

---

**(1969) 09 CAL CK 0010**  
**In the Calcutta High Court**  
**Case No : Suit No. 1062 of 1968**

Sourindra Narayan Sinha

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

---

**Date of Decision :** 01-09-1969

**Acts Referred:**

Calcutta Municipal Act, 1951 — Section 115, 165, 166, 167, 168  
Calcutta Police Act, 1866 — Section 10A, 62  
Constitution of India, 1950 — Article 14, 226  
Motor Vehicles Act, 1939 — Section 76

**Citation :** (1970) 2 ILR (Cal) 199

**Hon'ble Judges :** Sabyasachi Mukharji, J

**Bench :** Single Bench

**Advocate :** Amiya Kumar Basu and Goutarri Ghakmborti, for the Appellant; Sankar Ghose and Jayanta Mitra for Defendant Corporation and J.G. Ghose, for Defendant No. 2, for the Respondent

---

## Judgement

Sabyasachi Mukharji, J.—On April 1, 1968, the Corporation of Calcutta, which is a municipal authority charged with the carrying out of the provisions of the Calcutta Municipal Act, 1951, issued a public notice in exercise of its power u/s 361 of the Calcutta Municipal Act, 1951. Under the said notification public of Calcutta were informed that by a resolution dated March 22, 1968, the Corporation had decided to close permanently portions of 24 streets mentioned in the said notification with effect from April 1, 1968. The object of closing down as stated in the said notification is to provide "Fee Parking Areas". On April 17, 1968, the Corporation of Calcutta issued another notice whereby it was notified that an auction for securing the highest bid for grant of sole and exclusive licence, authorising the licensee the right to allow motor vehicles to be parked within certain areas in Calcutta against fees to be charged and recovered by the licensee at the rates fixed by the Corporation, will be held. The terms and conditions under which the said auction was to take place were also stated in the said notification. A (draft deed of agreement to be entered with the licensee

whose bids would be accepted could also be inspected. It appears that pursuant to the said notification mentioned aforesaid the Commissioner of the Corporation of Calcutta held an auction and accepted bids of certain bidders in respect of certain areas of the city of Calcutta. The 24 public streets mentioned in the first notification were divided in four areas, namely, Dalhousie Square area, New Market area, Park Street area and Gariahat area.

2. Sourindra Narayan Sinha and Sukumar Banerjee, for selves and on behalf of all the registered owners and drivers of motor vehicles in the city of Calcutta, filed the present suit against; the Corporation and three other Defendants who are the persons whose bids have been accepted for the four different areas mentioned hereinbefore.

3. Inasmuch as this was a representative action at the trial of the suit several gentlemen who are residents of the city of Calcutta and who are also said to be owners of motor vehicles joined in this proceedings as the Plaintiffs. By an order dated November 21, 1968, they have been so added. It must, however, be observed that though some of these persons were present at the initial stages of the hearing of the suit they took no further part in the proceedings. I need say no more about them, and the Plaintiffs hereinafter mentioned are the original Plaintiffs. The case of the Plaintiffs as made out in the plaint, is, that under the provisions of Section 76 of the Motor Vehicles Act of 1939 the sole authority for determination of all parking places and halting places, is the State Government or the authority authorised by the State Government. The Municipal Act of 1951, the Plaintiffs assert, contain no provisions regarding parking places and the Corporation of Calcutta has no right and authority under the provisions of the Calcutta Municipal Act, 1951, either to close down any parts of the public streets for the purpose of introduction of Fee Parking Area or to enter into the licensing agreements proposed to be done by the notification mentioned hereinbefore. It has been further asserted on behalf of the Plaintiff that the aforesaid act of the Corporation is outside the said Act and constitutes a colorable exercise of the powers conferred upon the Corporation by Section 361 of the Calcutta Municipal Act, 1951, and other provisions of the said Act. The Plaintiffs contend that the Corporation has no right or authority to realize any fee or tax for parking of cars in the streets of Calcutta and it has been alleged that the Corporation of Calcutta is trying to do indirectly, acts not permitted by the provisions of the Act. It has been stated that under the proposed licensing agreements there is no obligation on the part of the proposed licensees to allow all members of the public without discrimination to park their cars in the proposed parking areas on payment of the requisite fees and, as such, the scheme is violative of Article 14 of the Constitution of India. The acts of the Corporation are, therefore, it is asserted, illegal and void. It has been further stated that the original Plaintiffs are residents of Calcutta and owners of motor vehicles and in connection with their normal, official or professional or vocational or social duties and functions and in per suit of their ordinary avocations of life use and have the right to use public streets closed down by the Corporation. I must mention here that so far as the

assertions that the Plaintiffs are the Owners of motor vehicles and are the residents of Calcutta and use public streets, the Corporation of Calcutta admitted that position at the hearing of the suit. It was, therefore, not necessary for the Plaintiffs to call any evidence to prove the said assertions. By an amendment ordered by the Court on December 19, 1968, on an application made by the original Plaintiffs, the Plaintiffs have further alleged in the plaint that in any event there is no resolution or valid resolution of the Corporation for closing down any part of the said streets. It has been further alleged that the said resolution of March 22, 1968, is void and without jurisdiction.

