and future taxes and there is no retrospective effect or operation of imposition. Apart from the said aspect, Mr. Banerjee contends that in the instant case, the imposition was made in 1948 and the Plaintiff himself had paid taxes and obtained renewal of his professional licence on that basis till the year ending 1953, and as such the Plaintiff is estopped from challenging the validity of the imposition of the said tax.

9. In my opinion, the contentions raised by Mr. Banerjee in reply to the Appellant's contentions have substance. The Municipality has been authorized under the Act to impose on various matters specified in the Sub-sections to S. 123 of the Bengal Municipal Act and with regard to some of these matters, maximum rates have been specified by the State Government in the schedules to the said Act. The various Sub-sections of Section 123 of the Act indicate that rates, taxes, tolls etc. would be either on an annual basis or on half yearly basis. The year of a Municipality, according to Section 3(58) of the Act, means a year beginning on the 1st day of April. Accordingly, a half year of the Municipality would be from April to September and from October to March. If tax, rates, tolls etc. are to be realized on half yearly or yearly basis, it necessarily follows that the Municipality may determine in a particular year or half year, that such taxes would be levied and collected for that year or half year and thereafter for subsequent years or half years. In my opinion, since the levy of tax is either for a half year or for an entire year, it would not matter, if the determination by the Municipality to impose tax is not made at the very beginning of the said year or the said half year and all that is required is that such determination should be not go beyond that year or half year when it is first made. In the present case, the tax was levied or imposed by the Municipality in May, 1958, which is in a year of the Municipality. Moreover, the power or authority to tax has already been given to the Municipality by the Act, and the only thing which is left to the Municipalities under the Act, is to determine, whether inter alia, the provisions of schedule IV are to be extended to a particular Municipality or not and if so, from what period. Accordingly, it is not strictly an imposition of a tax, but only a determination about extension. Here a determination was made u/s 182 of the Act during the currency of a year of the Municipality and became realizable by

the Municipality on half yearly basis, only from the year 1948-49 and it is not operative for any past period or year and it has got thus no retrospective effect.

10. Besides, as Mr. Banerjee has contended the Plaintiff has himself, aid tax and took out licences for some years on the basis of the imposition made by the Municipality in May, 1948, and unless, the imposition itself is held to be totally invalid from the very beginning the Plaintiff cannot now challenge the imposition. The invalidity alleged relates to fixation of the period and not on the ground that the Municipality had no authority to impose tax. Therefore, the grievance is, about exercise of authority of the Municipality in a particular manner and I am of the opinion, that Plaintiff having submitted to the jurisdiction and authority of the Municipality to impose tax on profession by taking out a license in past years, is now estopped. Whatever could be said about the year 1948-49, when tax inter alia on profession written statement levied, the liability to pay tax continued year after year and at no point of time, the Plaintiff challenged the Municipality's authority prior to the present suit. There is a statutory rule being Rule 10, regarding the conditions and limitations under which a licence may be granted for a trade, profession or calling fixed u/s 123(1)(f) of the Bengal Municipal Act. Under the said Rule (vide notification No. 509 dated 7.2.1934) "any person who has taken out a licence for the next preceding year, shall, subject to other provisions of these rules, be presumed, unless, he proves to the contrary, to be liable and entitled to take out a licence for the current year". The present dispute is confined to the year 1953-54 and it does not appear that the Plaintiff has asked for refund of tax for previous years on the ground that he is not liable to take out a licence for any year. On the contrary, there is evidence on record to show that the Plaintiff himself by Ex. E 16, later on, applied to the Chairman of the Municipality for taking out a half yearly licence ending 30th September 1954. For the reasons and facts aforesaid, I am of the opinion, that the Appellant's contention on the first point has no merit or substance and must be rejected.

