(1923) 08 BOM CK 0010

Bombay High Court

Case No: None

BhagChand Dagadusha Gujarati and Others		APPELLANT
	Vs	
Secretary of State for India and Another		RESPONDENT

Date of Decision: Aug. 15, 1923

Acts Referred:

- Bombay District Police Act, 1890 - Section 25(a)(1)(b), 25A, 81

Citation: AIR 1924 Bom 1 : 90 Ind. Cas. 13

Hon'ble Judges: Lallubhai Shah, Acting C.J.; Kemp, J

Bench: Division Bench

Judgement

Lallubhai Shah, Acting, C.J.
This is an appeal from the judgment of the District-Judge of Nasik in a suit filed by 58 shop-keepers of Malegaon against the Secretary of State for India in Council and the Collector of Nasik. The suit was filed for a declaration that the Government Notification, dated 6th June 1222, directing a levy of the costs of certain additional Police and of the amount of compensation from the shop-keepers of Malegaon whether Hindus or Muhammadans was illegal and for an injunction restraining the defendants from making the recoveries authorised by the said notification.

2. It will be necessary to state in some detail the facts which led to this notification. But before doing so, I may state mat the suit was defended on various grounds which are indicated by the issues raised at the trial. The first five issues relate to the preliminary objections to the suit, and the next four issues (Nos. 5 to 8) relate to the merits of the case. The learned District Judge found that the suit was barred by Section 80 of the C P.C. as it was filed before the expiration of two months after the notice of action was given and that the suit was barred by the provisions of Section 81 of the Bombay District Police Act (IV of, 1890 as amended by various subsequent Acts.) Issues Nos. 2, 3 and 4 were found in favour of the plaintiffs. On the merits'' the

issues were decided against the plaintiffs. In the result the suit was dismissed with costs.

3. It, may be mentioned that original plaintiffs'' Nos. 4, 10, 11, 24, 27, 46, 53, 54, and 55 withdrew from the suit; and it was heard as regards the remaining 48 plaintiffs.

4. They have all appealed to this Court, and practically all the points raised in the lower Court have been raised in the course of the arguments before us. We have heard the parties fully and we have been assisted by the clear arguments of the learned Counsel on both sides. Broadly speaking the important points are two. One is a preliminary point relating to the notice required by Section 80 of the C.P.C., and the other relates to the legality of the new tax or rate levied on the plaintiffs (a) in respect of the additional Police and (b) in respect of the amount of compensation determined u/s 25-A of the Bombay District Police Act. The other preliminary issues are not so important, and the point relating to the merits covers a number of points of varying decrees of importance, which I shall notice when I come to deal with the question.

5. The facts which led to the notification and then to the suit have been fully stated in the judgment of the lower Court. I shall, however, state them briefly, confining the detailed statement only to the essential facts.

6. At the outset I may state that two letters one of the 7th December 1921 and the other of the 15th December 1921 by the District Magistrate to the Commissioner have been put in here. The learned Counsel for the appellants made an oral application for the production of these letters in the course of the argument, and the learned Advocate General for the defendant No. 1 expressed his willingness to put them in. As these letters were referred to in the correspondence which was already put in, as they were likely to be useful for a general understanding of the facts from beginning to end and as the parties consented we have admitted them in evidence in appeal

7. The facts are briefly these. Serious riots took place at Malegaon on the 25th of April 1921, which resulted in the loss of a life and some property. A notice was issued on the 13th May by the District Magistrate relating to an inquiry u/s 25-A of the Bombay District Police Act inviting all the persons to be present with proof of their claims for compensation which had been duly presented and all persons who wished to oppose the same (Ex. 102). On the 17th May the Commissioner, C.D. authorised the District Magistrate to declare the area included within the boundaries of the Municipality of Malegaon as the local area inhabitants of which had caused or contributed to the riots and unlawful assemblies at Malegaon on the 25th and 26th April and to determine the amount of compensation awardable under the section; and he further authorized the District Magistrate to require the collection to recover the amount so determined from the adult male Muhammadan inhabitants of the said local area.

8. Further proposals from the District Magistrate as to the proportions in which the compensation should be recovered from such inhabitants were awaited. In communicating this authority to the District Magistrate he gave the following further directions:

(2) The Commissioner does not think that participation by Hindu merchants in the collecting and accounting of Khilafat Fund subscriptions affords sufficient ground, for making them liable to contribute to the compensation,

The Commissioner agrees that the recovering authority should be the Collector and not the Municipality.

(4) The District Magistrate should himself personally conduct the enquiries for determining the amount of compensation recoverable.

For this purpose he should hold regular public proceedings and should allow to all parties concerned or, their Pleaders full opportunity for stating their case and for cross-examining witnesses. These proceedings should be held at Malegaon. A finding should be separately recorded and published on each claim for compensation." (Ex. 101).

9. On the 20th May 1921 the declaration as to the area u/s 25-A(a)(ii) was made by the District Magistrate. (Ex. 142). The previous sanction of the Government there referred to appears to be a mistake for the sanction of the Commissioner.

10. On the 4th July 1921, after making the necessary inquiry the District Magistrate decided the questions of compensations and sent the file of the proceedings to the Commissioner (Ex. 103).

11. On the 17th August 1921, the Commissioner varied the amounts in some of the awards and confirmed all the other awards. The total sum sanctioned by him amounted to Rs. 5,01,546 (Ex. 104.)

12. On the 16th August the Commissioner also settled the list of exemptions u/s 25-A, Sub-section (2) and passed the following order:

17. The total amount of compensation payable according to the awards as finally revised by the Commissioner-under Section 25-A of the District Police Act, 1890, comes to Rs. 5.04 and 546.

2. This amount should be assessed and recovered in the following manner subject to the exemptions of which a list is hereto attached, from the following two classes of male adult Muhammadan inhabitants of the town of Malegaon in the Nasik District and such other inhabitants of the said town as may be hereafter notified:

Class 1--Payers of income tax--Each to pay 9 times the amount of the Income Tax payable by him in 1920-21.

Class 2--All others--Each to pay an equal share of the balance of the total charges after deduction of the amounts recoverable from persons of class 1.

13. Provided that if any person in this class is the owner of more than one hand loom he shall pay an extra share for every loom owned by him in excess of one.

3. The amounts due to be recovered in instalments spread over three years ending July 31st, 1924." (Ex. 134). The only thing that remained for the District Magistrate to do at the time was to give a direction to the Collector to realise the amount of compensation in the above proportion u/s 25-A(1)(6). But apparently that was not done.

14. The Government also acted u/s 25 and imposed additional Police upon Malegaon. On 1st July 1921 the Government issued a notification directing additional Police of the strength indicated therein to be employed at Malegaon for one year and ordering "the cost of such additional Police to be defrayed wholly by a tax imposed on the male adult Muhammadan inhabitants of the said town as may be hereafter notified by a rate assessed on their property." The estimated cost of such Police was about Rs. 46,174 (Ex. 96.)

