**(1954) 08 CAL CK 0001**

**Calcutta High Court**

**Case No:** Full Bench Ref. No. 1 of 1953, arising out of Criminal Revision Case No. 247 of 1953

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| Bakul Behari Roy | | APPELLANT |
| | Vs | |
| Corporation of Calcutta and Another | | RESPONDENT |

**Date of Decision:** Aug. 19, 1954

**Acts Referred:**

- Calcutta Municipal Act, 1923 - Section 144(3), 363(1), 503, 504

**Citation:** AIR 1955 Cal 1 : (1955) CriLJ 36 : 59 CWN 28

**Hon'ble Judges:** Chakravartti, C.J; S.R. Das Gupta, J; P.N. Mookerjee, J; K.C. Chunder, J; Guha Ray, J

**Bench:** Full Bench

**Advocate:** Chandra Sekhar Bhowmik, for the Appellant; Santosh Kumar Basu and Ajoy Kumar Basu, for the Respondent

**Judgement**

Chakravartti, C.J.
This reference raises two short questions under proviso (a) to Section 363(1) of the Calcutta Municipal Act. The facts which have led up to this Reference are as follows :

2. On some date in 1950, one Badrudduja who was occupying a flat in the second storey of premises No. 15 Dhurrumtolla Street, Calcutta, made a complaint to the Corporation that one Abdul Hamid, who was occupying the ground floor, had erected a two storeyed structure to the south of the building which was Interfering with his light and air. On receipt of that complaint, the corporation sent an officer to inspect the premises, who found that not only had a structure been erected in the back space to the south, but another structure had also been erected in the side space to the west. Both were two storeyed structures with corrugated iron roofs and both were unauthorised.

Thereafter, proceedings were commenced u/s 363, Calcutta Municipal Act and after hearing Abdul Hamid, the Corporation made an order on 28-3-1951, that an application be made to the Municipal Magistrate for a demolition order. Actually, the application was made on 5-4-1951, when the Magistrate directed notices to issue for May, 31 following. On 20-5-1951, two notices were Issued, one addressed to Abdul Hamid and another addressed to "All owners and occupiers of premises No. 15, Dhurrumtolla Street", Both the notices were send on 25-5-1951 but when the returns were placed before the Magistrate on the 31st May, he considered the service on Abdul Hamid to be unsatisfactory and directed a fresh notice to issue. The case was adjourned to 19-7-1951. On that date Abdul Hamid appeared and the Magistrate record-ed an order to the effect that the general notice had been served, adjourning the case to 23-8-1951 for evidence.

The case put forward by Abdul Hamid was that he had no concern with the constructions and had been merely a tenant of the structures for more than five years. It is obvious that the case which Abdul Hamid made was one under Sub-section (2) of Section 363. He attended the hearing on the several dates on which prosecution witnesses were examined, but when the time came for him to adduce his own witnesses, he asked for time to do so. That application was made on 6-3-1952 and about two months time was allowed. Thereafter he never appeared, though the case was adjourned further twice, and ultimately on 17-7-1952, the Magistrate made an order, directing him to demolish the structures by 30-9-1952 and authorising the Corporation to demolish them at his cost if he failed to do so himself.

3. On 31-1-1953, one Bakul Behari Roy, who is the petitioner in the present case, appeared before the Magistrate and made an application in which he stated that he was an occupier of one of the structures but had come to know of the demolition order only three days earlier. He accordingly prayed for six months'' time to vacate. That application was rejected by the Magistrate by an order passed on 2-2-1953, but it appears that on the same date, Bakul Behari Roy made a second application by which he prayed for three months'' time. He was allowed fourteen days. Apparently, during those fourteen days he received advice that he could challenge the demolition order itself and accordingly on 14-2-1953 he made a fresh application in which he stated that the order of demolition having been passed without notice to him and in his absence, it was illegal and not binding on him. He accordingly prayed that the order might be set aside or he might be granted one week''s time for move ing this Court. The Magistrate disposed of the application by an order passed on 16-2-1953 by which he held that he had no power to set aside or revise the order of demolition already passed, but he granted the petitioner one week''s time as prayed for. Bakul Behari Roy then moved this Court and obtained a Rule.

4. The Rule came up for hearing before a Division Bench composed of Guha Ray and Sen JJ. It transpired that the petitioner was not a registered occupier and the only

point urged on his behalf was that, nevertheless, he was entitled to be served with a notice of the demolition proceeding under Proviso (a) to Section 363 (1) of the Calcutta Municipal Act & that no such notice having been served, the order of demolition was not valid in law.

5. It will be convenient at this stage to sets out the proviso on which the case turns. It reads as follows :

Provided that the Magistrate-

(a) shall not make any order under this section without giving the owner and occupier of the building to be so demolished or altered full opportunity of adducing evidence and of being heard in his defence."

The questions which arise out of the proviso in cases of the present class are (i) whether it requires any notice to be issued at all, (ii) if it does, to whom the notice should go and (iii) what the form of the notice and the manner of its service should be.

6. The learned Judges of the Division Bench found that as to the first question, it had been held in certain previous decisions that although the proviso did not require in terms any notice to issue, such requirement was implicit in the provision that the owner and occupier should be given full opportunity of adducing evidence and being heard in defence. It had been held that no such opportunity could be afforded without informing the parties concerned of the proceeding commenced and the recognised method of giving such information was to do so by issuing a notice. The learned Judges did not dissent from that view and indeed accepted it as correct.

7. As to the second question, the learned judges found that the matter had been considered in certain previous cases and the view taken was that not only the owner or only the owner in occupation, but the owner or all owners where there were more than one and also all occupiers, whether registered or unregistered, were entitled to the notice, impliedly contemplated by the proviso. From that view also the learned Judges did not dissent and indeed they accepted it as correctly representing the true meaning of the proviso.

8. As to the third question, the learned Judges bought that by reason of the provisions of Section 144(3) and 504 of the Act, it was not imperable that the notice should be drawn up in the mes of the owners or occupiers addressed and (sic) therefore in the case of occupiers and certainly unregistered occupiers, a notice address- (sic) to occupiers in general would suffice. They (sic)aught further that by reason of the provisions Section 504 (c), service of such a notice by affixation on some conspicuous part of the land or (sic) concerned would be good and valid service.

It, however, appeared to them that a contrary (sic) had been taken in the case of -- ''Central Hardware Mart v. Corporation of Calcutta AIR Cal 39, where as they read

the decision, (sic) had been held that the notice addressed to occupiers should be made out in their names and'' should be served individually in the same way is summonses were served. The learned Judges thought that the view taken, in the case was contrary to a certain extent to what had been held in the previous case of -- Ashutosh Sarkar Vs. Corporation of Calcutta, and that it would reduce the provisions of Sections 144 (3) and 504, as also those regarding the demolition of unauthorised structures, to a dead letter in a large majority of cases. They accordingly referred to a Full Bench the following two. questions of law :

"(i) whether notices even to unregistered owners or occupiers are to be issued by name and individually; and

(ii) how service is to be effected by a notice1 under Proviso (a) to Section 363".

In accordance with the provisions of Rule 5,. Chapter VII of the Appellate Side Rules, the learned Judges also referred the whole case to a Full Bench for decision.