4. The Corporation of Calcutta in its written statement has asserted that the Corporation has the power and the authority under the provisions of the Calcutta Municipal Act to close down parts of the public streets and enter into licensing agreements of the type proposed to be done. It has been further urged that the scheme of Fee Parking Areas of Calcutta was discussed with the various authorities including the Police, representatives of Calcutta Metropolitan Organisation, shortly called C.M.P.O., and the Automobile Association of Eastern India, and it has been said that the scheme has been prepared thereafter. The Corporation stated that the scheme for introducing fee parking at the New Market and other areas in Calcutta was discussed and approved at a special meeting of the Standing. Works and Town Planning Committee. Thereafter the matter was approved at a meeting of the Corporation on March 22, 1968. u/s 361 of the Calcutta Municipal Act, 1951, portions of 24 public streets were thereafter permanently closed. The Corporation further stated that the local Self Government department of the State Government was duly informed. The Corporation has further stated that the auction was duly held and the bids of the Defendants Nos. 2, 3 and 4 for different areas were properly accepted. It has been denied by the Corporation that under the provisions of Section 76 of the Motor Vehicles Act, 1939, the Police is the sole authority for all parking areas and streets. The Corporation has further asserted that as the 4 areas have been closed to public u/s 361 of the Calcutta Municipal Act, the State Government has no authority to exercise powers u/s 76 of the Motor Vehicles Act in respect of these portions of the streets. It has been denied that the Plaintiffs have free right of access in all the public streets. It has been further denied that there has been any infringement or curtailment of any fundamental rights of the Plaintiffs. The Corporation has asserted that it; has the legal right to close down public streets for the purposes mentioned in the resolution and in the notification and enter into the proposed licensing agreements. It has been further asserted that the suit is not maintainable as framed and also under provisions of s, 586 of the Calcutta Municipal Act, 1951. After the amendment of the plaint, as mentioned hereinbefore, the Corporation of Calcutta filed an additional written statement denying that there is no resolution or no valid resolution for closing down parts of the public streets u/s 361 of the Calcutta Municipal Act, 1951, or the said resolution is void as alleged or at all.

5. The only other Defendant, who has appeared and filed written statement, is

the Defendant No, 2, Bijoy Chand Agarwalla. This Defendant's bid in respect of the public streets being serial Nos. 1 to 12 mentioned in the notification closing down public street, was accepted and he stated that he had paid Rs. 93,750 being 25 % of the bid in terms of the conditions of the said sales. Save what appears, according to the relevant provisions of the Act, this Defendant has not admitted the allegations made in the plaint and this Defendant has stated that for the protection of the rights of the Defendants the Court should determine whether the Corporation of Calcutta has the power under the Calcutta Municipal Act, 1951, to grant licenses in favour of the Defendants and also adjudicate upon the legality or the validity of the proposed agreements and the right to collect fees from persons parking cars in the said areas.

6. On January 17, 1969, at the hearing of the suit the following issues were settled:

(1)(a) Was the closure of the portions of the public streets mentioned in Sch. "A" to the plaint illegal and not warranted by the Calcutta Municipal Act, 1951, as alleged in paras. 10 and 11 of the plaint ?

(b) Was no resolution passed by the Corporation of Calcutta for such closure as alleged in para. 11(a) of the plaint ?

(2) (a) Are the Plaintiffs entitled to use the areas or places mentioned in Sch. "A" to the plaint, as of right and without payment of any fee or charge as alleged in paras. 7 and 13 of the plaint ?

(b) Do the Plaintiffs have any right to move freely throughout the City of Calcutta as alleged in para. 10 of the plaint ?

(3) Is the State Government or the Commissioner of Police of Calcutta the only authority to determine parking places in Calcutta as alleged in para. 6 of the plaint ?

(4) (a) Has the Defendant Corporation no authority or power to realize any charges in respect of the parking of motor vehicles in the areas mentioned in Sch. "A" to the plaint as alleged in para. 9 of the plaint ?

(b) Is any tax or fee sought to be levied or realised by the Corporation for parking cars as alleged in para. 10 of the plaint ?

