

(1960) 11 CAL CK 0001
In the Calcutta High Court
Case No : Matter No. 183 of 1969

Sudhir Kumar Banerjee

APPELLANT

Vs

Commissioner, Corporation of Calcutta

RESPONDENT

Date of Decision : 17-11-1960

Acts Referred:

Bengal General Clauses Act, 1899 — Section 25
Calcutta Municipal Act, 1899 — Section 559(25)
Calcutta Municipal Act, 1923 — Section 478(17)
Calcutta Municipal Act, 1951 — Section 340(4), 349(7), 353, 353(2), 354
Calcutta Suburban Police Act, 1866 — Section 14A(1), 40(4)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : 65 CWN 133 : (1961) 2 ILR (Cal) 718

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : R. Chaudhuri and S.N. Ghorai, for the Appellant; Rarnen Dutt, Monotosh Mukherjee and Padtna Chatterji, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows: The Petitioners are the owners of premises No. 195, Rash Behari Avenue,, formerly part of premises Nos. 2 and 2|1, Ekdalia Road, police-station Ballyguoge, situate in the suburbs of Calcutta. It is a vacant plot,, having a road frontage of about 226 feet on its south, upon Rash Behari Avenue, an important public street in South Calcutta, leading to the Ballygunge Railway Station of the Eastern Railway. The Petitioners propose to divide the said land in several plots and to sell the same for construction of residential buildings. According to the petition, the Petitioners discovered, sometimes in March 1959, that the Corporation of Calcutta and the Commissioner thereof, have allowed some trespassers to raise unauthorised structures on the municipal footpath abutting Rash Behari Avenue, along the frontage; of the said land belonging to the Petitioners, thereby completely blocking access to, and from, the said premises, and also blocking the use of the public footpath, thus inconveniencing all users; of the same. Photographs of the said obstruction have been annexed to the petition and marked as Ext. "E". They

show that the entirety of the frontage on Rash Behari Avenue has been completely blocked by wooden structures constructed on a series of taktaposhea placed on the footpath all along the said frontage. On July 9, 1959, the Petitioners wrote a letter to the Commissioner of Police complaining, of the obstruction and asking that the illegal obstruction be removed. On July 17, 1959, the Petitioners wrote a letter to the Commissioner, Corporation of Calcutta, complaining of the obstructions and calling upon him to remove the same from the footpath in front of the said premises. So far as the letter to the Commissioner of Police is concerned, no answer was ever given to it. With regard to the Commissioner to the Corporation of Calcutta, a letter was received from the District Building Surveyor IV of the City Architect's Department, dated August 24, 1959, informing the Petitioners that the complaint has been forwarded to the District Engineer IV who dealt with such matters, and requesting the Petitioners to make correspondence with the District Engineer IV in future. On September 30, 1959, a demand for justice was made, and thereafter this application has been filed and a rule issued on or about December 3, 1959. The first Respondent in this application is the Commissioner, Corporation of Calcutta, the second Respondent is the Corporation of Calcutta, and the third Respondent is the Commissioner of Police, Calcutta, These were the original Respondents. By subsequent orders, some of rate actual stall-holders causing the obstruction have been made parties. The Rule requires the Respondents Nos. 1 to 3 to show cause why a writ in the nature of mandamus should not be issued directing the said Respondents to remove or cause to be removed the unauthorised structures on the foot ways and footpaths of Rash Behari Avenue, abutting the premises No. 195, Rash Behari Avenue in the suburbs of Calcutta, and remove and or cause to be removed the: obstructions from the passage and/or the entry to and from the said premises of Rash Behari Avenue, and further asking them to act in accordance with the powers and duties enjoined on them under the law, and to further act and give effect to the laws, thereby protecting the public right of user of the streets and foot ways in the city of Calcutta, and; particularly relating to the said premises, and for other reliefs. Leave was granted under Order 1, Rule 8 of the Code of Civil Procedure. Advertisements were duly issued, and several members of the: public have joined in the application, to support the Petitioners. Affidavits have been filed on behalf of the Corporation and the Commissioner to the Corporation, as well as the Commissioner of Police, Calcutta; I shall first of all deal with the affidavit filed by Nrisingha Majumdar, District Engineer IV to the Corporation of Calcutta, affirmed on February 5, 1960. According to him, the position is as follows: On the evening of June 17, 1955, some refugees encroached upon the footpath of Rash Behari Avenue, near the junction of Ekdalia Road, that is to say, on the frontage of the premises belonging to the Petitioners by placing a number of taktaposhes in front of the open land. The persons who committed the encroachment were hawkers, who distributed a circular, a copy whereof is annexed to the said petition, purporting to be issued by the "West Bengal Hawkers" Association, 12 Ballygunge Garden, Calcutta", stating that the