9. It will be noticed that the first question, as framed, is limited ,in scope, being confined only to unregistered owners or occupiers. It is concerned with the form of the notice. The second question is concerned with the mode of service. It is general in its form and appears to comprise the whole question of the proper mode of the service of a notice under Proviso (a) to Section 363 (1),

10. With great respect to the learned referring Judges, it appears to me that the difficulty felt by them as regards the ease of Central Hardware Mart Vs. Corporation of Calcutta and Others, , is not really presented by that decision. The learned Judges who decided that case said nothing whatever as regards the form of the notice, at least they did. not say anything in express terms. It is true that they said that normally a notice under Proviso (a) to Section 363 should be served in the same way as a summons, but that observation does not seem to me to involve that since the notice was to be served in the manner of a summons and since a summons, as ordinarily understood, is a direction to a named person commanding his appearance, the notice should correspond to a summons in form as well. Neither did the learned Judges say that the notice must always be served personally, but on the other hand what they clearly and expressly said was that the notice should be served personally except where personal service was impossible and that if it was impossible, service by affixation of the notice on the premises concerned would be sufficient.

Even those expressions of opinion were in the nature of ''obiter dicta'', because the real ground of the decision was that there was no evidence of even any service of a general notice, because in the view of the learned Judges, the peon''s return which was the only material in the case, could not prove service in the absence of the peon being examined. It would therefore appear that on a correct reading of the decision in -- ''Central Hardware Mart v. Corporation of Calcutta (A) (Supra)'', there was no real conflict between the view taken in that case and the view favoured by the

learned referring Judges and therefore, strictly speaking, the questions referred do not arise.

11. I do not, however, think that it will be proper to refrain from answering the questions, because there is another point which seems to me to make a decision necessary. No reference was made in the case of -- ''Central Hardware Mart v. Corporation of Calcutta (A) (Supra)'', to Section 504 of the Act and it would appear that the learned Judges who decided that case proceeded on general principles regarding service of notices. In the case of Ashutosh Sarkar Vs. Corporation of Calcutta, , also, the learned Judges did not proceed on Section 504, but only observed that a general notice to all owners and occupiers might be given by its affixation on some conspicuous part of the premises ''in much the same way as provided in Section 504 (c)''. The learned referring Judges in the present case, however, thought that it was Section 504 which regulated the service of notices under Proviso (a) to Section 363 and that difference of opinion, it appears to me, may be resolved by the Full Bench.

12. As already stated, the learned Judges have relied on two sections cf the Act, via., Section 144 (3) and Section 504. They have relied upon both the sections for the form of the notice and relied upon the second for the mode of service. The first section therefore bears upon the first of the questions referred to a Full Bench, while the second refers to both.

13. With great respect to the learned referring Judges, it appears to me that Section 144 (3) is not really concerned with making a provision as to the form in which notices or other documents intended for unregistered owners or occupiers should be made out. The object of Section 144 is quite different. It provides by Sub-section (1) that any owner or occupier may apply to the Executive Officer to have his name entered as such and that the Executive Officer shall cause his name to be entered in the assessment book, unless he finds reason to refuse the application. Sub-section (2) provides how the question as to who is entitled to have his name entered is to be decided, when there are gradations of owners or occupiers. Then comes Sub-section (3) which provides that

"No owner or occupier whose name is not entered in the assessment book shall be entitled to object that any bill, notice of demand, warrant or. other notice of any kind which is required by this Act to be served on the owner or occupier of any land or building, has not been made out in his name."

It is clear that the subject-matter of the section is registration of owners and occupiers and Sub-section (3) only lays down a disability, in regard to notices and other documents issued in respect of the premises, of owners and occupiers whose names are not entered in the assessment-book. The latter provision is not expressed by reference to the authority issuing a notice or other document and does not deal with his duties, but it is expressed by reference to the unregistered

owner or occupier and deals with a disability of his arising out of the non-registration of his name.

What the sub-section means is that if an owner''s or occupier''s name is not entered in the assessment book, then if he finds that a notice or other document has been made out in some name other than his, he will not be entitled to object that it has not been made out in his own name. The use of the word ''own'' clearly suggests that some name has been used in the document, but it is not the name of the unregistered owner or occupier. The sub-section cannot be read as contemplating a notice or other document which has used no name at all and as providing that in such a case, no unregistered owner or occupier shall be entitled to object that his name has not been used, because such a provision, in respect particularly of unregistered owners and occupiers, would be pointless in view of Section 504 of the Act which lays down that

"when any notice, bill, summons or other document is required by this Act or by any rule or bylaw made thereunder to be served upon or issued to any person as owner or occupier of any land or building, it shall not be necessary to name the owner or occupier in the document."

From that provision it is clear that even in the case of registered owners and occupiers, it is not required to name them in the notice or other document and it follows that no owner or occupier, whether registered or unregistered, is entitled to object that a notice or other document has not been made out in his name, but is in a general form and in no individual name or names at all. Section 144(3) cannot properly be read as repeating the general provision contained in Section 504 with particular reference to unregistered owners ami. occupiers, because such meaning would make iti a redundant provision. The true meaning of Section 144(3) is that it lays down a consequence of non-registration as between registered and unregistered owners and occupiers and the consequence is that when a notice or other document is made out in the name of a registered owner or occupier or it may be in some other name, an unregistered owner or occupier shall not be entitled to object that it has been made out in such name instead of his.

14. I am, for the reasons given above, unable to agree with the learned referring Judges that Section 144(3)

"clearly provides that in the case cf unregistered owners or occupiers, it will suffice for the corporation to have notices under the Act made out not in the names of the owners and the occupiers but addressed to them just as owners or occupiers as the case may be."

Confining ourselves to notices, the sub-section says nothing at all as to the kind or form of notice which the Corporation should or may issue and it is not its object to make any. provision in that regard. It is addressed solely to unregistered owners and occupiers and is concerned with their rights and all that it says is that if a notice

is made out in some name other than theirs, they will not be entitled to make that fact a ground of complaint.

It is true that if unregistered owners and occupiers have no right to insist on notices made out in their names, the Corporation also can be under no absolute duty to issue such, notices in all circumstances and so much may be said to be implied in the sub-section. But, still, the sub-section cannot be said to contain any provision as to the form in which a notice is to be made out when, by reason of some provision in the Act. a notice has got to be given to unregistered owners and occupiers, as under Proviso (a) to Section 303(1). in trying to find an answer to the first of the questions referred, Section 144(3) must, therefore, be left out of account.

15. The other section on which the learned referring Judges have relied is Section 504 and they have relied on it for both the form of the notice and the mode of its service. The main provision of that section, so far as it bears on the form of documents required to be issued to owners and occupiers, has already, been quoted. It is a direct provision, applying to all owners and occupiers, whether registered or unregistered, and it does say that in no case shall it be necessary to name the owner or occupier in the document. The document we are considering is a notice issued by a Magistrate.

In the case of --- Kartick Chandra and Others Vs. The Corporation of Calcutta, , decided by Sinha, J. and myself, I had occasion to remark that Section 504 could not be said to apply in terms to any notice issued by a Magistrate, inasmuch as there were indications in the section itself, as also in the preceding and succeeding sections, that the documents contemplated by the section were documents issued by the Corporation themselves. Having examined the provisions of the Act further, I feel constrained to say that great as the difficulties are in applying Section 504 to notices issued by a Magistrate, the section must still be held to apply to them, if a meaning is to be given to all the relevant sections of. the Act. To indicate what the position is, a somewhat extensive examination of the sections is necessary.