(5) Is the proposed licensing agreement discriminatory or violative of any right guaranteed by the Constitution as alleged in para. 12 of the plaint ?

(6) Is this suit maintainable by reason of non-service of notice u/s 586 of the Calcutta Municipal Act ?

(7) To what relief, if any, are the Plaintiffs entitled ?

Both documentary and oral evidence have been adduced in this case. As mentioned hereinbefore in view of the fact that as the Defendant, the Corporation of Calcutta, admitted the position that the original Plaintiffs are the

registered owners of motor vehicles and residents of Calcutta and use public streets, no witness was called on behalf of the Plaintiffs. The Corporation of Calcutta, however, called several witnesses. The first witness to be examined on behalf of the Corporation of Calcutta was one Surya Narayan Mitra, He is a reporter of the Corporation of Calcutta. He recorded the proceedings of the Corporation held on March 22, 1968, which is Ex.1 in this case. Though certain questions were put to him in the cross-examination, on the whole, I accept his testimony. Further it appears that the said proceedings were approved by the Corporation at a meeting held on July 26, 1968. In view of his evidence and other evidence which would be discussed later, I am of the opinion that Ex. 1 being the proceedings of the Calcutta Corporation has been duly proved. It is not necessary for me to discuss in detail his evidence. The Corporation also called Mr. Sailajananda Bhattacharyya ; he is the Secretary of the Calcutta Corporation. He stated that he was present on March 22, 1968, and Ex. 1 correctly records the proceedings of the meeting. The proceedings of March 22, 1968, were confirmed at a subsequent meeting of the Calcutta Corporation and Mr. Bhattacharyya has proved that. Nitya Gopal Pal was originally a typist and, thereafter, he was appointed stenographer in the Secretary's department of the Calcutta Corporation. He reported the meeting of the Standing Works and Town Planning Committee held on March 16, 1968. He has recorded the deliberations; he was present,; he has proved the said proceedings which have been tendered and marked as Ex. 6. I am satisfied with his evidence and hold that Ex. 6 has been correctly and properly proved. Rathin Das was also a stenographer and is still working as stenographer of the Corporation of Calcutta. He recorded the proceedings of the Standing Works and Town Planning Committee of the Calcutta Corporation held on February 10, 1968. He has proved the said proceedings which have been tendered and marked as Ex, 7. There was no cross-examination of his evidence. I am satisfied with the evidence and I accept his testimony, and hold that Ex.7 has been proved.

7. The evidence of Mr. Priya Bhusan Guha requires a little detailed consideration. He has generally referred to the documents disclosed on behalf of the Corporation and has stated that due to the increase of traffic in Calcutta the Corporation was considering for quite a long time how to improve the method of traffic control and he, along with another officer of the Corporation, went to Bombay and studied the question. He has further asserted that in consultation with the C.M.P.O., the Police and the Automobile Association of Eastern India, a scheme was originally discussed and formulated at a meeting held on January 10, 1968, at the office of the Mayor.

Accordingly, a tentative scheme for 4 areas was prepared by him along with the Chief Valuer. He has given the evidence that all the matters were properly considered and the views of the different authorities were also taken into consideration. He was cross-examined extensively and it was suggested to him that proper consideration has not been given to the views of the C.M.P.O. and the Police was not consulted. It was suggested that Mr. Knight, an Assistant

Commissioner of Police, who attended the meeting, had really no authority either to commit views of the State Government or the Police authorities. It, was suggested that without introduction of parking meters the suggested scheme would be unworkable. He was also asked why the administrative machinery employed by the Corporation of Calcutta was not being utilized for realisation of parking fees. It was also suggested to him that the question whether the Corporation has the power to introduce such scheme was not considered from legal point of view. It was further suggested that comments of C.M.P.O. were not circulated to the members of the Standing Committee or the Corporation, provisions have not been made in the proposed scheme for taxi stand and slow moving vehicles. It was further suggested/that; the problem was not studied by skilled men. About the feasibility of the scheme detailed questions were put to him with reference to the plans. In Qs. 475 to 483 in cross-examination, it was suggested that the scheme was a half-baked one and all the facts were not considered, all the authorities were not consulted. Mr. Guha has in his evidence denied the suggestions made and he has asserted that as much consideration as possible has been given to all the relevant factors. He has stated that there was no reason to suppose that the Police would frustrate the scheme. According to him, the scheme was formulated after consultation with the Police. The next person, who gave evidence was one Mr. Hari Prosad Boral, who is the Chief Valuer of the Corporation of Calcutta. According to Mr. Boral all the related authorities were consulted and the scheme would find the solution of the traffic problems in Calcutta. In cross-examination in Q. 44 he was asked whether there was any correspondence with the C.M.P.O. before the scheme was finalised. In answer he said it was done verbally as letters take time. It was put to him that in reply to a letter of C.M.P.O. certain sheets were sent on March 19, 1968, while the scheme was approved by the Committee on March 16, 1968. It appears in the final plans there were slight alterations after the meeting of the Committee before it was approved by the Corporation. He could not say? whether the members of the Corporation were informed about the alterations.