Government had given formal permission for the establishment of a hawkers' corner on Rash Behari Avenue (at the junction of Ekdalia Road and Rash Behari Avenue). It was given out that the formal opening of the Hawkers' Corner would be performed by Shri Arabinda Bose on Tuesday, June 21, 1955, at 5 p.m. and the public were cordially invited to attend. These hawkers gave the Corporation to understand that they were permitted to encroach upon the footpath by the police. On June 18, 1955, the Officiating District Engineer IV of the Corporation of Calcutta wrote a letter to the Officer-in-charge, Ballygunge police-station, complaining that the Corporation footpath in front of the open land near the junction of Rash Behari Avenue and Ekdalia Road had been encroached upon by some refugee hawkers, by placing taktaposhes thereon. On being questioned, they stated that they were allowed to do so by the police. Enquiry and necessary action for the removal of the said encroachment was requested. No answer was given to this letter. On June 28|29j 1955, a reminder was given. The reminder shows that the Overseer of the Corporation had seen the officer-in-charge of the Ballygunge police-station and had been told that the matter was being considered by a Deputy Commissioner of Police. The officer-in-charge of the Ballygunge police-station was requested to give information as to what action had been taken for the removal of the encroachment. As before, no reply was given to this letter. On July 14, 1955, a further reminder was given regarding the two previous letters mentioned above, asking for information as to what action had been taken by the police. No reply was received to this reminder. On July 28, 1955, the Acting District Engineer IV to the Corporation wrote directly to the Deputy Commissioner of Police, South District, Calcutta, referring to the three letters set out above, copies whereof had been sent to the Deputy Commissioner of Police, and to which no reply was given and no action taken. Request was made for enlightenment on the question of the difficulties standing in the way of the removal of the encroachment. No reply was given to this letter. Reminders, dated August 18, 1955 and December 24|28, 1955, suffered the same fate. This is all that the Corporation of Calcutta has achieved, So far as the police are concerned, it appears from the affidavit filed that at or about October 7, 1955, the Commissioner of Police was approached by hawkers for permission to sit on Gariahat Road (abolished corner), which I am told indicates the site which is the subject matter of this application. On October 18, 1955, permission" was given on certain conditions to do so, up to October 25, 1955. The permission and the conditions are contained in a letter written by the Commissioner of Police, Calcutta, dated October 18, 1955, to the General Secretary, "Street Hawkers" and Vendors" Union", 51 Chittaranjan Avenue, and is annexed to the affidavit of Shri Nrisingha Majumdar. One of the conditions was that no structure whatever should be erected and the permission was subject to the approval of the Corporation (which had never been given), and the hawkers shall have to vacate immediately if there was public complaint of inconvenience. I have stated above that according to the Petitioners, the encroachment was first noticed by them in March, 1959. On July 9, 1959, the Petitioners complained to the Commissioner of Police about the obstruction. To this complaint no reply was received. On July 17,

1959, the Petitioners wrote to the Commissioner, Corporation of Calcutta, whereupon on August 24, 1959, they were referred to the District Engineer IV. On behalf of the Commissioner of Police, Shri Kalyan Kumar Dutta, an Inspector of Police, being the officer-in-charge of the Ballygunge police-station, has filed an affidavit, dated January 22, 1960. According to the Inspector, he has been dealing with the matter. In his affidavit he states that some refugees from East Bengal have been using a portion of the footpath forming the subject matter of this application, as a Hawkers' Corner, since about the month of June, 1955. He states that the hawkers were never authorised to erect any structure on the said footpath. They have done so sometime thereafter. It appears that he made some enquiries and submitted a report dated August 19, 1959, to the effect that the said footpath was allowed to be used as a Hawkers' Corner without any right to erect any structures thereon. But some structures had been raised on the site. He also reported that any attempt to remove these structures would cause disturbances and so the Petitioners should be advised to seek redress in a proper court of law. He further states that it was not possible for the police authorities to take any action as it was apprehended that if any attempt was made to remove these structures, the same would be opposed, and would lead to the breach of the public peace and tranquillity of the locality. The deponent states that if any action had been taken by the police authorities, it would have led to disturbances of the public peace and to active public agitation by some of the political organisations in the city. I presume, although it is not so stated in the affidavit, that the report was made to the Commissioner of Police. No such report was disclosed to the Corporation or to the Petitioners at any time. Indeed, the wall of silence has always been complete. It is under these circumstances, that this application has been made. First of all, it is necessary to find the respective duties and powers of the Corporation of Calcutta and the Commissioner of Police, in respect of the obstructions that have been raised on the footpath, and their removal. I shall first of all deal with the position of the Corporation. Under Sub-section (60) of Section 5 of the Calcutta Municipal Act, 1951 (hereinafter referred to as the "Municipal Act"), "Public street" 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 footway attached to any such street. u/s 349(7) of the said Act, all public streets including footways, pavements, etc., which are situated in Calcutta vest in and belong to, the Corporation. u/s 350, the Corporation has a statutory liability to maintain and repair the public streets vested in it. u/s 353 of the said Act, when any verandah, platform or other similar structure causes a projection, encroachment or obstruction over, or on, any public street, the Commissioner, in accordance with such rules or bye-law as may be made by the Corporation, may, by written notice, require the owner or the occupier of the building to remove or alter such structure or fixture. Section 354 is very important and the relevant part thereof, is set out below:

354(1) The Corporation may, after giving notice to him, require any person to

remove any wall and may of its own motion remove any fence, rail, post, platform, steps or other obstruction, projection 01 encroachment (not being a portion of a building or fixture referred to in Section 353) which has been erected or set up, and any materials or goods which have been deposited, in a public street on in or Over any drain or aqueduct in a public street whether the offender be prosecuted under this Act or not; and the offender shall be liable for the payment of the expenses of such removal.

The materials and goods so removed may be stored at such place or places as the Corporation may think fit. If within seven days of such removal no person claiming the return of such materials and goods to him establishes his claim thereto and pays up the expenses incurred by the Corporation for removal or storage, the Corporation shall have the power to sell the same by public auction and recover the expenses incurred including the expenses of such auction from the proceeds of the sale....

2. Section 415(2) (a) of the said Act lays down that if, within the period prescribed in any notice issued under Sub-section (2) of Section 353, requiring the removal or alteration of a verandah, platform, or other similar structure or a fixture, the same be not duly removed or altered, the Commissioner may make an order directing that the platform, fixture and additions shall be demolished by the owner or the occupier thereof, to the satisfaction of the Commissioner, within the time specified in the order. If such person fails to carry out such direction, within such time, the Commissioner may, with the previous approval of the Standing Buildings Committee, cause such structure to be demolished or altered at the expense of such person, provided however that such an order shall not be made without giving the owner or the occupier of the structure to be so demolished or altered, an opportunity of being heard in that behalf. Chapter XXXIV in Part VII of the said Act, deals with bye-laws and rules made under Sub-section (17) of Section 527 of the said Act, which provides that the Corporation may make bye-laws generally for carrying out the provisions and intentions of the said Act, and in particular, and without prejudice to the generality of the foregoing power, it may make bye-laws prohibiting or regulating the placing of obstructions, projections or encroachments, or the depositing of materials or goods, in a public street or in or over any land Vested in the Corporation. No specific bye-laws in that behalf have been framed under the Calcutta Municipal Act of 1951. Neither Was any such bye-laws framed under the Calcutta Municipal Act of 1923. Such bye-laws were framed u/s 559(25) of the Calcutta Municipal Act of 1899, and sanctioned by the local Government by notification No. 85M, dated January 6, 1905, published in the Calcutta Gazette on January 11, 1905. By Sub-section (i) of Section 2 of the Calcutta Municipal Act, 1923, the Calcutta Municipal Act of 1899 was repealed. u/s 25 of the Bengal General Clauses Act of 1899, where any enactment is repealed and re-enacted by a, Bengal Act, then unless it is otherwise expressly provided, any bye-law made under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the

provisions so re-enacted, unless it is superseded by any order, scheme, rule, bye-law or notification issued under the provision so re-enacted. Sub-section (17) of Section 478 of the Calcutta Municipal Act of 1923, provided for bye-laws to be made prohibiting or regulating the placing of obstructions, projections or encroachments in a public street, etc. But under the 1923 Act no bye-law was made. Consequently, bye-laws made in that behalf under the 1890 Act continued. Similarly, under the Calcutta Municipal Act of 1951, there is power under Sub-section (17) of Section 527 to frame bye-laws in such a case, but no such bye-laws have been framed. Consequently, bye-laws that were framed Under the Act of 1899 which were deemed to have been made Under the Act of 1923 still continue in operation, as if made under the 1951 Act. It is, therefore, necessary to consider the bye-laws made under the 1899 Act. The relevant bye-laws are as follows:

(1) When any person has, whether before or after the passing of these bye-laws placed or allowed to be placed any.... post, platform plank.... or any structure in such a position as to cause a projection, encroachment, or obstruction over or on any public street..... or any land vested in the Corporation, the Chairman may, by written notice, require the owner of, or the person who has erected such....post, platform, plank.... erection or structure, to remove the same, within a reasonable time, and any person who fails to comply with the terras of such notice shall beliable to a daily fine which may extend to Rs. 10 per diem, for every day after the expiry of the time specified in the notice.

(2)... No person shall place...any covering, awning or other projection Which has not been sanctioned by the General Committee u/s 340(4) over of along any public street,..... or land vested in the Corporation... No person shall place or leave any show board, furniture, wares, merchandise, stool, bench stall or goods of any description hot elsewhere mentioned in these bye-laws, in any public street....

(3) No person shall place, hang up, or otherwise expose for Kale any goods, wares, merchandise, fruit, vegetables, matter or other article whatsoever, ao as to cause a projection into or over any public street... so as to obstruct or incommode the passage of any person over or along a public street.

(11) Any person who shall commit a breach of bye-laws 2 and 3 shall be liable to a fine which may extend to Rs. 20, and in the case of continuing-breach, to a fine which may extend to Rs. 10, for every day during which the breach continues after conviction for the first breach.

3. The position, therefore, is as follows: The Corporation of Calcutta has been constituted by a statute, to be a body corporate entrusted with the task of carrying out the municipal administration of the city and such portions of the suburb of Calcutta as have been brought i within its jurisdiction, with the assistance of the Commissioner and the Standing Committees. One of the duties of the Corporation is provide and maintain public streets for use, by members of

the public. Such public streets, including footways or pathways which flank them, vest in the Corporation. It is the duty of the Corporation to maintain and keep them in repair, which must necessarily mean, maintain and keep them in repair so as to be fit for the purposes for which they are intended. It is true that the Corporation is a body corporate and all properties vest in it in the same manner as it vests in an individual. But, there is this difference, namely, that the Corporation holds the properties for certain purposes, and so far as public streets are concerned, they are held for the purpose of providing unobstructed passage for people and vehicles using them, and the relevant provisions in the Municipal Act are all intended to be in aid thereof. As I have stated above the provisions in the Municipal Act provide the manner in which such public streets, including footways and pathways, should be maintained and kept in repair for the convenience of the public. Power has been granted to the Commissioner and the Corporation to cause all obstructions in any public street including footways and pathways, to be removed. Reference may be made to Sections 353 and 354 of the Municipal Act, which directly deal with the procedure which this may be effected. While in these sections the word, "may" has been used, it does not mean that the municipal authorities sit back and choose to take no action when there is an unwarranted encroachment upon any public street including footways and pathways obstructing the user thereof by members of the public, thereby defeating the very purpose for which such public streets including footways and pathways were provided for, by the Municipal Act. In any event, they are bound to take action when called upon by members of the public, for whose benefit the statute provided for the construction of public streets including footways and pathways, and vest them in the Corporation. This is how the position has been summarised by Maxwell on Interpretation of Statutes, 9th Ed. p. 246:

Statutes which authorise persons to do acts for the benefit of others, or, is sometimes said, for the public good or the advancement of justice, have given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may", or "shall, if they think fit," or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have to say the least a compulsory force, and so would seem to be modified by judicial exposition (*R. v. Tithe Commrs.* (1850) 14 Q.B. 474).

4. The leading case on this point is *Julius v. Bishop of Oxford* (1880) 5 App. Cas. 214. According to Lord Cairns, such words as "it shall be lawful" are always simply permissive or enabling. They confer a power, and do not, of themselves, do more. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to

exercise it when called upon to do so. According to Lord Blackburn, the enabling words gave a power which prima facie might be exercised or not, but if the object for which the power is conferred is for the purpose of enforcing a right, whether public or private, there may be a duty cast upon the donee of the power to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it. In an American case, *Supervisors v. U.S.* (1866) 5 Wallace 446, the Supreme Court of the United States of America held that when public officers are empowered to do an act for a third person, the law requires that it shall be done whenever the public interest or individual rights call for the exercise of the power, since the latter is given, not for their own benefit, but for the benefit of others, and is placed with the repository, to meet the demands of right and to prevent the failure of justice. In all such cases, the Court observed, the intent of the Legislature which is the test, is, not to grant a mere-discretion, but to impose a positive and absolute duty. In *Re: Baker* (1890) 44 Ch. D. 262 it was pointed out that the test is whether there is anything that makes it the duty of the person on whom the power is conferred to exercise that power. If not, the exercise is discretionary. But when the power is coupled with a duty of the person to whom it is given to exercise it, then it is imperative. It was stated in *R. v. Barlow* (1693) Car. 293 that the expression, "may be done" was always understood as "must be done" where public or private rights were involved.