16. Section 504 occurs in Chap. 37 of the Act which bears the general heading ''Procedure''. The chapter begins with Section 498 and upto Section 527, appears, ''prima facie'', to deal with matters which are the special concern of the Corporation. Those sections are grouped under various sub-headings to which it is not necessary to refer, except to say that Sections 502 to 506 appear under the subr-heading ''Signature and service of notice, etc''. After Section 527 comes the sub-heading ''Proceedings before Court of Small Causes'' and under that sub-heading appear Sections 528 to 530. Then comes another sub-heading, viz., ''Proceedings before Magistrates'' and under that sub-heading appear Sections 531 to 536. The arrangement and grouping of the sections contained in Chap. 37 might suggest that in relation to proceedings before Magistrate, the general subject-matter of the chapter, which is ''Procedure'', has been dealt with in a group of sections different and separate from those dealing with the procedure as to proceedings before the

Court of Small Causes and that as to proceedings before the Corporation. But the inference suggested by the broad division of the sections is negatived by the contents of Sections'' 502 to 50S, though the difficulty in the way of applying Sections 503 and 504 to notices issued by Magistrates is not in-considerable.

17. Sections 502 to 506 appear, as I have already pointed out, under the sub-heading ''Signature and service of notices, etc.'' The first of them, Section 502, may be left out of account, because it deals only with documents which are "required by this Act or by any rule or by-law made thereunder to bear the signature of any municipal Officer". Section 503 speaks of "all notices, bills, summonses and other documents required by this Act or by any rule or by-law made thereunder to be, served upon, or issued to, any person." and provides by whom such documents are to be served, and issued. The provision is that they "shall be so served or issued by municipal officers or servants or by other persons authorised by the Executive Officer in this behalf".

It is to be noticed that the section speaks of documents required to be issued to ''any person'' and it deals not only with the agency which is to serve the documents but also with the agency which is to issue them. Section 504 speaks of

"any notice, bill, summons or other documents required by this Act or by any rule or bylaw made thereunder to be served upon or issued to any person as owner or occupier of any land or building"

and it deals with the mode of service of such documents. Clause (a) of the section provides for the primary mode of service which is by giving or tendering the document to the owner or occupier, but there is a proviso attached to the clause which says that if there be more than one owner cr occupier, the Corporation may serve the document on any one or more of them as they think fit, if "it is not in the opinion of the Corporation practicable to serve the document on every one of them".

Clause (c) of the section provides that if other means of service be not available, a notice on yellow paper, in the form prescribed by Schedule 23 or in a form to the like effect and setting forth the substance of the document, may be affixed on some conspicuous part of the land or building to which the document relates. Section 505, again, covers all documents required to be served or issued under the Act or under any rule or by-law and it deals with the mode of service when the person to be served is someone other than an owner or occupier. Last comes Section 506 which provides that

"Nothing in Sections 503, 504 and 505 shall apply to any summons . issued under this Act by a Magistrate".

The immediate question we have to consider is whether the notice required to be issued by the Magistrate under Proviso (a) to Section 363(1) is governed by Section

504 and consequently whether a notice to unregistered owners or occupiers is to be made out and served in the manner laid down in that section. If the notice contemplated by Sections 503 to 505 includes a notice issued by a Magistrate, Section 504 must apply to a notice issued under Proviso (a) to Section 363(1). The language of Sections 503 to 504 is certainly unqualified, applying so far as words go to all documents, including notices, which are required by the Act to be issued to "any person", "any person as owner or occupier" and "any person otherwise than as owner and occupier", respectively.

Notices issued by Magistrates under the provisions of the Act clearly come under that language. It is also to be seen that Section 503 which excepts summonses issued by Magistrates from the purview of Sections 503 to 505, does not except notices issued by them and the clear implication is that notices issued by Magistrates have been left to be governed by 6s. 503 to 505. It is true that the sections apply only to documents "required by this Act or by any rule or by-law made there under" to be served or issued, but it cannot toe said that there is no provision in the Act, requiring a Magistrate to issue a notice, and therefore notices issued by Magistrates are not within the contemplation of the sections.

There is at least one provision, contained in Section 381(1), which requires, the Magistrate in express terms to serve a notice on an owner or occupier, when the Corporation applies to him tc prohibit the further use of a building or a portion thereof as a human habitation on the ground that it has become unfit for such purpose. Nor can it be said with regard to the notice under Proviso (a) to Section 363(1) that since there is no express provision in the proviso as regards tare service of a notice, a notice thereunder is not a notice required by the Act. It is out of the terms of the proviso that the Court has extracted the requirement of a notice and if the proviso, on a true construction, be at all held to provide for a notice, as it has been held, such notice is as much required by the Act as it would be if it had been prescribed in express terms.

It may be conceded that, directly, the proviso appears to be addressed not to the stage of the initial notice, but to the subsequent stages of the hearing before the Magistrate, because all that it provides in terms is that the owner or occupier concerned shall be given an opportunity to call evidence on his behalf and make his submissions before the Magistrate. The requirement of a notice has been read into the proviso on the obvious footing that the giving of a notice is the beginning of the. giving of an opportunity to call evidence and place the defence before the Court. Indeed, the Legislature itself seems to have proceeded on that view in Section 381(1) where it has required the Magistrate to "serve a notice on such owner or occupier so as to give him an opportunity of being heard in the Court". It is clear that, in the view of the Legislature, the service of a notice is a means or form of giving an opportunity to be heard and the first step in the giving of such opportunity.

The absence of an express mention of a notice in Proviso (a) to Section 363(1) and Proviso (a) to Section 364(1) can only have been an accidental omission, in view of the clear provision for a notice in Section 381(1) which deals with a proceeding of precisely the same kind and is designed to achieve precisely the same object. For all these reasons, it would appear that so far as the plain language of Sections 503 to 506 goes, notices issued by Magistrates under the provisions of the Act are within the contemplation of Sections 503 to 505 and that a notice under Proviso (a) to Section 363(1) is governed by Sections 503 and 504, the first, which applies to notices issued to all persons, providing who will serve or issue the notice and the second, which applies to notices issued to owners and occupiers, providing how the notice will be made out and served.

18. There are, however, certain great difficulties in the way of holding that notices issued by Magistrates are governed by Sections 503 and 504. The former section provides that the notices contemplated by It shall be "served or issued by Municipal Officers or servants or by other persons authorised by the Executive Officer in that behalf". The provision as regards service presents no difficulty, because there is nothing inappropriate in a notice issued by a Magistrate being served by officers or servants of the Corporation. But the section also provides that the notices contemplated by it shall be ''issued'' by the same persons.

If the word ''issued'' has been used in the section in the sense ordinarily associated with the giving of a notice by a judicial, administrative or other authority and includes the act of deciding to issue the notice, the effect of holding that the section applies to notices to be given by Magistrates will be strange, for it will mean that a notice relating to proceedings before a Magistrate and purporting to go out from him, must be issued by Municipal Officers or by other persons authorised by the Executive Officer. That the Legislature should have made such a provision is not conceivable. It cannot be said that a Municipal Magistrate is himself a Municipal Officer, because a Municipal Magistrate is appointed by the Local Government u/s 531 and he is not one of the Municipal Officers or servants mentioned in Sections 51 to 57 of the Act. So far again as Section 504 is concerned, which deals ''inter alia'' with the mode of service on owners and occupiers, the proviso to Clause (a) of the section leaves it to the Corporation to decide, when there is more than one owner or occupier to be served, whether it is practicable to serve all of them and if they consider that the same is not practicable, to serve any one or more of them as they may think fit.