8. There are certain documentary evidence in this case. It appears that on January 10, 1968, there was a meeting in the room of the Mayor where representatives of the C.M.P.O., Mr. Knight from the Police, Mr. Roy, Officer-in-Charge of Planning, Traffic Police, as well as Mr. Guha and Mr. Boral were present along with another Councilor. It appears thereafter that certain correspondence with the. Automobile Association of Eastern India and the G.M.P.O. were made. The matter was also considered by the Standing Works and Town Planning Committee of the Corporation of Calcutta and was finally approved by the Corporation of Calcutta on March 22, 1968. Brief containing the documents and correspondence, except the documents bearing serial Nos. 8, 10, 12 and 18 to 23, was tendered and marked as Ex. A.

9. Two main contentions require consideration in this case, namely, whether the Corporation has the power to close down public streets in the manner the Corporation has done and, secondly, whether the Corporation has the power and

authority to enter into the kind of arrangement with the licensees proposed to be done. These streets which have been closed were prior to the closure public streets. "Public street" has been defined u/s 5(60) of the Calcutta Municipal Act, 1951, as follows:

means any street, road, lane, gully, alley, passage, pathway, square or court, whether a thoroughfare or not, over which the public have a right of way, and includes....

The other places included in the definition do not require any consideration in this case. Section 361 of the Act states:

The Corporation may (a) lay out and make new streets, squares, and gardens;

(b) construct new bridges, causeways, culverts and sub-ways;

(c) turn, divert or temporarily or permanently close any public street or any part thereof or permanently close any public square or garden; and

(d) widen, open, enlarge, or otherwise improve any public street, square or garden.

Section 362 is in the following terms:

(1) When any public street, or part thereof, or any public square or garden is permanently closed u/s 361, the Corporation may sell or lease the site of so much Of the roadway and footpath. as is no longer required, or. the site of the square or garden, as the case may be. making, due.-compensation to, or providing means of. access for,, any. person who may. suffer damage by such closing:

(2) In determining such compensation u/s 571, the Court shall make allowance for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street, square or garden, at or about the same time that the public street, square or garden on account of" which the compensation is paid, is closed. Section 349 of the Act provides that all public streets and squares (excluding certain property not material for the present purpose) shall vest in and belong to the Corporation, Section 350 provides for maintenance and repairs of public streets of Corporation. Section 521 confers additional powers on the Corporation for acquisition and disposal of land or buildings by the Corporation. The question, therefore, is, can the Corporation close the public streets in the manner it has done ? The Corporation notification states that, the Corporation has decided to close parts of the public streets permanently. The clear language of Sub-section (c) of Section 361 in my opinion, gives authority to the Corporation of Calcutta to permanently or temporarily close any public street or any part thereof. It has been noticed that u/s 349 public streets are the property of the Corporation of Calcutta, right of closure would have been a normal incidence of the ownership of that property by the Corporation but for the common law doctrine of the highway

with the right of way. It is for this purpose express statutory provision has been made conferring this right upon the Corporation. In the case of *Suhrit Mitra v. Corporation of Calcutta and Ors.* (1957) 62 C.W.N. 186 (191) P. B. Mukharji J. observed as follows:

The reason why the Statute gives this express right even to temporarily close a public street is because of the common law doctrine of the highway with the right of way at any time and as a thoroughfare while that notion is absent in the case of a public square.

That was a case where the question that arose for the Court's consideration was whether the Corporation had any right to temporarily close a public square for the purpose of giving permission to hold a circus. It was held that it has such power to temporarily close public square even though there is no express provision for temporarily closing a public square. It was held that it is a normal incidence of ownership of property without any limitation of common law doctrine of the right of highway. In the case of *Kalyan Kumar Ghosh v. The Commissioner of Calcutta* (1961) 65 C.W.N. 1042, Sinha J. (as his Lordship then was) also accepted the same view in respect of a public square. That was also a case where the question that fell for consideration was, whether closure of a public square for the purpose of amusement was justified or not. Inasmuch as, however, the procedure followed in that case was not proper the rule nisi issued against the Corporation under Article 226 of the constitution was made absolute. In the case of *Udbodhan Park Bayamager v. Ram Golarri Chaudhury and Ors.* Unreported this point came up for consideration before a Division Bench of this Court. After discussing the provisions of the Statute their Lordships observed as follows:

In other words, a public street must be closed either temporarily or permanently before the Corporation can grant a licence

Therefore, on a plain reading of the section and on the authorities of the decisions mentioned above it appears to me that the Corporation has the right to permanently close parts of public streets. It was, however, contended by counsel for the Plaintiffs that in none of the decisions referred to above, the question directly come up for consideration and furthermore, according to counsel for the Plaintiffs, the observations in the Division Bench support his contention that the Corporation cannot close a public street permanently for the purpose of granting a licence or a lease. It was contended that in order to be a closure for the purpose of granting lease in view of the language of Section 362, Sub-section (1), it has further to be found that road is no longer required and it has not been so found. It has been urged that there is no such finding in this case. I am unable to accept the contentions of counsel for the Plaintiffs for the following reasons:

10. Firstly, Section 361 does not impose any conditions upon the fulfillment of which the power of closure of public streets can be used by the Corporation.

Neither the language nor the context of the section warrant such a construction. Upon the clear language of the section I find that the Corporation has the power to close down any public street, or any part thereof, either temporarily or permanently. Secondly, the limitations imposed by Sub-section (1) of Section 361 are not upon the closure of the public streets but upon selling or leasing out portions of public streets closed down. Sections 361 and 362 do not state that the closure of the public streets must only be for the purpose of Section 362. Thirdly, Section 362, in my opinion, has no application to the facts of this case. The agreements proposed to be entered with the licensees are neither sales or leases. In the case of a sale or lease, an interest in the property is transferred but not so in the case of a licence. Finally, on this aspect of the matter I am of the opinion that though in none of the decisions referred to above the question of the power of the Corporation to close down public streets permanently came up for decision, there are observations in the said decisions as mentioned hereinbefore which support the above view of the matter that I am taking. The next point that requires consideration in this case is whether the Corporation has the authority and the right to enter into the proposed agreements with the Defendants Nos. 2, 3 and 4. Counsel for the Plaintiffs drew my attention to the various provisions Of the Calcutta Municipal Act, 1951, and contended that there is no express provisions in the Act authorising the Corporation of Calcutta to realize fee or tax for car parking. Counsel urged that the Corporation had no power or authority to realize any charges for parking car directly and as such what the Corporation cannot do directly, the Corporation cannot do indirectly, it was submitted. According to counsel for the Plaintiffs the charges contemplated under the proposed arrangements amount to tax" or fee. I am also unable to accept the contentions of counsel on this aspect of the matter. As mentioned hereinbefore u/s 349 of the Act all public streets vest in and belong to the Corporation. After the closure of the part if the public streets u/s 361 of the Act, the public have no right; of way in those parts of the public streets. The power or the right to grant a licence is part of the proprietary rights of the Corporation, it is an incidence of ownership of the property. The Corporation would, therefore, have the right and power to enter into the proposed agreements with the licensees, unless there is any prohibition in the Act, either express or implied. I have not been able to find any. On the contrary, there are certain provisions in the Act which indicate that the Corporation has that right. Section 115 of the Act is in the following terms:

There shall be" one Municipal Fund held by Corporation in trust for the purposes of this Act to which all moneys realised or realizable under this Act (other than fine levied by Magistrates) and all moneys otherwise received by the Corporation shall be credited. The section, therefore, recognizes the fact that save under express provisions of the statute, moneys can lawfully be received by the Corporation. Then there are the provisions of Section 548 of the Calcutta Municipal Act, 1951, indicating certain procedures for licenses and written permissions. Sub-clause (d) of Section 548(1) of the Act provides that the