15. On the 11th July 1921, they further directed that the cost of the additional Police should be recovered as follows:

Class I--Payers of income tax--Each person to pay an amount equal to the amount payable by him as Income Tax for the years 1920-21.

Class II--All others to pay in equal share the balance of the charges after deduction of the amounts recoverable from person in class I.

16. Provided that if any person in this class is the owner of more than one hand loom he shall pay an extra share for every loom owned by him in excess of one." (Ex. 97).

17. On the 211 July.1921, the District Magistrate communicated this notification to the Municipality u/s 25, Sub-section (4) with the letter from the Commissioner dated 19th July and gave direction as to the method of collection (Ex. 100).

18. On the 8th October 1921, the Government slightly altered the first notification according to which the cost of the additional Police was Rs. 46,473 (Ex. 98).

19. The Municipality'' was unable to make the collections as required. The President of the Municipality wrote to the Collector on the 1st December 1921 explaining at length, the difficulties of the Municipality the unwillingness and objectionable conduct of the Momins to make the payments and the poverty of a large, number of the Momin adults at Malegaon, and asking for advice as to what should be done. This is a long letter and explains the situation as it then existed according to the President of the Municipality (Ex. 105).

20. Then the District Magistrate wrote two letters, one on the 7th December and the other on the 15th December 1921, which are admitted in evidence in appeal. He practically agreed that the Municipality would not be able to make the collection and suggested that both the collections-the Police charges and compensation--should be lumped together to be collected by the Collector by taking the saris woven by the Momins, that is by taxing the shop keepers, who purchase saris from them. He observes at the end of the second letter as follows:

The shop-keepers were easily made to collect the Khilafat Funds. Let them now be made to Collector our compensation. (Exhibits A and B in appeal).

21. On 30th December the Commissioner wrote the Collector pointing out the difficulties in accepting his suggestions as to the shop-keepers being made to pay as it would result in shifting the burden from the Momins to the shop-keepers who were not covered by the notifications and were in fact excluded by the Government. He suggested some method of collecting the amounts by taxing the sari as it would be sold by the Momins to the shop-keeper. The Collector''s endorsement dated 6th January 1922 on this letter shows, however, that he thought that the Commissioner''s suggestion was practically the same as his suggestion (Ex. 146). The Commissioner then wrote to the Government on the 14th January 1922 recommending in effect that !he Collector''s recommendations might be accepted (Ex. 147). It seems that the matter was making slow progress for reasons which may not be all known on this record and it is possible that they were waiting for the final result of the appeals to the High Court by those who were convicted and sentenced in the Malegaon riot cases as it appears from the letter of the 7th December:

22. Then comes the confidential letter of the 7th March addressed by the District Magistrate to the Commissioner in which he reviewed the whole question and recommended that the shop-keepers should be taxed. The whole of this letter is important and is really the genesis of the new notification which forms the bone of contention between the parties. I shall only state that in para. 4 he explains that the suggestion of the Commissioner made in the letter of the 30th December is unworkable, and suggests in para. 5 the reasons for taxing the shop-keepers. In that paragraph he suggests the following inquiry in the case of the Hindus if necessary: "If it be suggested that the non-Mohammadans are not to be held responsible for any payment and that this proposal brings in a certain number of Hindus then I go back to the original issue between Mr. Simcox and Mr. Pratt and would suggest that the views of Mr. Simcox based on many years'' knowledge of Malegaon and concurred in by every local official, be now accepted by Government, namely, that the Hindus were either actively behind the Khilafat movement (as shown, for example, by their collecting money for the Khilafat Paisa Fund) or passively sympathised with it and in any case took no line in support of law and order and that, as a matter of fact, the whole town should beheld responsible for the mis-deeds of certain of its inhabitants unless any individual can prove that he was

actively and publicly on the side of Government throughout the trouble. Not one of these merchants and shopkeepers is known to come within this category. Nevertheless to prevent any injustice being done to the Hindus, I would propose that the Deputy Collector in charge of Malegaon Sub.-Division should hold a summary inquiry at which the Hindu shopkeepers in these two lists should be called upon to be present and that they should be given any opportunity of furnishing proof, that before, during and after the riots they were actively and publicly on the side of Government: the decision of the Deputy Collector on confirmation by the District Magistrate to be final and conclusive.

23. He proposes a scheme and in para. 7 summarises the arguments.

7. In support of this scheme I would summarise the following argument:

(1) The shop-keeper who actually makes the payments will not be out of pocket. He will naturally pay less for the sari to the Momin from whom he buys it and in selling he may put up the price of the finished article and he will charge the Momin more for the yarn which he, sells to him. He will cover himself at every point and the maker of the sari will pay as Government intend. Therefore, there is no hardship in making the shop-keeper, the agent for the collections.

(2) Instead of having to deal with a whole community we confine our collections to not more then 84 men. The machinery for collection is made correspondingly easier and cheaper.

(3) The Momin weaver, even if he did not abandon the town in large numbers, as he conceivably might if recoveries were to be made direct from him, would be a certain defaulter, and none of the coercive measures of the Land Revenue Code for recovery would-be practicable or advisable. His movable or Immovable property is negligible and to put him in the Civil Jail would provoke a riot.

(4) On the other hand the shop-keepers own both movable and Immovable property, they are residents of the town, they are few in number and coercive measures can be used against them. Since it has been shown that they can shift the burden, on to others it is reasonable to assume that they will do so and will pay what is demanded of them rather than make themselves liable to such measures. Contumacy, on their part is less likely to provoke a riot and to cause any disturbance." (Ex. 106;).

24. The Commissioner sent this letter to the Government on the 9th March endorsing the Collector''s recommendations (Ex. 107). The Government wrote to the Commissioner on the 5th April 1922 approving of the District Magistrate''s suggestions as follows: With reference to correspondence ending with your memorandum No. P.O.L. 3-181 dated the 9th March 1922, on the subject noted above, I am directed to inform you that Government approve all the District Magistrate''s proposals contained in his letter No. P.O.L. 100-A, dated the 7th March

1922. The Collector should be told that His Excellency the Governor has personally read his report and thinks it excellent.

2. I am to forward herewith a copy of the opinion of the Remembrancer of Legal Affairs and to request that you will be so good as to submit revised draft notifications. Your report should indicate the grounds for holding that the Municipality has made default in accordance with the proviso to Section 26 of the District Police Act IV of 1890. Meantime the summary inquiry proposed by the District Magistrate Nasik, in para. 5 of his letter quoted above should be proceeded with." (Ex. 146.)

25. The District Magistrate wrote to the Commissioner with reference to the above letter (Ex. 109) on the 21st April and on the dame day directed the Sub-Divisional Magistrate to make an inquiry in the terms of the following memorandum:

26. The Sub-Divisional Magistrate, Malegaon, is informed that Government have approved all the proposals made by the District Magistrate in his letter No. P.O.L. 100-A of 7th March 1922 for recovering the monies due from the people of Malegaon. The necessary notifications authorising the {recoveries are being prepared and as soon as they are issued by Government, the work of recovering must be taken in hand. The Sub-Divisional Magistrate will remember that in all sum of Rs. 2,14,619 is to be recovered before July 31st.