11. The second branch of Mr. Dutta's argument regarding the validity of the Municipality's decision or determination to impose tax on profession is, that the proceedings of the special meeting of the Municipality held on 21st May 1948 has not been confirmed in the subsequent meeting of the Municipality as required under the law. According to Mr. Dutta, as in the next general meeting of the Municipality which was held on the very same date at 4.30 P.M. the said resolution of special meeting was not confirmed, no effect should be given to the resolution of the special meeting imposing tax. Mr. Dutta has contended that u/s 84 of the Act read with the said Rule 7 of the Model Rules of Business, every resolution passed at a special meeting of the Municipality is required to be confirmed at the next general meeting of the Commissioners and since the proceedings of the special meeting held on 21st May 1948, was not confirmed in the next general meeting held at 4.30 P.M. on the same date, not only the said resolution imposing tax becomes void but all notices of demand issued on the basis of the said resolution are also void and illegal and as notices are void, all subsequent action beginning from demand of tax up to recovery by sale is also

void. Mr. Banerjee in reply, has contended that on proper reading of the provisions of Section 84 of the Act and Rule 7 of the Model Rules, it would appear that the provisions relating to confirmation at the next meeting is not mandatory and that the proceedings of the special meeting could be confirmed in a subsequent meeting. According to Mr. Banerjee, all that is required under the law, is that the previous resolution is required to be confirmed at any subsequent meeting of the Commrs. He further contends that confirmation is only a matter of procedure and such confirmation is required for testing the inaccuracy, if any, of the resolution of previous meeting and for admitting the same in evidence u/s 74 of the Evidence Act. He also contends that the provisions relating to placing for confirmation of the resolution of a previous meeting at a subsequent general meeting is a procedural matter and any defect or departure from the statutory provisions, does not affect the validity of the resolution itself and the word "shall" used in Sub-section (3) of Section 84, is only directory and not mandatory. Mr. Banerjee in this connection also refers to the provisions of Section 92(1) (c) of the Act and relies upon certain decisions of the Supreme Court and this Court as to directory or mandatory nature of provisions of an Act and how far a breach of the said provisions vitiates the action of the Municipality.

12. u/s 84, Sub-section (3) of the Act, the minutes of a meeting are to be laid before the next meeting of the Commissioners for confirmation and is to be signed by the person presiding over the next meeting. From these provisions, two things appear, firstly that a proceeding of a meeting has to be confirmed and secondly, it is to be placed before the next meeting. How far confirmation is mandatory or obligatory, depends upon the provisions of the Act and its scheme and its various sections and also on the meaning of the said word "confirm". Shackelton, in the well known treatise on the procedure of law relating to meetings, has dealt with the question of confirmation of a meeting and according to him, "decisions once arrived do not need confirmation and the practice adopted by some authorities of "confirming" minutes has no legal significance" (page 166, 1934 Edition). Shackelton's view is based on an English decision reported in (1) 1853, 1 EB 594, corresponding to 18 English Reports page 558 (Queen v. Mayor of York). In that case Lord Campbell, C.J. held that "to confirm the minutes of a meeting means not to give them force, but to declare them accurate." Palgrave in his Chairman's Handbook, was of the view that confirmation of minutes is "a formal proceeding designed solely for the ratification of the record" (page 17). According to Ballentine (in his Law Dictionary) "confirmation" means "to make firm which was previously infirm to making certain which was previously uncertain." Whatever may be the literal meaning or author's view, I follow the meaning given by Lord Campbell, C.J. in the above cited case and I hold that confirmation is only a procedural aspect of a resolution and is a formal affair and non-confirmation of minutes in the next meeting of the body which took the earlier resolution does not make the earlier resolution invalid or unenforceable.