licence or the written permission should state the name and address of the person to whom it is granted. Sub-clause (e) requires that the tax or fee, if any, paid for the licence or written permission should also be stated. The section, therefore, confirms the position that the Corporation can realize parking fees from the owners of the motor vehicles if it is so wanted. If these portions of public streets belong to and vest in the Corporation and if after their closure by the Corporation, u/s 361 of the Act the public cannot claim any right of way then for allowing the public to use portions of the public streets for certain period, I do not see impediment for the owner charging a fee or an amount. It cannot, therefore, be said that the Corporation has done something in this case indirectly which it could not have done directly. My attention was drawn to the various provisions of the Calcutta Municipal Act, 1951 which grant specific powers to the Corporation either to impose tax or a fee. It was contended with reference to the said provision that there is no provision authorising the Corporation either to impose any fee or levy any tax for allowing parking of motor cars in its property or to realize any money by granting licenses in respect of the public streets. It was urged that the Corporation being a statutory body must find the limits of its power within the statute. In my opinion, the aforesaid argument on behalf of the Plaintiffs cannot be accepted. Specific powers which have been given to the Corporation for the purposes of either levying taxes or fees are for enabling the Corporation to discharge the statutory functions enjoined by the statute itself. They do not deal with the rights and obligation of the Corporation as an owner of certain properties or affect the legal incidences of ownership of certain properties by the Corporation. And the said rights are, therefore/ unaffected unless some indication to the contrary can be found in the statute itself. An analysis of the different provisions of the specific powers given to the Corporation for the purpose of levying taxes or fees would reveal the position that they do not deal with the powers in respect of the ownership of properties. The power of taxation is contained in pt. IV, chap. XI of the Calcutta Municipal Act, 1951, containing Sections 165 to 207. They deal with the rights of the Corporation to impose consolidated rates. These have nothing to do with the legal incidences of ownership of properties by the Corporation. The next chapter is chap. XII-which gives powers to the Corporation to impose tax on carriages and animals. The provisions relating thereto can be found u/s 208 to Section 217. Chapter XIII containing Sections 218 to 221 gives the Corporation powers to impose tax on profession, trade and callings. Chapter XIV gives the Corporation powers to impose scavenging tax by Sections 222 to 223. Sections 224 to 228 of chap. XV gives powers to the Corporation to impose tax on carts. Chapter XVI, containing provisions of Sections 229 to 233, deals with the powers of the Corporation to impose licence fee for advertisements. A reference to the sections would make it clear that the powers of the Corporation are to impose licence fees in respect of any advertisements which are displayed to public view or which are visible from the public street or public places. These powers have nothing to do with the rights of the Corporation as an owner of properties. The granting of these statutory and express powers do not, in my opinion, detract from the

Corporation's rights as owner or affect the incidences of ownership of properties. I am, therefore, unable to accept the contention made on behalf of the Plaintiffs that the absence of any express power of the Corporation to realize any fees or taxes from persons using Corporation property must lead to the conclusion that the Corporation has no right in respect thereof. In view of the decisions of this Court in the case of *Suhrit Mitra v. Corporation of Calcutta and Ors.* (Supra ) and in the case-of *Udbodhan Park Bayamagar v. Ram Golam Chaudhury and Ors.* (Supra ) I am bound to hold the Corporation cannot support or justify its action" by virtue of Section 521 of the Act. I, however, refrain from -expressing my own views on this section. But for the reasons given by me hereinbefore, I am of the opinion that the Corporation has the power to enter into proposed licensing agreements with the Defendants Nos. 2, 3, and 4.

11. Having disposed of the main contentions in this case, it would be necessary to deal with the specific issues raised in this case.

Issue (I)(a): For the reasons mentioned hereinbefore I am of the opinion that the Corporation has the power to close down parts of public streets in the manner it has done. I am further of the opinion, for the reasons stated by me in this judgment, that the Corporation has the power and the authority to enter into the proposed agreements with the Defendants Nos. 2, 3 and 4. It has been contended that the closure of public streets and the resolution of March 22,1968, constitute a colorable exercise of powers by the Corporation. The doctrine of colorable exercise of power is based upon the doctrine that you cannot do indirectly what you cannot do directly. It was suggested that the closure of the portions of the public streets have been made for the purpose of realizing taxes or fees for parking cars. I am unable to agree. The Corporation has the power to exercise its rights of ownership in respect of the properties owned by it. It has been contended that the powers have been exercised mala fide,, in the sense that they have been exercised for purposes foreign to the section", without considering all the relevant and proper factors. It has to be borne in mind that generally the doctrine of colorable exercise of power does not involve any question of bona fides or mala fides on the part of the body exercising the power. It depends upon the competency of the body. But in judging the question the substance of the matter has to be looked into and not merely the form. But in any event if the-Corporation as the owner of the properties for the purposes of better maintaining the roads wants to realize moneys by exercising its rights that it has, I do not see any mala fide in this. In my opinion, the Corporation has the right to do directly what if; proposes to do by entering into the agreements with the Defendants Nos. 2, 3 and 4. Therefore, no question of doing indirectly what it could not have done directly, arises. In the view I have taken of the matter I do not think there has been any colorable exercise of the powers. Various questions were put in cross-examination to indicate that proper consideration has not been given to the matter. Questions were put suggesting that proper and appropriate authorities were not consulted in time and their views were not considered. It was further suggested that without the introduction of parking meters the