2. Meanwhile the summary inquiry proposed in para. 5 of the original letter should be taken in hand, and the Sub-Divisional Magistrate is requested to arrange to hold this inquiry at Malegaon at as early a date as possible. The inquiry should be conducted summarily. The Sub-Divisional Magistrate will see that no inquiry is necessary in the case of the Momins whose names are in the lists, as to their liability to make payment since this point was determined last year. The inquiry as to the liability only extends to the Hindus. On the other hand the estimate of the number of saris and of the bales of yarn is to be made in respect of all the persons, both Momins and Hindus, and if the Sub-Divisional Magistrate thinks that the assistance of the Income Tax Inspector will be of advantage to him in making these estimates he should apply for it.

3. Each man''s case should be taken up separately and orders recorded and these should be reported to the District Magistrate who will pass final orders u/s 25(a)(1)(b) of the Police Act.

4. The District Magistrate hopes that it will be possible for the Sub-Divisional Magistrate to finish these inquiries by the time that the Notifications are issued by Government, so that the orders to the Collector for the recovery of the sums due can forthwith be issued.

5. Both the Sub-Divisional Magistrate and the mamlatdar are requested to give as wide a publicity as possible to the principle on which Government have now decided

to recover the charges. The more generally these principles are known the easier it should be for the money to be recovered, and in any case there need be no secrecy about the matter." (Ex. 108),

27. The Sub-Divisional Magistrate issued the following public notice:

All the people of the town of Malegaon are hereby informed as follows: The amount of costs of additional Police and the compensation amount in connection with the riots that took place at Malegaon in the year 1921 are to be recovered as herein below set forth:

The shop-keepers who sell yarn to the Momins of Malegaon or who purchase saris from them are to be considered as agents for the purpose of the recovery of these amounts.

From every such shop-keeper purchasing saris or selling yarn, annual recovery will be made for three years on behalf of the Momins at the rate of 6 annas per sari purchased and of Rs. 5 per bale of yarn sold. Before such recovery is made, we shall give notices to the respective shop-keepers in that behalf and make-inquiries at Malegaon on the date fixed. This inquiry will commence very shortly. May this be known. Date the 21st April 1922". (Ex. 89).

28. It may be mentioned that there was no reference either in Ex. 108 or Ex. 109 to the nature of the summary inquiry proposed by the District Magistrate in his letter as to the liability of the Hindu shop-keepers; and it is noticeable that Ex. 89 is practically silent on the point of this summary inquiry as to the Hindu shop-keepers. On the 25th April the Sub-Divisional Magistrate issued notices to the individual shop-keepers which related to the proposed amount of the tax (Exhibit 92). On the 20th May 1922, the District Magistrate published the following public notice: "All the people of the town of Malegaon are hereby informed as follows: It has been decided to recover the amount of cost of additional Police and the amount of compensation for damages sustained in the riots that took place at Malegaon on the 25th and 26th of April in the year 1921 from the shop-keepers dealing in yarn and saris by levying a rate on each bale of yarn sold and on each sari purchased at Malegaon. And pending publication of Government notification authorising the levy of such rate, the people concerned are hereby informed by the District Magistrate, Nasik, that the amount to be recovered in the first year will be recovered in three equal instalments instead of in one instalment as I originally proposed and the said amount Will be recovered at the rate of Rs. 5 per bale of yarn and at the rate of 3 annas per sari instead of 6 annas per sari as originally proposed.

29. The amounts to be recovered in the next two years will be recovered in those years. But it will be determined later on as to in how many instalments and at what rate those amounts are to be recovered,

30. The dates of instalments and the amounts to be paid by individual merchants as settled by the. Sub-Divisional Magistrate, Malegaon, on a recent enquiry made by him as regards the annual average dealings of merchants dealing in yarn and saris will be duly communicated to the persons concerned by notice. May this be known. Date the 20th May 1922." (Ex. 90).

31. On 6th June 1922 the Government published the notification, the legality of which is in question.

32. The material terms thereof are these:

No. 152: Whereas it appears to His Excellency, the Governor in Council that the conduct of the inhabitant of the town of Malegaon in the Nasik District has rendered it expedient to employ additional Police in the said town, the Governor in Council in supersession of Government Notifications Nos. 6423 dated 1st July 1921, 6801, dated 11th July 1921 and 9911, dated 8th October 1921, is pleased in exercise of the powers conferred by Section 25 of the Bombay District Police Act, 1830, (Bom. IV of 1890), (1) to direct the employment in local area of the said town of additional Police of the strength and cost herein below set forth for a period up to the 31st May 1923 with effect from 1st July 1921, and (2) to direct the cost of such additional Police as here-in-below set forth shall be defrayed wholly by a tax imposed on the Muhammadan Income Tax payers who are inhabitants of the said town and by a rate assessed on the property of such other inhabitants of the said town as are here in below notified in the manner here-in-below set forth:

33. [The annual charges for the additional Police are estimated at Rs. 46,437].

The Governor in Council is pleased further to direct that the cost of the additional Police as above set forth and the total amount of compensation of Rs. 5,04,546 awarded by the District Magistrate, Nasik, to claimants who suffered damages in the riots of 25th and 26th April 1921, u/s 25 A of the said Act, shall be assessed and recovered as here-in-below set forth:

34. Class I--Payers of income tax--Each person to pay nine times the amount of the Income Tax payable by him in 1920-21, to be recovered in three equal instalments payable on the 1st August 1921, 1922 and 1923.

35. Class II--The balance of the combined charges, after the amount recoverable from parsons of class I has been deducted, shall be recovered on behalf of the Momin adult weavers of Malegaon, from both Muhammadans and Hindu shop-keepers of Malegaon dealing in saris and yarn, who shall pay every year upto 31st May 1923 beginning from 1st July 1921 a rate calculated by the District Magistrate, Nasik, at a sum not exceeding 6-annas multiplied by the average number of saris hitherto purchased by them from Momin weavers of Malegaon annually or a sum not exceeding Rs. 5 multiplied by the number of bales of yarn hitherto sold by them to Momin weavers of Malegaon annually, as the case may be.

36. And whereas the Municipality of Malegaon has made a default in the recovery of charges on account of the said additional Police, the Governor in Council is pleased to direct, under the proviso to Section 26(1) of the said Act, that the recovery of the said charges shall be made by the Collector of the District, along with the compensation money as an arrear of land revenue due by the persons as described in classes I and II". (Ex. 99).