If the section applies to notices issued by Magisstrates,, it would seem to follow that even when it is a Magistrate who issues a notice and he directs it to issue to several owners or occupiers, the Corporation shall have a discretion as to on which of them the notice will be served. If such indeed be the effect of applying Section 504 to notices issued by Magistrates, it is hardly conceivable that the Legislature intended it. There is undoubtedly the fact that the language of Sections 503 and 504

embraces all notices which the Act requires to be served or issued and it is '' also true that Section 506, while excepting summonses issued by Magistrates, does not except notices issued by them. But Section 506 is Itself not a very well-considered provision, because it does not ex cept even summonses issued by the Small Cause Court, though there could be no reason to make a distinction between such summonses and sum monses issued by Magistrates.

19. These were the difficulties which induced me to hold in the case of -- - Kartick Chandra and Others Vs. The Corporation of Calcutta, , that Section 504, should be read as limited to notices and other documents issued by the Corporation themselves. On further consideration, however, I have come to be of the view that great as the difficulties are, some means of getting round them must be found, if the Act is to be made to work. Apart from Section 504, there is no other provision in the Act which prescribes the mode of service.

The mode prescribed by the Code of Criminal Procedure cannot apply, because it has not been made applicable in terms. Nor is that mode attracted by anything contained in the Code itself, because a Municipal Magistrate is not a Magistrate contemplated by the Code and the matters dealt with by him are not offences under the Indian Penal Code. It must, therefore, be held that unless the Legislature has left it to Municipal Magistrates to mould their own procedure regarding the drawing up and service of notices issued by them, which it is not easy to hold, such notices must be treated as governed by Section 5.04, unless it be wholly impossible to take that view. If Section 504 applies, Section 503 must also apply, the two sections being inter-connected and it must be seen if the difficulty presented by these sections can be met.

20. As to the difficulty about Section 503, it appears to me that Section 504 provides a dictionary as to what the term ''issued'' means, although, it must be admitted that it is not a very satisfactory one. Both the sections use the expression ''served or issued'' in respect of notices and other documents. Section 504, however, also provides that the "service or issue" of the documents shall be effected in three ways set out in Clauses (a), (b) and (c). It thus gives an indication of what ''issue'' means. Clauses (a) and (b) deal with modes of actual service, pure and simple. Clause (c) reads as follows :

"(c) if none of the means mentioned in Clause (a) or Clause (b) be available, by causing a notice on yellow paper, in the form prescribed in Schedule 23, or in a form to the like effect, setting forth the substance of such document, to be affixed on some conspicuous part of the land or building to which the document relates".

21. It is only to this clause that the word ''issue'' might be said to have been intended to apply and it might be thought that the word had been used in respect of the decision to give a notice in the particular form prescribed and the act of sending out a notice of that kind. But it will be seen that Clause (c) is an alternative to Clauses

(a) and (b) and it is to be resorted to "if none of the means mentioned in Clause (a) or Clause (b) be available". Since the means mentioned in Clauses (a) and (b) are only means of actual service, it would seem that the real subject-matter of Clause (c) is the same, which is further emphasised by the fact that what the clause mainly and directly does, is that it prescribes the affixation of the notice on some conspicuous part of the premises. The form of the notice is referred to only incidentally.

It is also to be observed that the notice prescribed in Schedule 23 is not necessarily a notice addressed to no one by name and may well be a notice addressed to a named owner or occupier, as the form itself shows. In the case of the issue of such a notice, no decision as to the manner in which the notice is to be addressed is involved. It has further to be observed that although Clause (c) speaks of a notice, giving the substance of the document concerned, there can be no question of giving the substance of the notice when the document to be served is itself a notice, as in" the case of notices issued by Magistrates or other notices prescribed by the Act.

It follows that in the case of the issue of a document which is itself a notice, no decision as to tile form or contents of the notice is involved. From all these considerations it appears, to me to be possible to hold that the words ''issued'' and ''issue'' have been used in Sections 503 and 504 in the sense of the mechanical drawing up and sending out the documents required to be served or issued, at least in the case of notices issued by authorities other than the corporation themselves. I confess I do not find this construction wholly satisfactory, because the words have been used in respect of all documents required by the Act to be served or issued and, therefore, in the case of documents issued by the Corporation themselves and also in the case of notices in a general form issued by other authorities, some amount of decision, is involved.

But the construction I have adopted is the only one which will make available a provision for the drawing up, sending out and service of notices issued by authorities other than the Corporation and thus make the Act workable in respect of such notices. If the word ''issued'' may be taken as referring to the mechanical act of drawing up and sending out, there is no difficulty in applying Section 503 to notices issued by Magistrate. Such notices may well be sent out by officers of the Corporation and served by their servants without causing any incongruous result. We were informed that, in actual fact, notices issued by Magistrates were sent out and served by members of their own staff, but that circumstance cannot stand in the way of our adopting a construction of the Act which it, by its terms, bears.

22. The difficulty about the proviso to Clause (a) of Section 504 is less serious. It is true that the proviso gives the Corporation power to decide, when there are several owners or occupiers to be served, whether it is practicable to serve all of them and if they think that the same is not practicable, to serve such of them as they may consider it proper to serve. But this provision can be adjusted to notices issued by Magistrates, if the discretion given to the Corporation is not treated as absolute and

final, but taken as subject to the power of the Magistrate to reject the service effected by the Corporation as unsatisfactory, if he finds reason to do so. So read, the proviso would mean that in the case of notices issued by Magistrates, the discretion conferred on the Corporation is only a discretion to be exercised by them in the first instance, but the exercise of the discretion can always be over-ridden by the Magistrate who may direct fresh or further service.

If the proviso be read in that sense, the exercise of discretion by the Corporation under its provisions would be wholly in accord with what every process-server does under the provisions of the Civil and Criminal Procedure Codes. Rules 10 to 17 of Order 5, Civil P. C. and Sections 69 to 71, Criminal P. C. lay down several alternative modes of service and the process-server or police officer effects service in the first instance in the mode which he considers possible in the circumstances of the case, without reference to the Court.

It is thereafter that the Court examines the return of service and if it thinks that proper service has not been effected, it directs fresh service. It appears to me that, in like manner, the Corporation may in the first instance effect service in the exercise of their own judgment and discretion some only of several owners or occupiers required to be served, but the Magistrate can always hold that the service has not been sufficient or effective and may direct service on persons not served or on some of them. It is true that the ordinary process-server cannot omit altogether a person required to be served, but regarded from the point of view of the primary discretion vested in the person entrusted with the service of a summons or a notice, the position is in essence the same, whether the discretion is limited to the mode of service or extends to the choice of the persons to be served.

The discretion conferred on the Corporation by the proviso to Clause (a) of Section 504 cannot, therefore, be regarded as ill-adapted to the service of notices issued by Magistrates, provided the over-riding authority of the Magistrate to determine if proper service has been effected is taken as always superimposed on the discretion. That the Magistrate has such over-riding authority may be taken to be implicit in the Act. So far as proviso (a) to Section 363(1) is concerned and also Section 381(1), it must be remembered that the notice is to be given in discharge of the statutory duty of the Magistrate to give a full opportunity to the owner or occupier to adduce evidence and to be heard in his defence.