scheme would be unworkable. Further, actual defects in the plans were also suggested. It was then suggested that the Corporation passed this resolution without consideration of its legal powers and authority and without taking into consideration the reaction of the Police authorities. These questions were put in spite of and subject to the objections of counsel for the Corporation. Counsel for the Corporation has contended that these questions do not arise on the issues or on the pleadings. I am of the opinion that counsel for the Corporation is right in his submission. These suggestions were denied both by Mr. Guba and Mr. Boral. Even on consideration of the suggestions made, and the evidence on record, both oral and documentary, I do not think that the Plaintiffs have been able to establish either that the Corporation has acted mala fide in the sense the expression should be understood in this controversy or that there has been a colorable exercise of powers. If the municipal body has acted within its competency, then this Court should not substitute its own views about the workability of the scheme proposed. It was contended that without the introduction of parking meters--there would be serious difficulties. The theory that machines can do better what manual labour can do, cannot be judged in the abstract. It has to be considered in the background of the availability of machines, the costs of procuring the machines, the question of foreign exchange, the abundance of unemployed human labour. In my opinion, the Court cannot and should not substitute its appraisal of these factors, for that made by the administrative machinery of the Corporation. Counsel for the Plaintiffs relied on the observations of Lord Sumner in the case of *Roberts v. Hopwood* and *Ors. L.R.H. 925 A.C. 578 (603, 604).*) There under a certain statute a Metropolitan Borough Council was empowered to employ such servants as may be necessary and to allow them such wages as the Council thought fit. The Public Health Act authorised the district auditor to disallow any payment which was contrary to law and surcharge the same on the person making or authorising the payment. In the year ending March 31, 1922, the Metropolitan Borough Council paid to its lowest grade of workers, whether men or women, a minimum wage of as per week notwithstanding that the cost of living had fallen during that year from 176 per cent to 82 per cent above the pre-War level, the Borough Council being of the opinion that ? 4 was the least wage which a local authority ought as a model employer to pay for adult labour. The district auditor disallowed certain portion and surcharged them upon the Councilors responsible for the payment. It was held by the House of Lords that the discretion conferred upon the Council by the statute should have been exercised reasonably and that the fixing by the Council of an arbitrary sum of wages without regard to existing labour conditions was not an exercise of that discretion; and that an expenditure upon a lawful object might be so excessive as to be unlawful and that to the extent by which the amount exceeded legality the auditor was bound to disallow it and surcharge the excess upon the persons responsible. In that context Lord Sumner in his judgment observed as follows:

Is the implication of good faith all ? That is a qualification drawn from the general

legal doctrine, that persons who hold public office have a legal responsibility towards those whom they represent--not merely towards those who vote for them--to the discharge of which they must honestly apply their minds. Bona fide here cannot simply mean that they are not making a profit out of their office or acting in it from private spite, nor is bona fide a short way of saying that the Council has acted within the ambit of its powers and therefore not contrary to law. It must mean that they are giving their minds to the comprehension and their wills to the discharge of their duty towards that public, whose money and local business they administer--Pages 603-604. It has to be remembered that the House of Lords in that case was concerned with the exercise of discretion by a statutory body and what would be the standard of good faith." The principles which should guide the exercise of discretion by a statutory body and the principles that should control a local authority in legislating or formulating schemes within its limited field are not necessarily the same. It is difficult, however, to draw a distinction between "legislative" and "administrative" actions for the purpose of enquiring into the bona fides of these authorities, it is to a certain extent legislative because the act is an exercise of legislative power and it is administrative because the action is taken by the administrative machinery. For the purpose of this case, however, it is not necessary to pursue this matter further because it has to be remembered that there is no absolute standard either of comprehension of mind or willingness for the discharge of one's duty. After all, a man can only comprehend what he is capable of and apply so much of the will as he is in possession of it. This depends upon the objective conditions of a particular country at a particular time and the public standards of choosing men for public offices. It is a truism to say that a country gets a government, central, state or local, that it deserves. There is no evidence before me in this case that the members who composed the Corporation of Calcutta were not giving their minds to the comprehension as they were capable of or their will to the discharge of the duty, as they were in possession in this case. If the grievance is about the capacity of the mind or the will-power of the members of the Corporation, the redress, if any,, must be sought in other forums and not in a Court of law. In that view of the matter, I am of the opinion that counsel for the Plaintiffs cannot really get much support from the observations of Lord Sumner in the present context.