37. After the notification was published the District Magistrate wrote to the Collector (Ex. 110) asking him to make both the recoveries. The direction as to Police charges is given u/s 26 and that is really the direction of the Government communicated to the Collector. As regards the compensation it is mentioned in para. 3 of the letter that the Municipality is unable to recover the said amount. But it may be remembered that as regards the compensation from the beginning it was decided by the Commissioner that the amount should be recovered by the Collector (see Ex. 101).

38. On the same day several merchants of Malegaon presented a petition to the Collector (Ex. III) in which they complained of the illegality and injustice of the Government notification of the 6th June, but they were informed orally by the Collector that the orders would not be changed. Notices were served on the same day upon the merchants to pay the respective amounts. Exhibit 94 is a sample of these notices. After referring to the Government notification each merchant was informed as to what was payable by him for the year ending 30th June 1922, and that it was payable in three instalments falling due on 1st July 1922, 1st October 1922 and 1st January 1923 The merchants were further informed that in case of default in the payment of any of the instalments the whole amount for the three years will be liable to be recovered at once as an arrear of land revenue. On the 24th June 1922, some of the shopkeepers sent a memorial to the Government through the Collector (Ex. 120).

39. On the 26th June the notice of this action required by Section 80 of the C.P.C., was given. It was received by the Collector on the 27th. The present suit was filed on the 27th June and an application for temporary injunction was made on the same day. On 30th June the application was rejected by the District Court. The plaintiffs appealed to the Court from the order of the 30th June. On 22nd September 1922 this Court granted a temporary injunction on the plaintiffs giving security on the grounds indicated in the judgment (Ex. 25). There were two other similar suits (Nos. 4 and 5 of 1922) in that Court but there are no appeals in those suits: and we are no longer concerned therewith. The written statement need not be detailed as the defences are indicated by the orders. I may, however, quote para. 6 of the statement in which the defence as to the nature of the new tax or rate has been stated in these terms: With further reference to para. 7 and with reference to paras. 8 and 9 of the plaint, defendants submit that the words "on behalf of the Momin adult weavers of Malegaon" occurring in the said Government Notification No. 152

dated the 6th June 1922 and certain words to the same effect occurring in a notice issued by the Sub-Divisional Magistrate on 21st April 1922 have been wrongly construed by the plaintiffs. The true intention of the order as finally passed by Government u/s 25 and those passed by the District Magistrate and the Commissioner u/s 25-A was that payments should be made by both the Hindu and Muhammadan shop-keepers and merchants dealing in saris and yarn in their own individual capacity as being primarily responsible therefore and not as agents for the weavers. It was, however, intended that the said shop-keepers and merchants should be at liberty to recover the payments made by them from the weavers by charging them more for the saris they purchased from, them and the yarn sold to them. It is not correct to say that the Hindu and Muhammadan shop-keepers as a class were held not to be responsible for the riot, directly or indirectly. It is also not correct to say that the notification was made to operate retrospectively. The additional Police was entertained from 1st July 1921. The cost thereof was accordingly, payable on and from that date".

40. The defences are sufficiently indicated by the following issues raised in the lower Court:

1. Whether the suit is bad for want of due notice as required by Section 80 of the C.P.C.?

2. Whether the suit is liable to be dismissed for failure to give a notice as required by Section 80, Clause 4 of the Bombay District Police Act, 1890?

Note: Mr. Akut states that this issue can affect defendant No. 2 only.

2- A. Whether the suit is liable to be dismissed u/s 81 of the Bombay District Police Act, 1890?

3. Whether the suit is barred u/s 4 Clause (f) para. 3 of the Bombay Revenue Jurisdiction Act of 1876?

4. Whether this Court has jurisdiction to decide legality or otherwise of the Notification No. 152 of the Home Department dated the 6th June 1922 and other orders passed under the Bombay District Police Act, 1830?

Note: This issue has reference to Section 79 of the Bombay District Police Act of 1890.

5. Whether the Government Notification No. 152 of the Home Department dated the 6th June 1922 is ultra vires?

6. Whether the said Notification contemplates retrospective effect? If so, whether this portion of it is legal?

Note: Mr. Akut objects to the form of this issue.

7. Whether the amounts have been arbitrarily and illegally fixed behind the back of the plaintiff?

8. Whether a permanent injunction as prayed for should be granted?

9. What order should be made as to costs?

10. What should be the valuation for Pleaders fees?

11. What should the decree be?"

41. I have already referred to the findings and the result of the suit.

42. I shall first deal with the preliminary points raised in the arguments before us in, appeal, The most important among them is the point as to notice u/s 80 of the C.P.C. The section provides as follows:

No suit shall be instituted against the Secretary of States for India in Council, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after Notice in writing has been, in the case of the Secretary of State in Council, delivered to or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a Public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims....

43. There is ho objection to the form of the notice given in this case: but it is urged that as the suit was instituted before the expiration of two months next after the notice, it should be dismissed. On the one hand it is urged that it makes no difference whether the suit be against the Secretary of State for India in Council or against a Public Officer and that whatever the nature of the suit, it cannot be instituted before the expiration of two months. On the other hand it is urged that the principle of hot requiring the aggrieved party to wait for two months when the circumstances require that the proposed act should be immediately prevented with a view to stop an irremediable loss to the party the Courts have entertained suits in spite of the peremptory provisions as to notice in the interests of justice and various decisions have been referred to in support of that view. It is urged that the provision is a rule of procedure and does not affect the right: and where the right requires an immediate remedy the Courts have entertained the suits, where they have been satisfied as to the need of an immediate remedy by way of prevention the wrong complained of.

44. After considering the arguments on both sides, I am content to accept the view taken by this Court in Secretary of State for India v. Gajanan Krishna 10 Ind. Cas. 630 : 35 B. 362 : 13 Bom. L.R. 273 and Secretary of State for India v. Gulam Rusul 31 Ind. Cas. 535 : 10 B. 392 : 18 Bom. L.R. 213 as to the powers of the Court to entertain suits for injunction against the Secretary of State for India before the expiration of

two months from the service of notice. As I understand the observations in Dayal Khushal v. Secretary of State for India 59 Ind. Cas. 122 : 22 Bom. L.R. 1089 they do not in any way conflict with or modify the view taken in the two cases just referred to. As regards a similar suit against a public, officer in respect of any act purporting to be done by such public officer, I accept the view taken by this Court in Naginlal Chunilal v. Official Assignee 7 Ind. Cas. 876 : 37 B.243 : 14 Bom. L.R. 1148. The question whether a suit for injunction could be filed against the Secretary of State, for India in spite of the provisions of Section 80 of the C.P.C. before the expiration of two months from the date of the notice was not decided in Hari v. Secretary of State for India 27 B. 424 : 5 Bom. L.R. 431. but the case was decided on the ground that in that suit and under the circumstances of that case no injunction could be claimed against the Secretary of State. The observations in that case at page 451 Page of 27 B.--[Ed.] that the Court should, if possible, always require notice, however short, to be given relates to an ex parte injunction during the pendency of the proceedings and has nothing to do with the point we have to consider.