It will, therefore, always be the duty of the Magistrate to see that such notice as is possible in the circumstances is given, which will serve the purpose of giving the owners or occupiers, likely to be affected, the opportunity enjoined by the statute and, to that end, to direct service of the notice on persons whom the Corporation may not have served in the first instance. For all these reasons it appears to me that so far as notices issued by Magistrates are concerned, the absolute form of the proviso to Clause (a) of Section 504 may be disregarded and the clause may be adjusted even to such notices.

23. Section 503 does not really present any difficulty as respects the question before us except that it creates some confusion as to the true scope and extent of Sections 503 to 505. It does not except summonses issued by the Court of Small Causes from the purview of those sections, but the reason may be that such summonses are excepted by Section 528 which makes the provisions of the Presidency and Provincial Small Cause Courts Acts applicable to them. Sub-section (1) of that section refers directly to summonses issued to witnesses and Sub-section (2) indirectly to the summons to the party proceeded against, and the two Small Cause Courts Acts seem to have been made applicable to summonses of both kinds by the provisions in the two paragraphs of Sub-section (1).

Even so, Section 506 should logically have excepted summonses issued by the Small Cause Court or the provisions of Sections 503 to 505 should have been made subject to Section 523. A question may arise as to what summonses are contemplated by those sections, if those issued by Magistrates and, by the Small Cause Court are both excepted, particularly since the Act does not appear to provide for any summons to be issued by the Corporation, as far as we have been able to investigate. The only provision for a summons to be issued by any other authority which we have been able to trace is Section 121(1) (a) which provides for the issue of a summons by the auditor and to that extent the mention of ''summons'' in SS. 503 to 505 may be said to have a meaning.

24. If the difficulties in the way of applying Sections 503 and 504 to notices issued by Magistrates can be overcome in the manner I have indicated, the general language of the sections and the implication of Section 506 must obviously prevail. As I have already stated, it is not possible to feel that the difficulties can be laid to rest in a manner wholly satisfying to the mind, but if the not very well-drafted Act is to be construed in a manner which will make it workable, some amount of compromise is unavoidable. I would, therefore, hold, in agreement with the learned referring Judges, that Section 504 applies to notices issued by Magistrates and that a notice under Proviso (a) to Section 363(1) is governed by that section.

25. To return now to the questions referred to a Pull Bench. If Section 504 applies to all notices issued under the Act, including notices issued by Magistrates, the answers are almost wholly furnished by that section alone, because it covers both the form of the notices and the mode of their service. The first question is whether notices even to unregistered owners or occupiers are to be issued by name and individually. I do not think that the second part raises any separate question and it seems to me that what the learned referring Judges intended to ask was whether, even in the case of unregistered owners or occupiers, a separate notice was to be issued to each person, made out in his name.

In a sense, however, the question, as framed, is general in form, because though limited to unregistered owners or occupiers, it is not limited to a notice issued under Proviso (a) to Section 363(1) and not even limited to notices issued by Magistrates. I

think, however, that what the learned referring Judges had in view were notices under the proviso. The second question is how a notice under Proviso (a) to Section 363(1) is to be served. It is limited to the notice under the proviso, but is a general question in the sense that it is not limited to service on unregistered owners or occupiers.

26. Since Section 504 applies to all notices to owners or occupiers, it must be held that by reason of the provision contained in the opening paragraph of the section, it is not imperative that notices intended for unregistered owners or occupiers-should be issued to them in their names. To say that, however, is only to answer the question in a general way. Though Section 504 provides that no notice, required to be served upon or issued to an owner or occupier, need name him, it does not forbid the issue of notices made out in their names. The special object of a particular kind of notice may, therefore, make it necessary or at least proper that the owner or occupier, intended to be addressed, should, if possible, be named.

In my view, the notice contemplated by Proviso (a) to Section 363(1) is such a notice. It is to be given by way, and for the purpose, of providing an opportunity to the owner or occupier or owners or occupiers concerned to adduce evidence and to be heard in defence. The statute enjoins that the opportunity should be full opportunity. It appears to me that in view of such, object of the notice, everything possible should be done to make it reach the particular owner or occupier as the person addressed by the Court and as the person invited by it to offer his defence and adduce evidence in its support. That object can be best achieved by issuing a notice in the name o the owner or occupier concerned, whenever his name is known.

In the case of a registered owner or occupier, the name will necessarily be known, but when aen occasion for issuing a notice under Proviso (a) to Section 363(1) arises, the Magistrate, in my view, must also ascertain whether in addition to registered owners and also registered occupiers, if any, here are unregistered owners or occupiers whose names are known to the Corporation. If he finds that there are such unregistered owners or occupiers, the notice under the proviso must go out in their names, because otherwise less than the full opportunity possible in the circumstances will be given to such owners or occupiers. section 504 can be no argument against the necessity of giving such notice, because that section makes it unnecessary to give even to registered owners and occupiers a notice made out in their names, but none, I presume, will contend that even when there are registered owners or occupiers, no notice addressed to them personally need be given and that the proviso will be complied with by giving a general notice addressed simply to the owner or occupier or all owners and occupiers.

In my view, it is only when the existence of an unregistered owner or occupier is known to the Corporation but his identity is not known and cannot be ascertained or where neither the existence, nor the identity is known, but still there is reason to

think that there may be an unregistered owner or occupier, that a notice in no particular name but addressed to the owner or occupier as such or to owners or occupiers in general, can be given. In such a case, Section 504 will authorise and validate the issue of such a notice.

27. The question of the service of the notice presents no difficulty, once it is held that Section 504 applies. The section prescribes an elaborate and graduated mode of service which will have to be followed according to me circumstances of each case. All that is necessary to point out in particular is that if the Corporation have proceeded in a case in the manner laid down in the proviso to Clause (a) of the section, the Magistrate must examine the position and decide whether he will direct service on persons who have not been served.

In the case of notices which the Magistrate has directed to issue in a form addressed to owners or occupiers in general -- which will only be in. cases where neither the existence, nor the identity of the unregistered owners or occupiers is known but the possible existence of an unregistered owner or occupier or unregistered owners or occupiers is suspected -- there can be no question of attempting a personal service or service upon an adult male member or a servant of the family and in such a case the mode prescribed in Clause (c) of Section 504 may be followed even initially, provided the Magistrate so directs. But it would seem that where the existence of one or more unregistered owners or occupiers is known but his or their names are not ascertainable, the modes prescribed in Clause (a) and the first part of Clause (b) can be followed and will have first to be tried.

28. In the result, the answers to the questions referred to a Pull Bench should, in my opinion, be as follows:

"Question (i) : It is not imperative that notices even to unregistered owners or occupiers must in all cases be issued by name and individually. In the case of a notice under Proviso (a) to Section 363 (1) to unregistered owners or occupiers, it may be a notice simply addressed to the owner or occupier as such or a notice addressed to owners or occupiers in general, according to the circumstances of a case, but the Magistrate should, in discharge of his statutory duty to give a full opportunity to even such owners or occupiers to adduce evidence and to be heard in their defence, satisfy himself before directing the issue of a notice without any name or in a general form that the names of the unregistered owners or occupiers for whom such notice is intended are not known to the Corporation and cannot be ascertained. When the name of an unregistered owner or occupier is known, the notice ought to be made out in his name.

Question (ii) : The service of a notice under Proviso" (a) to Section 363 (1) is to be effected in the mode laid down in Section 504, following the order there prescribed, according to the circumstances of each case, subject to the condition that where the Corporation have proceeded in the manner indicated in the Proviso to Clause (a) of

the section and served only one or some of the owners or occupiers required to be served, the Magistrate should examine the position and decide whether he will direct service on the persons not served. In the case of unregistered owners or occupiers, if the notice is in the name of an individual, the modes prescribed in the section must be followed in the sequence given. If it is a notice addressed simply to an owner or occupier as such, his existence being known taut his name unknown, service should be effected in the same manner. If it is a notice in a general form, it may be served even initially in the mode prescribed in Clause (c) of the section."