12. Counsel for the Plaintiffs in cross-examination of the witness of the Corporation as well as in argument before me suggested that the present scheme was "a half baked scheme". This may not be a wholly unjustified criticism but one must remember that in an under-developed country where most of the people are living in subhuman conditions and are used to very raw deal that by itself may not be the worst thing that can happen. In a tropical country, with the sun and the heat of the contemporary life, it may be that the deficiency in the baking of the scheme might be made up, but if it is put in the cold storage of "thorough investigation" by "skilled men", it may become too stale for consumption. In a situation like this it is difficult to evolve a correct

method of approach of hastening slowly, it must necessarily be an empirical one. After all, we are an optimistic breed, capable of absorbing immeasurable amounts of misery and through the constant repetition of folly asking for more Prima facie, the scheme is not so unworkable as to receive condemnation without giving it a trial or a chance to improve by trial and error.

13. For the reasons given hereinbefore this issue is, therefore, answered in the negative.

Issue (i)(-6): In view of the evidence discussed before, I am of the opinion that the resolution was passed by the Calcutta Corporation. It was, however, argued that in view of the fact that there were alterations in the scheme after" it was approved by the Standing Works and Town Planning Committee, and in view of the fact that these alterations were not brought to the notice of the Corporation of Calcutta, there was no valid resolution. I am unable to agree. It is the matter naturally for the Corporation to decide, where the statute does not lay down any procedure in this respect, what should be the method or procedure for bringing up resolutions before the Corporation. My attention was not drawn to any rules of business of the Corporation, statutory or otherwise, which have been violated. Therefore, this issue is also answered in the negative.

Issues (2)(a) & (b): After the closure of the portions of the public streets by the Corporation u/s 361 of the Calcutta Municipal Act, 1951, the Plaintiffs have no such right to move about freely with out any payment or charge in these portions that have been closed down. In view of that and in view of. the provisions of law, as discussed by me hereinbefore,, both these issues are answered in the negative.

Issue(3): It was contended that u/s 76 of the Motor Vehicles Act the authority to fix parking places is the State Government. The Corporation has no authority to do so, it was urged. Such resolution of closing down public streets is illegal and the proposed agreements are unwarranted, it was submitted. As I read Section 76 of the Motor Vehicles Act, I am of the opinion that it does not authorise the State Government to regulate parking places and halting stations in respect of the portions of the public streets which have been closed down u/s 361 of the Calcutta Municipal Act, 1951. My attention was also drawn to Section 10A(m) of the Calcutta Police Act, 1866, for the argument that it is the duty of the Police authority to regulate and control traffic in streets to prevent obstructions. Reliance was also placed on Section 62(l)(b) of the said Act. I find, how ever, that street has been defined in the said Act as to mean a road, lane or a foot-path way or passage where public have permanently or temporarily a right of access, Therefore, after the closure of the portions of the public streets u/s 361 of the Calcutta Municipal Act, 1951, the public have no right of access. I do not find any provisions in the Calcutta Police Act, 1866, which would prohibit the Corporation from exercising or regulating its own affairs over its own properties. Furthermore, in the proposed scheme I do not find anything in conflict with the Calcutta Police Act. Oh the evidence before me, I cannot hold either that the

Police will not cooperate with the Municipal authority in implementing the scheme. The Assistant Commissioner was present at the meeting where the scheme was discussed and the Commissioner of the Corporation Mr. Guha has asserted that the Police had been consulted. It was suggested that the Police had not been consulted. No evidence has been given or adduced before me to show that the Police or the State Government would not co-operate with the scheme. Therefore, my answer to this issue is in the negative.

Issue (4)(a): In view of the provisions of law discussed by me hereinbefore this issue is answered in the negative.

Issue (4)(b): For the reasons discussed earlier in the judgment the charges contemplated are not taxes, but they are charges which the Corporation is entitled to realize.

Issue (5): It was said that there would be discrimination because those who have cars and would park these cars in particular places will have to pay charges while others have not to pay such charges. There is a rational basis for this differentiation. The proposed agreement with the licensees expressly stipulate by Clause 12 of the agreement that licensees would have no right to discriminate. The issue is, therefore, answered in the negative.

Issue (6): In view of the fact that this is a suit for injunction and in view of the provisions of Sub-section (4) of Section 586 of the Calcutta Municipal Act, 1951, it must be held that the suit is not barred because of non-service of the notice under the section. This issue is, therefore, answered in the affirmative.

Issue (7): In view of the provisions of law as discussed by me and in view of the answers given to the previous issues, the Plaintiffs are not entitled to any relief in the suit.

14. This suit, therefore, fails and is hereby dismissed. In the facts and circumstances of this case each party would pay and bear its own costs including any reserved costs. Certified for two counsel as against their respective clients. In this suit I have not adjudicated upon rights, if any, of the Defendants No. 2, 3 or 4 against the Corporation.