13. Since it has been argued by Mr. Dutta that the various provisions of the

Municipal Act upon which reliance has been placed, are mandatory in nature and since it has been argued by Mr. Banerjee that the said provisions are not mandatory but only directory, it is necessary for me at this stage to discuss this aspect. The word "shall" when used in a statutory provisions prima facie, the said provision is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. The Supreme Court of India in the case of (2) *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, has held that for ascertaining the real intention of the legislature, the "Court may consider inter alia, the nature and design of the statute and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provision in question is avoided the circumstances, namely, that the statute provides for a contingency for non-compliance of the provision, the fact that the non-compliance of the provision is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, where the object of the legislature would be defeated or furthered." Looking at the entire scheme of the Bengal Municipal Act and its various provisions including the provisions which have been referred to by Mr. Dutta, it appears to me that the legislature intended that the Municipality ought to carry out its function as nearly as possible according to the provisions of the Act, and the legislature intended that in the interest of the Municipality and the rate payers every irregularity would not vitiate the action of the Municipality but only those which affect the merits of the particular action, shall become vitiated and that is why a curing provision has been incorporated in the statute (vide Section 92). There is hardly any provision for contingency arising out of non-compliance of procedural provisions is not visited with some penalty. Accordingly, the relevant provisions wherein, the legislature has used the word "shall", the provisions are, in my opinion, directory in nature and not mandatory. Moreover, the consequences which flow from not strictly complying with the provisions of the Act are really trivial in nature and they are not serious. If it was the intention of the legislature that such non-compliance would be serious, certainly there would have been some provisions for such contingency. Lastly, if undue weight has to be given to the use of the word "shall", it may very often happen, that the Municipality will not be able to carry out its function under the Act or carry out its function under the Act or carry out its function expeditiously and the intention of the legislature would be thus rather defeated.

14. The provisions of the Municipal Act came up for consideration before the Supreme Court in a number of cases. In all these cases, it appears, that in the relevant provision of the Act, the legislature has chosen the word "shall" and accordingly, in all these cases, contentions were raised, that wherever the word "shall" appears, the provisions are mandatory and not directory. The Supreme Court in (3) *Shyabuddinsab Mohidinsab Akki Vs. The Gadag-betgeri Municipal Borough and Others*, held that the provision of the relevant Burrough Act, which prescribes for issue of notice of a special general meeting in writing to be

published and served upon the Councillors in the manner specified are directory in nature not mandatory and any omissions in the manner of service of notice are merely irregularities and they do not vitiate the proceedings unless it could be shown that these irregularities have prejudicially affected the proceedings. In spite of the use of the word "shall" the Supreme Court held that though notices as required under the provisions of the Act were not served in the prescribed manner and as members have actually present at a particular meeting, the defect or irregularity in holding the meeting has no legal consequence so far as validity of the election of a President of the Municipality is concerned. In (4) *Thakur Pratap Singh Vs. Shri Krishna Gupta and Others*, , the Supreme Court held that the tendency of the Court towards technicalities should be deprecated and the substance that courts should be considered and such substance must take procedure over the form. The Supreme Court in that case, further held, that unless the rules are vital and go to the root of the matter and they cannot be broken, those rules are only directory and any breach of them could be overlooked provided there has been substantial compliance with the rules read as a whole. In both the two above cases, it appears that there are similar provisions like ours, namely, Section 92 of the Act and the Supreme Court relied upon such provisions for its decision. Similar view was taken by the Supreme Court in two other cases, one reported in (5) *Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. Corporation of the City of Bangalore*, by its Commissioner, Bangalore City, between the same parties reported in (6) *Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. The Corporation of The City of Bangalore* by its Commissioner, Bangalore City, .

15. The above decisions clearly lay down, that where the irregularities do not go to the root of the matter and when no penal consequences follow from not strictly complying with the provisions the provisions are directory in nature and not mandatory. On these settled principles of law, I hold that in the instant case, the provisions relating to confirmation of a previous resolution prescribed in Section 84(3) of the Act and other provisions wherein the legislature has used the word "shall", are directory in nature and not mandatory.