29. Mr. Basu who appeared for the Corporation, invited us to reconsider the question as to whether all the owners and occupiers of a building, including all the unregistered owners and occupiers, are required to be served with the notice contemplated by Proviso (a) to Section 363 (1). That question has not been referred to a Full Bench and J express no opinion on it. The answers I have proposed to the two questions referred are on the basis of the requirement of Proviso (a) to Section 363 (1) regarding persons to be served as laid down in the decisions of this Court which were not in question in this Reference.

30. One observation, however, is called for as to the physical form of the general notice. The notice served in this case was one on white and not yellow paper. Clause (c) of Section 504, however, requires that the notice must be on yellow paper, although as regards using the form prescribed in Schedule 23 or a form to the like effect, an option is given. Presumably, the Corporation did not consider the use of yellow paper imperative, because they were giving a notice in accordance with the decision in -- Ashutosh Sarkar Vs. Corporation of Calcutta, , which did not hold that Section 504 (c) applied but only held that a notice might be given "in much the same (way as provided in Section 504 (c)". Now that it is being held that Section 504 (c) applies, the Corporation must in future use yellow paper for the notice.

31. It remains now to deal with the merits of the case. The only ground taken by the petitioner was that he had not been served with a notice individually. It was not contended that the general notice, such as it was, had not in fact been served or served properly. That being so, if the issue of a general notice was proper in the circumstances of the case, the petitioner cannot be heard to say that the absence of the service of any individual notice upon him vitiated the proceedings and affected the validity of the order made.

Admittedly, he is an unregistered occupier. It is true that a notice in the general form appears tc have been issued all at once without any facts being placed before the Magistrate and without the Magistrate being satisfied that there was no owner other than Abdul Hamid and no occupier who could be served individually, either in the first or in the second mode of service and that the issue of a general notice to unknown owners or occupiers, if there were any, was all that was possible. A slight error of procedure thus occurred, but the petitioner can derive no benefit from that circumstance at the present stage. He adduced no evidence before the Magistrate

to show that his identity or existence was known to the Corporation; nor did he, when the Corporation stated by affidavit in this Court that no one had been found in the occupation of the structures at the time of the inspection and that no one had even claimed to be an occupier, filed any affidavit in reply, denying the allegation or proving his occupation by producing the alleged agreement of lease on which he relied.

In those circumstances, the issue of a general notice was justified in fact and it was all that was possible to do in order to apprise the petitioner of the institution and pendency of the proceedings, even assuming that he was an occupier of the structures, as he alleges to be. No ground has therefore been made out for interference with the order of the Magistrate.

32. In the course of the Order of Reference, the learned referring Judges have expressed their inability to assent to the view taken in ''Central Hardware Mart v. Corporation of Calcutta (A)'' (ante) that a peon''s return relating to the service of a general notice cannot prove service in the absence of the examination of the peon. They have observed that

"there is hardly any necessity of recording evidence of the service of the general notice when the Magistrate is satisfied from the Peon''s return that the notice was in fact served."

It is true that the order-sheet in the present case contains an entry to the effect that the general notice has been served and therefore the Magistrate''s satisfaction that service had been effected may be presumed.

But the observation of the learned Judges raises two much-debated questions, one as to whether a peon''s report, without more, can at all be accepted as good and sufficient evidence of service and another as to whether an entry in the order-sheet to the effect that the notice or summons had been served, raises a presumption not merely of the regularity of the service after service has been -proved but also of service itself which will stand, until it is rebutted. It is, however, unnecessary for us to decide the point in the present case. The learned Judges have not included the question of proof of service among the questions referred to a Full Bench. As for the petitioner, his learned Advocate stated to us specifically that he did not wish to contend that the general notice had not in fact been served or that its service had not been duly proved. The question of the proper proof of the service of the general notice does not therefore call for decision.

33. In the result, I would answer the questions referred to a Pull Bench as above and discharge the Rule.

K.C. Chuwder, J.

34. I agree.

S.R. Das Gupta, J.

35. I agree with the views expressed by my Lord the Chief Justice.

P.N. Mookerjee, J.

36. I agree that this Rule should be discharged. I am not satisfied on the materials, placed before the Court, that the petitioner is an "occupier" of the disputed premises. He claimed to have been in occupation as a tenant since 27-12-1949, and he specifically set up an "agreement for lease", dated 23-12-1949. The petitioner''s allegations were denied by the corporation and, in their affidavit, filed in Court on 25-6-1953, the Corporation put the petitioner to the proof of his alleged tenancy, occupation and "agreement for lease". The challenge was left unanswered. There was no affidavit in reply on the petitioner''s behalf nor was the alleged "agreement for lease" produced before the Court nor was any attempt made to substantiate the petitioner''s allegation that he was a tenant or an "occupier" of the disputed premises. In this state of things, the Rule must fail on the preliminary ground that the petitioner''s alleged status as "occupier" has not been established and it is un-necessary to go into any of the questions, formulated by the learned referring Judges.

38. Even otherwise, -- and I say this with the utmost respect to the learned referring Judges --it appears to me that this Reference does not strictly arise. The learned referring Judges were apparently inclined to the view that, although an "occupier" would be entitled to notice before an order of demolition is made by the learned Municipal Magistrate, an "unregistered occupier" would be precluded, by reason of Section 144 (3) of the Act, from objecting to the validity of a general notice, not made out in his or in any particular name but addressed to "the owner and occupier" or "owners and occupiers" in general, and such a notice would also be perfectly valid u/s 504 of the Act and its service again would be proper, if made in accordance with Sub-clause (c) of that section. The learned referring Judges, however, felt that, in taking the above view, they would be going against the previous Bench decision of this Court in the case of Central Hardware Mart Vs. Corporation of Calcutta and Others, , and they also felt that that decision Central Hardware Mart Vs. Corporation of Calcutta and Others, was, to a certain extent, in conflict with the earlier Bench decision in Ashutosh Sarkar Vs. Corporation of Calcutta, , and, accordingly, they made the present Reference.

39. It seems to me that the cases cited do not, strictly speaking, contain any decision on the applicability or otherwise of the sections, quoted by the learned referring Judges, to demolition proceedings before the Municipal Magistrate and, accordingly, there was, in strict law, no occasion for the present Reference.

40. In the first of the two cases cited, all that was really decided was that there was no service of notice of any kind whatsoever and their Lordships (Harries, C. J. and Bose, J.) held that there was no proof of any service of even a general notice. No

return of service was on the record and their Lordships expressed the view that, in the absence of the return, it was not possible to hold that the general notice had been served in any manner whatsoever. That was the basic finding on which the case cited Central Hardware Mart Vs. Corporation of Calcutta and Others, was decided, and the observations of Chief Justice Harries at p. 39 of the Report that notice (including apparently, a general notice too) of an application u/s 363 of the Calcutta Municipal Act should be served "in much the same way as a summons is served" was more or less incidental, and rather of a tentative and general character.

It does not seem to me that the learned Judges, in the case cited, were making any pronouncement on the applicability or otherwise of Section 504 or Section 144 (3), Calcutta Municipal Act to demolition proceedings before the Municipal Magistrate. They were only making general observations on the question of service of notice and were stressing the need of personal service wherever that was possible. There were no doubt some observations which were apparently of a wider character but he central theme was the need of personal service unless that was impossible.