45. I am aware of the weight due to the contrary view taken in Secretary of State for India v. Kalekhan. 16 Ind. Cas. 947 37 M. 113 : 23 M.L.J. 181 : (1912) M.W.N. 786 : 12 M.L.T. 224 and in Muradally Shamji v. Long 53 Ind. Cas. 627 : 44 B. 555 : 21 Bom. L.R. 980. I have carefully considered these decisions, and the wording of Section 80 in the light of the arguments urged at the Bar; but I still think that the view taken in the Bombay decisions, which I have above referred to is the right view. I agree that the words "in respect of any act purporting to be done" apply to the "public officer" only and not to the Secretary of State for India in Council But as I understand the principle underlying the decisions, which I am prepared to follow, it is independent of these words and in my opinion, applicable to suits against the Secretary of State for India as well as to suits against public officers The really difficult question is whether the imperative provisions of the section do not exclude the application of the principle based upon such considerations as may arise in suits for injunction where the necessity for the remedy by way of an injunction is made out. In applying this principle, this Court has followed the ratio decidendi of the English decisions in Attorney-General v. Hackney Local Board (1875) 20 Eq. 626 : 44 L.J. Ch. 545 : 33 L.T. 244 and Flower v. Local Board of Low Leyton (1877) 5 Ch. D. 347 : 46 L.J. Ch. 621 : 36 L.T. 760 : 25 W.R. 545. In the sections which were under consideration in there two cases, the provisions as to notice were not less imperative than the words of Section 80 of the Code; and the decisions, were not in any sense dependent upon the view whether the expression was "act purporting to have been done" or "purporting to be done". They are based on the broad consideration of the object of the notice and of the necessity for a speedy remedy according to the nature of the wrong complained of. It is true that in virtue of the provisions of the Public Authorities Protection Act, 1893 (56 and 57 Vict. c 61) these English decisions have not the same value now as they had before the Act was passed so far as their actual application is concerned. When this Court adopted that view in dealing with the point as to notice

under the old District Municipal Acts of 1873 and 1884 it was based upon this broad consideration though partly it was based upon the effect of the words ''anything'' done or purporting to have been done" used ins. 48 of Bombay Act II of 1884. [See Shidmallappa Nurandappa v. Gokak Municipality 22 B. 605 : 11 Ind. Dec. 985 and Harilal Ramchandlal v. Himat Manekchand 22 B. 636 : 11 Ind. Dec. 1006]. The rule contained in Section 80 is a rule of procedure and does not affect in any way the cause of action or the rights of the parties. If the cause of action requires an immediate remedy by way of injunction, and if Section 80 is literally applied, the party aggrieved would have no remedy. It seems to me that this Court has accepted a view which is in consonance with justice, equity and good conscience, which is not in any sense based upon any technical rule of English Law, and which is in accordance with the rule that has been followed in England in cases where the provisions as to notice were no less stringent than we have here.

46. It is desirable that this question should be decided one way or the other in a manner which would be practically final and leave no scope for such elaborate argument as is unavoidable under the present state of the decisions. I have not overlooked the desirability of having this question considered by a Full Bench of this Court, but under the circumstances of this case, we both agree, it is not necessary to do so.

47. It remains to consider whether this is a case, in which the relief by way of injunction was essential to meet the requirements of the case. On a consideration of the admitted facts it seems to me that it was. It appears that the shop-keepers as a class ware not taxed in 1921 either as to the additional Police or compensation charges. In April and May 1922 the Sub-Divisional Magistrate made enquiry as to the extent of their business in saris in the next preceding year; and in the result in June 1922 the shop-keepers were required to pay Rs. 92,874 for Police charges and Rs. 5,04546 during three years ending with June 1924. The amount payable for the first year was one-third of the total amount and it was payable in three instalments. In default of payment of any one instalment, the whole amount for all the three years was to become payable. It appears that the plaintiffs, (exclusive of the plaintiffs who have withdrawn from the suit) had to pay on the 1st July 1922 a substantial sum; and in default of payment they were liable to pay the whole amount for all the three years (see notice Ex. 94). We also know that on the 12th June the Collector had told them that the orders were not likely to be modified. We also know that when the temporary injunction was refused on the 30th June, the Collector immediately proceeded to enforce the notices, with the result that the shop-keepers had either to pay the 1st instalment or to incur the risk of the liability to pay the whole amount at once. It is urged that after all it was a case of money payment, and plaintiffs could have waited for two months. It appears, however, that the waiting would have been more or less formal so far as the defendants were concerned, as it is clear from the conduct of the Revenue Authorities immediately after the temporary injunction was refused by the Trial Court that they were not going to reconsider the question. In a

case of this kind where a class of persons is taxed heavily, as in this case, it would not be fair to treat the position as one of ordinary pecuniary liability of an individual only. I am satisfied that this is a case in which at the date of the suit a situation had arisen which was calculated to cause serious apprehension, in the minds of the plaintiffs that irremediable damage might be caused to their business as dealers in sari''s, unless the enforcement of the orders were stopped at once. The remedy sought by way of injunction was appropriate and necessary to safeguard their interests under the circumstances. I think, that the suit is not open to the objection based on Section 80 of the C.P.C.

48. The other preliminary objections raised on behalf of the defendants may be briefly dealt Avith. It is urged that Sections 80 and 81 of the District Police Act are a bar to this suit. I do not think that this argument is sound. Section 80 has no application as this is not a suit of the character contemplated by Section 80 Sub-section (4). As Regards Section 81 also it seems to me that it creates no bar to the present suit. The orders published by the Government do not require a particular class of persons to perform some duty or actor to conduct or order themselves in a particular manner. It is an order practically directing the Collector to recover the particular amounts from a class of persons. That does not appear to me to be an order to any particular class of persons (i, e., in this case the shop-keepers) to perform any duty or act or to conduct or order themselves in a particular manner. Besides it seems to me that Section 81 provides an additional remedy which the party concerned may follow but it does not bar a suit, which it may be otherwise open to the party to file.

49. It is further urged that the suit is barred by Section 4 Clause (f) of the Bombay Revenue Jurisdiction Act, as it is in effect a suit to set aside a cess or rate authorised by Government, under the provisions of the Bombay District Police Act. This clause cannot apply in terms to the order as to compensation amount as the Government is not empowered by Section 25 A of the Bombay District Police Act to levy any cess or rate and the section refers to cess or rate authorised by Government and not to cess or rate authorised by the District Magistrate with the previous sanction of the Commissioner. Apart from this ground it is clear that the provision cannot apply where the legality of the order of the Government is questioned. It would apply to a cess or rate which is authorised, that is, legally authorised by the Government. In the present case the legal basis for the action of Government is questioned, and I think that the suit is not barred by this clause even as regards the tax-relating to the additional Police charges, provided it is established that the rate is not legal. Thus the objection would apply to the Police charges, if it be proved that the rate is legally authorised. It is necessary, therefore, to determine the merits of the objections as to the legality of the rate or tax.