5. In the present case, it is true, that the word, "may" has been used in respect of the power granted to the Commissioner and the Corporation to prevent and remove obstructions from public streets including footways and pathways, but, public streets are to be maintained by the Corporation for the benefit of the members of the public, who have a right to use them. Therefore, the powers to prevent obstructions to such user are powers which have been granted entirely for the benefit of the members of the public, and when such rights are threatened by obstructions and the beneficiaries call upon the Corporation to exercise all such powers then the power is no longer a discretion, but a statutory duty and, therefore, must be exercised.

6. Indeed, learned Counsel appearing for the Commissioner and the Corporation has not contested the proposition that they have a duty in this behalf which must be exercised. It is, however, argued that the Corporation by itself has not the resources to clear the obstructions. It is pointed out that it is not as if the obstruction has been caused by an individual. In this case, almost a market has sprung up on the pavement, and there are various factors to be considered. It is further pointed out that even the police are apprehensive of violent opposition, and without police help the Corporation cannot remove the obstructions. I shall presently comment upon the attitude taken by the police in this case. I shall first of all deal with the duty, if any, enjoined upon them by law. So far as the Municipal Act is concerned, the relevant provisions are Sections 596 and 597. Sub-section (1) of Section 596 lays down that the Commissioner of Police,

Calcutta, and his subordinates shall co-operate with the Corporation for carrying into effect and enforcing the provisions of the said Act and for maintaining good order in and outside Calcutta. Sub-section (2) lays down that it shall be the duty of every police officer in or outside Calcutta to assist the Commissioner to the Corporation or any municipal officer or servant, reasonably demanding his aid, for the lawful exercise of any power vesting in the Corporation, in the: Commissioner, or in such municipal officer or servant, under the Municipal Act or under any rule or by-law made under it. Section 597 grants certain powers to a police officer and enjoins his cooperation with the Corporation and its officers in carrying out their functions under the Municipal Act or any rules or by-laws made thereunder. Under Sub-section (4a) of Section 40 of the Calcutta Suburban Police Act, being Act II of 1866, exposing or keeping any article so as to cause obstruction in any public thoroughfare has been made an offence and anyone committing such an offence is liable to a fine (sic) not exceeding Rs. 50. u/s 14A(1) (m) it is the duty of every police officer to prevent obstruction in the streets.

7. These being the relevant provisions, I see no authority for the Commissioner of Police to grant permission to the General Secretary "Street Hawkers" and Vendors" Union", by his letter, dated October 18, 1955, to encroach upon the pavement belonging to the Corporation and to sit on the Gariahat Road (abolished corner) temporarily or permanently. At all times same encroachment upon a public thoroughfare for such a purpose is an offence, and the Commissioner of Police has no right to permit an offence to be committed, whether temporarily or otherwise. Further, it is the duty of the Commissioner of Police and his subordinates to assist the Commissioner to the Corporation and the Corporation of Calcutta to carry out their statutory duties in removing obstructions of the nature that we are dealing with, in this application. It is a wellknown fact that owing to the influx of refugees into the city of Calcutta, a grave problem has arisen. The displaced persons who wish to carry on their trade, are either unwilling to secure the necessary accommodation or are unable to find out the same. In order to enable them to carry on their trade, the Government is stated to have given permission for the opening of stalls and or markets on public streets or lands vested in the Corporation. Then again, it is stated that the Commissioner of Police from time to time sanctions the same. Neither the Government of West Bengal nor the Commissioner of Police, has the slightest right or jurisdiction in law to do this. On the contrary, the law creating the Corporation of Calcutta and/or regulating its powers and duties, enjoins that public streets including pathways and footways, are meant for the use and benefit of the public and that all obstructions upon it, excepting certain regulated obstructions which are permitted by the by-laws, and subject to conditions imposed thereby, are unwarranted and illegal. In certain circumstances, such obstructions constitute an offence under the law. The Commissioner to the Corporation and the Corporation of Calcutta have a duty to clear such obstructions, and in that respect they are entitled to assistance from the Commissioner of Police and his subordinates, which assistance is not a matter of