16. In connection with the requirement of confirmation of the resolution taken at the special general meeting held on 21st May 1948 Mr. Banerjee has contended that even if it is assumed, that the provision of Sub-section (3) of Section 84 is obligatory or mandatory and the said resolution ought to have been confirmed at the very next meeting of the Commissioners, that is which was held on 21st May 1948 at 4.30 P.M. there is really no defect or irregularities due to such non-compliance which vitiate the resolution itself, because of the provisions of Section 92(1)(c) of the Bengal Municipal Act and because non-confirmation of the earlier resolution does not affect the Municipality's power to impose tax. Mr. Dutta in reply, has however, contended that the said Section is not applicable in cases of meeting of the Commissioners, inasmuch as, there is separate provision for such matters in Sub-section (2) of Section 92 of the Act. Sub-section (2) of Section 92 of the Act also speaks of confirmation of an earlier resolution at a subsequent

meeting and according to that Section, when the minutes are confirmed at a subsequent meeting, the said minutes shall be deemed to be free from all defects and/or irregularities and any accidental omission as to service of notice, shall not affect the validity of the meeting. In my opinion, the said provision does not help Mr. Dutta, as the said provision cures defects or irregularities that may have taken place in the earlier meeting and it does make the earlier resolution invalid due to non-confirmation. Moreover, even according to the provisions of Sub-section (2) of Section 92 of the Act, what is required is, confirmation of the previous resolution at a subsequent meeting and not in the next meeting. The provision of this section, in my opinion, have been substantially complied with in the present case. Similar provisions would be found in the Municipal Acts dealt with by the Supreme Court and relying upon the principles decided in the aforesaid Supreme Court decisions inter alia reported in (3) Shyabuddinsab Mohidinsab Akki Vs. The Gadag-betgeri Municipal Borough and Others, , I hold that the defects or irregularities, if any, in the matter of confirmation of the resolution passed at the special meeting held on 21st May 1958, does not affect the validity of the meeting and/or the resolution passed in that meeting. Moreover, since the said resolution if otherwise have been found to be valid, namely, that the Municipality has power to impose tax inter alia on profession, non-confirmation of the relevant resolution at the very next subsequent meeting, does not affect the merit of the Municipality's action.

17. In the courts below, besides the two main contentions discussed above, some other points relating to the procedural part of the meeting as also regarding the contracts and service of demand notice, issue of distress warrant, the procedure for inventory and the contents of the inventory and the notice of sale were urged and those have been re-argued in detail by Mr. Dutta in the present appeal. The said objections briefly stated as thus: -

(a) The Presiding Officer of the subsequent meeting of the Commissioners of the Municipality did not sign the minutes of the resolution passed at the special meeting of the Municipality on the 21st May 1948 as required u/s 84(3) of the Act;

(b) The Chairman of the Municipality was not properly authorized to take the necessary steps, as is mandatory u/s 51 of the Act;

(c) The demand notice did not contain copies of the bills and there has been statutory violation of Section 155 of the Act as also Rule 70 of the statutory rules;

(d) The Chairman of the Municipality had no authority to issue a distress warrant in view of the provisions of Section 157(4) of the Act;

(e) That the inventory made by the Municipality and the consequent notice was also illegal and in the inventory the signature of the Plaintiff was not taken.

The learned Subordinate Judge has dealt with each and every such objection and has given reasons why the objections cannot be upheld. I find no reason to differ

from the said reasoning and findings. The defects which have been urged by Mr. Dutta, in my opinion, are all formal defects and such formal defects do not vitiate the proceedings. Mr. Dutta, however, contends that the defects are not formal as the relevant provisions show that the thing has to be done in a particular manner, in other words, according to him, the provisions are mandatory and any departure or non-compliance with such provision is fatal. Mr. Dutta particularly relied upon the word "shall" appearing in the different provisions of the Act. I have already discussed how far provisions which begin with the word "shall" are mandatory and whether they are directory. For the reasons stated above, I am of the opinion, that merely due to the use of the word "shall" the relevant provisions do not become mandatory and on the contrary, the said provisions are directory, more so, when there is no penal consequences for non-compliance of the said provisions in their literal and strict sense.