50. As regards the merits it will be convenient, to deal with the questions as to the additional Police, and the compensation money quite separately. The provisions of

Sections 25 and 25-A, though similar in certain respects, are different in material particulars and in order to avoid confusion I shall deal with the two matters quite independently of each other.

51. As regards the additional Police, the authority of the Government is derived from Sections 25 and 26.

52. The objections taken to the legality of the Government Notification of the 6th June, 1922 so far as it relates to the Police charge are these:

(a) First that the Government having once decided to levy the Police charges from the male adult Momins of Malegaon, they could not alter the order and direct the whole of it to be levied from the shop-keepers.

(b) That the Government have no power under the section to make A pay for B, and that the order requiring the shop-keepers to pay on behalf of the Momins is illegal.

(c) That after the Municipality made a default in payment of the rate levied in the first instance the Government could direct the Collector to recover such rate or tax but the Government could not impose a new tax or a rate instead of the first rate or tax and ask the Collector to recover it directly without first calling upon the Municipality to pay the amount or assess the rate under sub Section (4) of Section 25.

(d) That the rate in question is not a rate On property;

(e) That the powers are not exercised by the Government fairly but wantonly, arbitrarily and oppressively:

(f) And lastly that no retrospective operation could be given to the notification.

53. As regards the first objection it is true that the Government first ordered the additional Police for one year and ordered the charges to be levied by a tax imposed upon the male adult Momins of Malegaon. The Momins are weavers and form nearly three-fourths of the population of that town. The second notification directed employment of the Police in effect for two years. As regards the second year''s charges the objection would not apply. But that is not a sufficient answer to the objection. Under the section the Government have the power to give directions as to how the charges shall be recovered: and Section 21 of the General Clauses Act (Bombay Act I of 1904) provides that "Where by any Bombay Act, a power to issue notifications, orders... is conferred, then that power includes a power, exercise able in the like manner and subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders... so issued". If this section applies it affords a complete answer to the objection raised on behalf of the plaintiffs. The Act was passed long after the Bombay District Police Act of 1890, and unless it were clear that this provision applies to Acts already passed it would not help the defendants. The scheme of the Act is to distinguish between the provisions which

are intended to apply to all Bombay Acts and those which are intended to apply to Bombay Acts made after the commencement of the Act. The use of the words "any Bombay Act" in Section 21 indicates that the section was intended to be of general application. Therefore, it was perfectly open to the Government to alter the first Notification if minded to do so.

54. The second objection is more difficult. It is clear that the Government have no power under the section to call upon A to pay for B as an agent of B. It is open to the Government under Sub-section (2) Clause (b) to charge any section or sections or class or classes of persons and under the powers mentioned in Section 21 of the General Clauses Act it is open to them, to and, to amend or vary the first order on this point. But under the section the Government cannot call upon A to pay on behalf of B. The proposition as thus stated is not seriously contested by the learned Advocate-General. The plaintiffs'' case rests upon the use of the words "on behalf of the Momins" in the notification and the facts disclosed in the correspondence commencing with 7th December, 1921 and ending with the notification of the 6th June, 1922, between the District Magistrate, the Commissioner and the Government. The notice issued by the Sub Divisional Magistrate refers to the new class of persons as agents of the Momins, and the evidence of the District Magistrate (Ex. 131) shows that the plaintiffs were regarded as the agents of the Momins. The use of expression "on behalf of the Momins" in the Government notification is consistent only with that view. If the matter rested there I think the objection would be good, as the plaintiffs or the shop-keepers of Malegaon are in no sense the agents of Momins.

55. But the effect of the notification in law is clearly to impose a new tax on the shop-keepers. In the written statement this is made clear. I have already quoted that passage from the written statement and in my opinion, this paragraph has been justly criticised by the learned Counsel for the plaintiffs as involving a change of front on the part of the defendants. That, however, does not enable him to get over the difficulty of the notification. We have to consider the true legal effect of the notification; and taking its effect to be that a new tax or rate is imposed upon shop-keepers of Malegaon, it is within the powers of the Government, under the section. It is hardly reasonable to declare it to be illegal, when on that footing it is within the powers of the Government to impose the tax or rate which has been imposed. I am, therefore, unable to allow this objection as the effect of the notification is within the scope of the authority of the Government. It may be said that this view is subject to the criticism that it is practically allowing the Government to substitute a new notification for one which cannot be justified in its entirety. But so long as in substance it is a tax or rate on another class of persons living within the area concerned, it is within the legal authority of the Government and as the Government have sought to support it on that footing, I do not see how it can be declared to be illegal. I need hardly observe that the Court is not concerned with the propriety of the new tax or rate. We are concerned with its legality and that is the only point with which I am dealing. It is for the Government to consider its propriety

as the Legislature has laid the obligation of determining the questions mentioned in that section upon that authority.

56. As regards the objection (c) it is clear that under Sub-section (4) the Government have to ask the Municipality of Malegaon to pay the amount and assess the tax or rate conformably to their orders. In the present case the Government asked the Municipality to recover the tax or rate levied in the first instance (Ex. 96). The Municipality was unable to recover it from the Momins and made a default in payment. The Government then reconsidered the position and imposed a tax or rate which was a new tax on a different section or class of inhabitants. If the Government were re imposing the old tax or rate they would be justified in acting upon the default of the Municipality which had undoubtedly taken place. But if the tax is to be justified as a different tax or rate and not as the old rate on the Momins the legality of the course adopted by the Government must be considered on that footing. It is clear under the proviso to Section 26, Sub-section (2), that the Government can ask the Collector to recover the tax or rate in respect of which the Municipality has made a default. And I think it was obligatory upon the Government to ask the Municipality under sub Section (4) of Section 25 to recover this amount; but in the notification they acted upon the default already made by the Municipality. As a practical proposition it may be a correct view to take: and even legally it would be correct if the same tax or rate were to be levied. But in the present, case the legality of the tax or rate can be established only on the footing of its being a different tax or rate on another section or class of the public of Malegaon: and the Municipality, was not called upon to pay or to recover that tax. We have to consider the effect of this omission. I think that an obligatory provision in the Statute cannot be allowed to be ignored without adequate grounds. The effect of this omission on the legality of the levy by the Collector is a question of some difficulty. In the present case, it is clear, that the Municipality had been unable to do anything in the first instance: and the Municipality had in effect said so. I am not prepared to hold that though the tax or rate may be legal its recovery by the Collector is illegal under the circumstances. At least as regards the class of Income Tax payers undoubtedly there was a default by the Municipality and to that extent the direction to the Collector is quite regular. And when it is partially legal, for the rest the direct reference to the Collector is in the nature of an irregularity, which cannot affect the legality of the taz.