I am not unmindful that the learned Chief Justice (Harries, C.J.) expressed, "grave doubts whether the Corporation is entitled to serve notice in a way in which no other person or body is entitled so to do" and he also went on to observe further that "there is nothing in the Municipal Act authorising this form of service" but it seems to me that, in these passages, he was referring particularly to service by affixation without attempting personal service, even though such service was not impossible, and he was merely speaking against the validity of such service by affixation in a general way.

That Harries, C. J. meant to lay down nothing more appears almost clear when we turn to the sentences, preceding and following the quoted observations, where he spoke as follows :

"I do not think that affixing a notice on the premises would be sufficient notice when the occupier could be served personally. Of course, if personal service was impossible by reason of the conduct of the occupier, then I think notice by affixation of the document on the premises would be sufficient." (vide p. 39)..... "I do not think that it is a good form of service except in cases where personal service is impossible", (vide p. 40).

In the above context, I would not read the observations of the learned Chief Justice as a pronouncement on the scope and applicability of 6. 144 (3) and/ or Section 504, Calcutta Municipal Act. He was merely commenting on the invalidity of service by affixation,. where personal service was not impossible but still no attempt had been made to effect such service

41. In Ashutosh Sarkar Vs. Corporation of Calcutta, , the real question was, whether, in spite of Section 144 (3), Calcutta Municipal Act, an "unregistered occupier" could insist upon service of, at least, a general notice, addressed not to any individual but

to owners and occupiers in general. This question was answered in the affirmative and, as, admittedly, there was no notice at all, the proceedings were held to be bad. In the course of their judgment their Lordships no doubt spoke of "a general notice to all owners and occupiers affixed on some conspicuous part of the premises ''in much the same way as provided in Section 504'' (C)" taut that, again, namely, the phrase, underlined (here in '' '') above, was a mere general and incidental observation, not necessary for the decision of the case and, never intended, so it seems to me, to be a pronouncement on the applicability or otherwise of Section 504 or even of Section 144 (3), Calcutta Municipal Act to demolition proceedings before the Municipal Magistrate. The judgment no doubt proceeded on the footing that this latter section was applicable but, in view of the, ultimate finding, that was more in the nature of an assumption than a decision.

42. The only case which may be said to contain some definite pronouncement on the questions, raised by the learned referring Judges, is the case of Kartick Chandra and Others Vs. The Corporation of Calcutta, , where my Lord the Chief Justice held ''inter alia'' that Section 144 (3), Calcutta Municipal Act did not prevent an unregistered occupier from, contending that a general notice, served in the manner, contemplated by Section 504 (c) of the Act, -- at any rate, before or until the methods laid down in Clauses (a) and (b) of the section, were exhausted -- was not sufficient compliance with the proviso to Section 363 (1).

In that connection the learned Chief Justice examined the scope of Section 504 in some detail and, on a consideration of the different parts, of chapter 37 of the Act, where it occurs, he expressed the view that that section did not in terms apply to any notice "to be given" or issued by the Municipal Magistrate but that it referred to and was also confined to "notice which is required by the Act to be given" -- the statute says to be issued or served -- "by the Corporation". This is undoubtedly opposed to the view of the learned referring Judges and if the Full Bench, has to express any opinion on the points, referred to it, it has to examine the propriety or otherwise of this decision.

43. I ought to point out, however, that, even in Kartick Chandra and Others Vs. The Corporation of Calcutta, , the learned Chief Justice did not altogether rule out the possibility of the issue of "a general notice in the form of a notice u/s 504 (c)" but, in that case again, the ultimate finding was that the notice, there served, was defective even as a general notice and, further, that there was no proper service even u/s 504 of the Act and, eventually, the decision turned on that finding. As, however, there was some definite opinion, expressed on the point of law, now before this Bench, the correctness of that opinion may be usefully examined.

The question is of some public importance and it frequently arises in demolition proceedings before the Municipal Magistrate. It is hardly desirable that such a matter should be left in doubt or any error or erroneous expression of opinion, however unfortunate and howsoever occasioned, should be allowed to remain

unrectified, even after it has been brought to the notice of a Full Bench. From this point of view, this Reference is productive of some good, as it has given this Court an opportunity of pronouncing authoritatively and exhaustively on a point which did not receive full and adequate consideration in its earlier decisions. The Reference has not gone wholly without purpose. It has at least drawn attention to a vital aspect of the Municipal law and the Municipal Administration of this city and has served to obtain a clarification of the true position by enabling this Bench to correct an unfortunate error in the interpretation of some of the important provisions of the Calcutta Municipal Act.

Section 504, in particular, appears to have been somewhat wrongly construed in Kartick Chandra and Others Vs. The Corporation of Calcutta, . That section is frequently invoked in proceedings under the Calcutta Municipal Act and an error in its interpretation is sure to have far-reaching consequences. It is well, therefore, that an opportunity has been found so soon to rectify the said error.

44. I had the advantage of reading the present judgment of my Lord the Chief Justice and I may at once say that I agree generally with his view of the law, now under consideration. My Lord has pointed out that the Calcutta Municipal Act is an ill-drafted statute. There is certainly scope for this observation and, although one may not agree with all that has been said by my Lord in this connection, it cannot be denied that the. drafting of the statute is at places extremely imperfect and suffers from lack of accuracy and precision and also lucidity and even consistency.

45. Confining ourselves to the more relevant sections, it is possible to argue that, on the language, used by the Legislature, either Sections 503-505 would apply only to documents, including summonses and notices, issued or served by the Corporation, and not to documents, issued or served, by other persons, even though such documents are required to be issued or served under the Act or "any rule or bylaw made there under, or that all documents "required by the Act or by any rule or bylaw made thereunder to be served or issued" are to be so served or issued by Municipal officers or servants or persons authorised in that behalf by the Chief Executive Officer of the Corporation.

46. The former view would make Section 506 wholly redundant as, Sections 503-505, being, on tin''s interpretation, confined to documents, issued or served by the Corporation, the question of exempting summons issued by the (Municipal) Magistrate (who is certainly distinct from the Corporation) from the operation of those sections would not arise. This was apparently overlooked in Kartick Chandra and Others Vs. The Corporation of Calcutta, and thus an error crept into that judgment. That error has now been rectified. I quite agree with the learned Chief Justice that the question is not free from difficulty but it seems to me that the true answer has now been found.

47. The other view again would be apparently illogical and rather self-contradictory, as it would virtually make the Corporation -- Section 503 speaks of "Municipal Officers or servants or other persons authorised by the (Chief) Executive Officer" --the issuing authority or the authority deciding the question of issue, even with regard to documents, required by the relevant substantive provisions, either expressly or impliedly, to be issued by the Magistrate or some person other than the Corporation (vide e.g., Section 121 (2)). The language of Section 503 may ''prima facie'' support this view but, as pointed out above, such a view would apparently be illogical and rather self-contradictory.