grace, but is a matter of legal right. The Commissioner of Police has, therefore, no right to permit (sic) obstructions in public streets belonging to the Corporation, but, on the other hand, he has a legal duty to assist the Commissioner to the Corporation and the Corporation in preventing or removing such (sic) obstructions. He has also a statutory duty to prosecute those who commit offences by making such obstructions. Just as the Commissioner to the Corporation and the Corporation of Calcutta have a legal (sic) duty to clear all obstructions to the user of public streets, including public footways and or footpaths, the Commissioner of Police and his subordinates have a duty to assist them in removing such obstructions (sic) and preventing the same. It is the clear right of members of the public who are entitled to use such footpaths, to call upon the Commissioner to the Corporation and]or the Corporation of Calcutta, to (sic) exercise their rights and perform their duties enjoined by law and Commissioner of Police and his subordinates are bound to help (sic) them in effectively exercising such rights and the performance of their (sic) statutory duties. If these persons fail to perform their statutory (sic) duties, this Court has a right to command them by a writ in the nature of mandamus to do so. The present condition of footpaths flanking public streets in Calcutta and its suburbs, is nothing short of scandalous. All kinds of obstructions?hawkers, itinerant beggars, stray cattle, rubbish heaps and everything conceivable on earth is allowed to crowd the footpaths and footways, meant for the convenience of pedestrian traffic. It is almost forgotten that members of the public using the footpaths have a legal right of unobstructed user thereof, and that there is a legal liability on the part of the municipal and the police authorities to see that such a right is maintained. Now that the matter has been brought to court by a party affected, these authorities must be firmly told to carry out their legal obligations.

8. In this case, a strong comment is called for, regarding the conduct of the police authorities. It would be remembered that the Petitioners called upon the Corporation and the Commissioner thereof to clear the obstructions, and the municipal authorities started correspondence with the police authorities. Instead of receiving help, they were driven from pillar to post and were finally met with a wall of silence. It appears that answering letters or requisitions, even though it may be in conformity with, or in enforcement of, a statutory provision is not a charge to which the police authorities in the city of Calcutta can be accused of. Common civility demanded that the letters of the municipal authorities should have been duly answered. In this case, however, the police authorities were being asked to do an act which they are compelled by law to perform, and not as a matter of grace. As I have pointed out above, a certain association known as the West Bengal Hawkers' Association was given permission by the police authorities for establishing a Hawkers' Corner upon the footpath on (sic) Rash Behari Avenue. This footpath belongs to the Corporation of (sic) Calcutta and the police have no right to allow any such hawker (sic) corner to be opened upon a public footpath, either temporarily or a (sic) all. Instead of realising this, and coming to the aid of the municipal authorities when such an illegal sanction

blossomed into a market, the police authorities, when called upon to aid the municipal authorities maintained a wall of silence and have given no aid. The plea that the removal of an illegal obstruction will cause violence on the part of the wrongdoers and thus affect public tranquility is, to say the least, an astounding statement. It is a strange proposition that the law should be allowed to be flouted and offences permitted to be committed, because the police apprehend a disturbance of public tranquility by the wrongdoers or interference by a political party, I am glad to place on record however that the learned Counsel appearing on behalf of the police authorities has not maintained that attitude in Court. I am informed that the police authorities have been awaiting an authoritative interpretation of their duties in the matter and have every intention of carrying them out. None of the trespassers who have made illegal constructions on the footpath and were the parties, have appeared or opposed this application, which is understandable, because there appears to be no defence to this application, so far as they are concerned.

9. The result is that this rule is made absolute and there will be issued a writ in the nature of mandamus directing the Respondent Nos. 1 and 2 to remove or cause to be removed the unauthorised constructions on the footways and footpath on Rash Behari Avenue abutting the premises No. 195, Rash Behari Avenue, in the suburbs of Calcutta, and to exercise all the powers conferred upon them by the Calcutta Municipal Act, 1951, or the bye-laws in force, for that purpose. There will also be a writ issued in the nature of mandamus directing the Commissioner of Police, the Respondent No. 3, to render adequate help and assist the Respondents Nos. 1 and 2 in carrying out their statutory duties in this behalf in clearing the obstructions including the unauthorised structures to public use of the footpath and or footways flanking Rash Behari Avenue at its junction with Ekdalia Road, as mentioned in the petition. There will be no order as to costs. Let the order be drawn up immediately.