57. The objection that it is not a rate on property as described by the Government in the notification has no substance in it. It does not matter to my mind whether it is a tax or rate on property. It is a tax determined on the footing of the extent of the business done during the previous years by the shop-keepers. It is in no way dependent upon their continuing the business during the period of the recovery of the rate: nor does it depend upon the extent of the business actively done during the period. Therefore, it is preferably a tax on the shop keepers as a class of persons living at Malegaon; but it is undoubtedly one or, the other and the objection appears to me to be profitless.

58. The next objection is that this tax or rate on the shop-keepers is wanton, arbitrary, and oppressive. This objection can be more appropriately dealt with along with the similar objection as to compensation charges.

59. As to the last objection about the retrospective operation of the notification I doubt whether it is really retrospective for it is an order to recover during the period after the notification certain charges incurred and to be incurred. But whether retrospective or not in its operation it is clear that it is within the powers of the Government u/s 25 read with Section 21 of the General Clauses Act. I hold, therefore, that the notification so far as it relates to the Police charges is not illegal or ultra vires.

60. As regards the compensation charges the powers of the authorities are defined by Section 25-A which is as follows:

61. The facts about the compensation money have been already stated. It is relevant to note that after the Commissioner passed his orders on the 16th and 17th August (Exs. 134 and 104), there is nothing to show that u/s 25-A, sub Section (1), el. (6), the District Magistrate asked the Collector to realise the amount as had been directed by the Commissioner. The District Magistrate does not appear to have been satisfied with the Commissioner''s orders as to the method of realisation; and whether on that account or for any other reason he refrained from taking the step required by sub-s (1), Clause (6). Then in December the District Magistrate started the correspondence again. Ultimately in March 1922 the District Magistrate re-opened the subject with the result that the Government issued the notification in question and then the Commissioner and the District Magistrate were all agreed as to how the amount was to be recovered. Then on the 12th June the District Magistrate took for the first time the step contemplated by sub Section (1), Clause (b) and he wrote to the Collector to recover the amount in the manner indicated in his letter of the 12th June (Ex. 110), It is not obligatory to ask the Municipality to recover the amount under this section. It may also be observed that the authorities mentioned in the section are the District Magistrate and the Commissioner and not the Government.

62. The objections urged against the notification so far as it relates to this amount are these:

(a) The District Magistrate having once decided the question and the Commissioner having passed his orders on revision the question as to who were liable to pay was finally settled and could not be re-opened.

(b) The Government have no power to interfere in this matter u/s 25-A.

(c) The direction that the money should be recovered from the "shop-keepers" on behalf of the Momins is illegal.

(d) That the powers are arbitrarily, want-only and oppressively exercised by the District Magistrate and the Commissioner in so far as they make shop-keepers pay

the whole amount, which is justly payable by the Momins.

(e) That no further inquiry was made as is contemplated by Section 25-A or as was suggested by the District Magistrate in his letter of 7th March 1922 before the plaintiffs were taxed.

63. As regards the first objection the Advocate-General has relied upon Section 21 of the Bombay General Clauses Act; but there is a difficulty in holding that Section 21 applies to orders made by the District Magistrate u/s 25-A, Sub-section (1). Sub-section (4), provides-that every declaration, assessment, direction and order made by the District Magistrate under Sub-section (1) shall be subject to revision by the Commissioner but save as aforesaid shall be final. The express provision as to finality would apparently exclude the application of Section 21 of the Bombay General Clauses Act. It is difficult to reconcile this provision as to finality with the idea of his being able to vary it from time to time. The question whether the Commissioner can revise it from time to time is more difficult. Having regard to the nature of the powers conferred by the section, it has been argued that with the reference to the orders and the directions made under Sub-section (1) the Legislature intended finality and that the idea of revising the same from time to time is repugnant to the scheme and purpose of the section. I do not desire to decide this point, as in the view I take of the facts of the case on this point, it is not necessary to do so. Assuming, without deciding, that the declarations, orders, etc., made under sub.s. (1) with the previous sanction of the Commissioner would be final, and that the Commissioner could not revise the same from time to time thereafter, in the present case it is not shown that the District Magistrate passed any orders under subs. (1) Clause (b) requiring the Collector to recover the amount in any particular proportions from the inhabitants of the local area or from any defined class before he wrote the letter of the 12th June 1922 (Ex. 110). It is true that the Commissioner passed his orders on or before the 17th August. 1921: but as apparently there was a difference, between the District Magistrate and the Commissioner as to the class of persons from whom and the proportion in which the compensation money was to be" recovered, the District Magistrate appears to have waited until he got an opportunity to re-open the matter on the 7th December. But finally the matter was taken up by his successor in March 1922, and as a result the Government and the Commissioner accepted the District Magistrate''s proposals. Then with the sanction of the Commissioner, for the first time the District Magistrate required the Collector to recover the amount on the new basis. Whether the District Magistrate was thus justified in waiting from August 1921 to June 1922 in taking action under Clause (6) is quite a different matter. In determining the legality of the present orders I am not concerned with the propriety of that attitude on the part of the District Magistrate. But the order of 12th June 1922 made with the sanction of the Commissioner and communicated to the Collector is the first order of its kind on the record. I may here refer to Ex. 150 which is a memo signed by the District Magistrate and Collector and addressed to the Mamlatdar asking him to realise the amounts to be recovered

from the class of Income Tax payers who were Momins. It is to be remembered that the Commissioner had specified two classes of the Momin adults of Malegaon. As regards class I, there was no difference between the District Magistrate and the Commissioner. Though there is no letter by the District Magistrate asking the Collector to recover the amount payable by the Income Tax payers under class I, this memo would indicate that without any formal compliance with the requirements of Section 25-A(1)(6), the District Magistrate and Collector ordered the Mamlatdar to realise the amount or that this letter itself was a formal requisition in respect of this class of persons. At any rate the fact remains that as regards class II there was no letter from the District Magistrate to the Collector before 12th June 1922. As regards the class of Income Tax payers the letter (Ex. J 50) was the first intimation to the local officer at Malegaon to recover the amount payable by that class under the Commissioner''s order dated 16th August 1921 (Ex. 134). There is no such intimation in the case of class II, as to which the correspondence had been started again by the District Magistrate by his letter of the 7th March 1922. As against this it may be urged that the letter of the 30th December 1921 addressed by the Commissioner to the Collector would not be appropriate unless the District Magistrate had already written to the Collector to recover the compensation. I do not think that such an inference can arise, as the letter relates to the Police charges also, with respect to which it is clear that no intimation could have been given to the Collector to realise the charges. It is true that Section 25-A makes a clear distinction between the District Magistrate and the Collector. In fact the same officer occupies two capacities. This circumstance at times tends to obscure the essential legal distinction in official correspondence. But on the present record it is a fair inference that until the 8th March 1922 no attempt whatever was made to recover the amount and that until 12th June the District Magistrate did not require the Collector to recover the amount as provided Section 25-A(1)(b). This inference is consistent with and derives support from the wording of para. (4) of the memorandum of the District Magistrate (Ex. 108), in which he refers to the orders to be issued to the Collector for the recovery of the sums due. Therefore, the final direction under Sub-section (1)(b) revised by the Commissioner as contemplated by sub Section (4) is that given by Ex. 110 at least as regards class II of shop-keepers.