18. Moreover, in view of the provisions of Section 92(1)(c) of the Bengal Municipal Act, the defect or irregularities if they are due to not strictly complying with any of the provisions of the Act, the same does not vitiate any act done or procedure taken by the Municipality, unless such defects or irregularities affect the merits of the case. I have already held that non-compliance with the provisions of Section 84(3) of the Act does not affect the merit of the Municipality's action in imposing tax. If the imposition was valid, the Plaintiff had a liability to take out a licence and pay the tax. Plaintiff himself took out such licence and paid tax for a number of years and therefore, the merit of the resolution imposing tax remained unchallenged for a number of years. Once the resolution imposing tax is passed, the effect of the resolution or determination continues. The Plaintiff subsequently applied for renewal for his licence. It is not disputed that the Plaintiff did not receive any notice of demand and he was totally unaware of the demand. Once the Plaintiff receives such demand notice, the Plaintiff, in my opinion, ought to have paid the tax immediately and ought to have taken out licence, without permitting the Municipality to take recourse to the other provisions of law and to realize the tax by issue of distress warrant and sale of goods. Alternatively, the Plaintiff could have immediately instituted or started proper legal proceedings in a court of law and asked for an injunction or stay. Instead, the Plaintiff waited for about six months to file the present suit. In my opinion, the Plaintiff himself is responsible for all these subsequent procedure after the issue of the demand notice and the Plaintiff, in the circumstances, is not free from blame and the defects and irregularities do not affect the merit regarding Plaintiff's obligation to pay tax and/or take out a licence. Accordingly, I am of the opinion, that the other various objections regarding the procedural part have no substance.

19. One argument of Mr. Dutta is however required to be considered and it is this. The Municipality on account of arrears of professional taxes which the Plaintiff failed to pay up in spite of demand, issued a distress warrant and seized and sold movable properties, namely, cycle parts belonging to the Plaintiff. Mr. Dutta has contended, that these moveable properties of the Plaintiff, namely,

cycle parts are tools and/or implements of the trade of the Plaintiff and they are not liable to attachment or sale u/s 156 of the Bengal Municipal Act, 1932. Mr. Dutta has raised a grievance, that though this point was argued in the court of appeal below, the learned Subordinate Judge did not deal with that question and for that reason, I have taken up this point separately. u/s 156 of the Bengal Municipal Act, no doubt, movable properties belonging to a defaulter could be attached and sold if there is a failure to pay tax, bill, fee or rate, but movable properties like plough or cattle, tools and implements of agriculture or trade are not liable to attachment or sale. The question therefore, is, how far a cycle or its parts could be said to be an implement of the trade of the Plaintiff. Plaintiff is a medical practitioner and is not carrying on any trade but he is carrying on a profession. Under schedule IV of the Act, persons engaged in trade, profession and callings are liable to pay taxes. It appears from the said schedule, that serial No. 3 relates to persons carrying on professions and/or callings and those carrying on trade, business etc. are included in serial Nos. 1 and 2. The said schedule has made a distinction between persons carrying on trade, etc. with those carrying on profession and callings. In that view of the matter, it would not be quite correct to equate persons engaged in trade etc. with persons engaged in professions and callings. Moreover, I fail to understand, how could it be said that a cycle is an implement of trade for a person engaged in profession like that of a medical practitioner. A medical practitioner for the purpose of his profession, may require such implements like thermometer, stethoscope or a blood-pressure instrument, but certainly a cycle is not essential for diagnosing any disease or for treatment. A cycle may be required by persons engaged in medical profession for his convenience and for the convenience of the patients, but it is not a implement or goods without which a medical practitioner cannot carry on his profession. In that view of matter, I hold that there is no substance in Mr. Dutta's contention.

20. Although I refrained from discussing each and every objection raised by Mr. Dutta with regard to the procedural aspect, I am however, satisfied, that the Municipality was not very careful and diligent in the present case and there is some indication, that the Municipality showed some over enthusiasm in the matter of collection of tax from the Plaintiff by the procedure adopted by it. The Municipality is a public body dealing with the public and while it is true, that the Municipality has to find out its own revenue and collect the same. The Municipality must now show, any undue haste or over zealously on its part and adopt procedure which may invite criticism from the public into its affairs.

21. As all the contentions urged by Mr. Dutta have failed, I hold that there is no substance in this appeal and the appeal accordingly fails and is hereby dismissed. In view of the special facts and circumstances of the case, I direct that each party would bear its own costs throughout.