It may, however, work quite well if the issue or service, contemplated in the latter part of the section (S. 503), be held to refer to the actual issue -- or the mechanical act of issue -- or service and the persons, mentioned therein, to the machinery or agency which may be employed by the relevant ultimate authority for the purpose of such service or issue. To read the word "shall", occurring in the section (Section 503), in the sense of "may" (which may be necessary to complete this construction of the statute) seems to be less objectionable than any of the other possible interpretations of the sections (Sections .503-505) and I would much prefer to hold that Sections 503-505 embrace "all notices, bills, summonses and other documents required by the Act or by any rule or bylaw, made thereunder, to be served upon or issued to any person" and are not confined to notices, etc., required to be served or issued by the corporation and that the actual service or issue may be made through the agency of "Municipal Officers or servants or persons authorised by the (Chief) Executive Officer in that behalf".

I agree, therefore, that Section 504 would apply to notices which the Magistrate might issue for the purpose of giving "the owner and occupier" the requisite opportunity under the proviso to Section 363 (1) of the Act and service of such notices in accordance with the provisions of that section (Section 504) would be good service under the law. Such notices, as my Lord has pointed out, have been extracted by the Courts out of the provisions of the Act and they are as much notices required by the Act as any expressly provided therein, and the same principles ought to regulate their form and ''service.

48. It is , necessary at this stage to guard against one or two possible misunderstandings. The proviso to Section 363 (1) speaks of "giving the owner and occupier full opportunity of adducing evidence and of being heard in his defence." That may be done by service of notice which is the normal method, usually adopted or employed for the purpose, but that is, not the only method. The statute prescribes no particular procedure in this behalf. It may or may not be a case of accidental omission but. under the statute, as it stands, there is enough scope for complying with the proviso to Section 363 (1) of the Act otherwise than by service of notice. The phraseology of Section 381 (1) seems to be more limited but there also the ultimate test is whether the party concerned has been given "opportunity of

being heard in the Court".

The difference in the statutory language in the two places may well have been accidental, and indeed, the relevant position under either section is practically the same, but, on the statute, as it stands, I do not feel pressed, nor do I feel justified, to hold that, under the proviso to Section 363 (1) cf the Act, service of notice is the only method by which the opportunity, contemplated therein, can be given. Undeniably also, as pointed out by the learned Chief Justice, it is open to the Magistrate not to accept the service in a particular case, although such service may purport to have been effected in accordance with law or the prescribed procedure and, in spite of such service, the Court is entitled to hold that the requisite opportunity has not been given.

49. In his judgment, just delivered, my Lord has pointed out that, in spite of the words, "it shall not be necessary to name the owner or occupier in the document", appearing in Section 504 of the Act, the notice to an unregistered owner or occupier, if his name be known, ought to be made out in such name. That seems to be the proper interpretation of the statute and I agree with it. Reasonably construed, the words quoted should not be extended beyond cases where the names of the persons concerned are not known and cannot be ascertained. Their presence is amply justified by the necessity of validating the general notice in cases where as stated above, the names are not known and cannot be ascertained.

Where the names are known or can be ascertained, the notices ought to be made out in such names and served in the manner provided in Section 504 in the order, or sequence, mentioned to Clauses (a), (b), and (c) thereof. Where the names are not known and cannot be ascertained but the existence and/or the identity (though not the name) are known or can be ascertained, the notices need not be -- and, indeed, they cannot be -- made out in particular or individual names but the j service has still to be effected in the order or sequence, as mentioned in Clauses (a), (b) and (c) of Section 504.

Where the existence -- and necessarily, therefore, the identity and the name -- is not known but the existence of some unregistered owner or occupier is suspected, there is no question of making out the notice in any particular or individual name or of any service under Clauses (a) and (b) of Section 504 and the only mode available is the service of a general notice in the manner prescribed in Clause (c). It is clear also from the section itself -- and this ought to be carefully borne in mind, -- that Clause (c) does not come into the picture until and unless Clauses (a) and (b), where, of course, it is possible to apply them, have been exhausted. '' Nothing more need be said in this judgment on Section 504 and I shall pass on to other points.

50. I turn now to the other section (S. 144 (3)). That section, as rightly held in Ashutosh Sarkar Vs. Corporation of Calcutta, and Kartick Chandra and Others Vs. The Corporation of Calcutta, , merely precludes the unregistered owner or occupier

form objecting to the validity of a notice on the ground that it has not been made out in his name. It does not, however, prevent him from objecting to the absence of a general notice or even to its form (subject, of course, to the limitations, already noticed) or service; and, particularly, in proceedings u/s 363, it has not much relevance and is certainly not of much practical importance as, under the proviso to Sub-section (1), the Magistrate is to give even an unregistered "owner and occupier" "full opportunity of adducing evidence and of being heard", so that the question is not whether he (the unregistered owner or occupier) is entitled to object to the notice but whether the Magistrate has given him the requisite opportunity, and, even where such opportunity is sought to be given by notice or service of notice, such notice must be satisfactory from that point of view and, when the name of the particular owner or occupier is known, it can hardly be considered satisfactory, if not made out in his name. In such a case, therefore, in spite of Section 144 (3), it seems proper to hold that, so far as proceedings u/s 363, Calcutta Municipal Act are concerned, the notice should be made out in the name of the unregistered owner or occupier.

51. In the above view of the matter, I agree that the questions, referred to us, should be answered in the manner, proposed by the learned Chief Justice.

52. On the merits very little remains to be said in this case. I have already held that the petitioner has not succeeded in showing that he is an "occupier" of the disputed premises and that, accordingly this Rule is liable to be discharged on that preliminary ground. Even apart from that, the petitioner has no case on the merits. It was not denied that there was service of a general notice u/s 504 of the Act and that the service was in compliance with Clause (c) of that section. During argument a slight irregularity came to notice, namely, that the notice served u/s 504 (c) was on white and not on "yellow paper", as mentioned in the section, but no point was rightly made of this triviality.

Even if any point were sought to be made of this little deviation, it was bound to fail. It had only to be stated to be rejected, as no proceeding can fail by reason of such trivial irregularity. On the affidavits before the Court, it is at least clear that the Corporation was unaware of and also could not ascertain the petitioner''s existence and identity, and, accordingly, the service of a general notice u/s 504 in manner laid down or contemplated in Clause (c) thereof, seems to have been quite appropriate and, in the facts and circumstances of the present case, it cannot be argued that any better compliance with the proviso to Section 363 (1) was at all possible or practicable.

I am also far from satisfied that in the present case, the petitioner, even if he was actually an occupier (though his existence was unknown and unascertainable), had not the requisite "opportunity of adducing evidence or of being heard" before the learned Magistrate or that he was prejudiced in any way by the absence of a more direct notice or service. I agree, therefore, that this Rule should be discharged.

53. Before parting with this case, I ought to refer to one matter which I had occasion to discuss only recently in this court (vide -- Dilwar Sultan Vs. Keshab Chandra Mukherjee and Others, . It is a characteristic of the judicial mind that it ever remains free and open and it is, indeed, a high tradition that Judges, whenever they are apprised of errors in their judgments and invited to correct them in a constitutional manner, never hesitate, if they feel convinced that their earlier view was wrong, to own up the mistake and admit and rectify the same. That tradition has seldom suffered in this Court and, in the present case, it is now once more reaffirmed. An error of law unfortunately crept into the judgment of this Court in Kartick Chandra and Others Vs. The Corporation of Calcutta, . It has now been rectified and the fact that the earlier Bench which took the opposite view was presided over by himself did not, in the least, deter the learned Chief Justice, while presiding over this Bench, from accepting the proper construction of the relevant statutory provision, once he felt convinced that his earlier view was wrong and needed reconsideration and revision.

Guha Ray, J.

54. I agree with the view expressed by my Lord the Chief Justice.