64. Apart from this consideration it is clear that when the Commissioner made his order of the 16th August, 1921, a reservation was made as to "such other inhabitants of the said town as may be hereafter notified". But as the new class of shop-keepers now notified is not in addition to the class of Momins but in the eye of the law in substitution of class II of the adult male Muhammadan inhabitants other than Income Tax payers as previously notified, it involves a substantial change: and its validity must depend upon the Commissioner''s power to alter it. As the stage of finality contemplated by the provisions of Sub-section (4) was not reached, and as the subject was still open to the District Magistrate in consequence of his having made no requisition on the Collector under Sub-section (1)(b), it does not matter to

my mind whether there was any such reservation in the Commissioner''s order of the 16th August. This objection, therefore, fails.

65. As regards the second objection the section does not refer to the Government at all. The Commissioner was substituted for the Government in the section by Bombay Act III of 1915: and while the position that the District Magistrate and the Commissioner may consult the Government is intelligible, the Government has no authority under the section in the purely legal aspect of the question. The District Magistrate and the Commissioner are the authorities we are concerned with under 8.25-A, and the legality of their action as such is to be considered.

66. As regards the third objection I would not repeat what I have said with reference to the fame objection as to Police charges. The really effective document in this matter is not the Government notification, but the order that was communicated by the District Magistrate on the 12th June 1922 with the sanction of the Commissioner as disclosed in the correspondence. As I have already pointed out the order to make A pay for B would not be legal: but the simple order to make A pay would be legal. That is the effect of the order: and I take the same view, as in the case of Police charges, on this point. It does not matter whether A is able to recover it in any indirect form from B or not: nor does it matter whether ultimately A is able to recoup himself in trade by taxing the article in his dealings with any other persons. So far as the legality of the tax is concerned, in my opinion, it does not matter whether the intended economic adjustment takes place as between the persons, taxed and those who deal with them in saris and yarn at all and if so, to what extent.

67. This brings me to the next objection that this tax or rate is wanton, arbitrary and oppressive and as such not legally recoverable. Sir Chimanlal Setalwad has relied upon the observations of West, J., in Nagar Valab Narasi v. Municipality of Dhandhuka 12 B. 490 : 6 Ind. Dec. 810 and generally upon the summary given in Maxwell on interpretation of Statues under the heading "Construction to prevent abuse of powers" in Ch. IV, s. II (pages 226--34, 6th Edition.). It is necessary to bear in mind the basic principle of interference by Civil Courts in matters which are assigned primarily to the discretion of public authorities by the Legislature. Different Judges have expressed in different language what appears to me to be the same principle, the language being adapted to the requirements of the particular case. I shall quote a few passages as containing an enunciation of the principle which underlies the particular objection:

68. In Duke of Bedford v. Dawson (1875) 20 Eq. 353 : 41 L.J. Ch. 549 : 33 L.T. 156 Sir George Jessel, M.R. (page 358 Page of (1875) 20 Eq.--[Ed.]) observes: "This means that when the words ''for the purpose'', are used, that does not imply what the plaintiff or some body else may think the purpose, or what the Court may think is for the purpose, but it means what the public body entrusted with the power by the Legislature may in their honest and reasonable exercise of judgment think necessary for the purpose. They are to be the Judges, subject to this, that if they are

manifestly abusing their powers, and purporting to use the land for a purpose for which manifestly it is not intended, the Court will say it is not a fair and honest judgment, and will not allow it. But subject to that limit they are the persons to decide." It may be stated in the words of Lord Esher, M.R. in R. v. Vestry of St. Pancras (1890) 21 Q.B.D. 371 : 53 L.J.Q.B. 244 : 62 L.T. 440 : 38 W.R. 311 : 51 J.P. 339 : "If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion." In Sharp v. Wake field (1891) A.C. 173 : 60 L.J.M.C. 73 : 64 L.T. 180 : 39 W.R. 551 : 55 J.P. 197, Lord Halsbury, L.C. observes as follows (page 179 Page of (1891) A.C.-[Ed.]): "An extensive power is confided to the justices in their capacity as justices to be exercised judicially; and ''discretion'' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: Rooke''s case 5b Co. Rep. 99 at p. 100a; 773 R. 200, according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself." I have selected these passages as, indicating the range of the Court''s powers to interfere with matters confided by the Legislature to public authorities.

69. In dealing with this point we have to bear in mind the special purpose of Section 25-A, the extent of the powers given to the District Magistrate and the Commissioner for determining the amount and fixing the proportion in which it may be recovered from different classes and the manner of recovering it and the wide discretion given to them to meet the exigencies in a disturbed area. This is equally true of the powers conferred upon the Government u/s 25 also. On the other hand we have the fact that a large sum of nearly 5,00,000 (in round figures) on account of compensation, and if we include about Rs. 93,000 for the Police charges for two years nearly six lacs were to be recovered. It was the view of the public authorities at least of the Commissioner and the Government in 1921, that the inhabitants of this area responsible for the amount were the Momins and they were proposed to be taxed then in two ways: Income Tax payers to pay on certain scale and the adult male Momins to pay equally, provided that a Momin having more looms than one was to count as an extra unit for each loom in excess of one. Apparently there was difficulty felt by the Municipality in realising even the amount of about Rs. 50,000 (fifty thousand), which was then the only charge u/s 25, and apparently no effort was made to recover the bigger sum of compensation, u/s 25-A. When this difficulty was realised the authorities on a re-consideration taxed the inhabitants in a different way within the limits prescribed by law as now found. The class of Income Tax payers was kept exactly the same: but for class II of adult male. Momins a comparatively small class of shop-keepers was substituted and they were required to make up the whole of the balance of both the charges in three years. This class

consisted of Momins and non-Momins. In effect about a hundred shop-keepers were called upon to _ pay nearly six lacs of rupees in three years: and if we exclude Rs. 38,000 the total amount payable by the class of Income Tax payers according to the figures supplied by the learned Advocate General, the balance payable by the shop-keepers would be, nearly, 5,60,000.

70. Out of 102 shop-keepers 48 are Hindu shop-keepers and their total liability compared to the total liability of the Muhammadan shop-keepers would be roughly in the ratio of 17 to 7 that is the Hindu shop-keepers would have, to pay nearly 3,96,000 and the Muhammadan shop-keeper''s would have to pay about 1,64,000. I have taken this ratio from the figures given by the Advocate-General, according to which out of a total of Rs. 2,37,000 and odd the Hindu shop-keepers (48 in number) would have to pay Rs. 1,68,000 and odd and the Muhammadan shop-keepers would have to pay Rs. 68,000 and odd which works out roughly the ratio of 17 to 7. Both the ratio and the figures are rough and intended only to indicate broadly the effect of the orders passed in June 1922, In a population of about twenty-five thousand persons only about 100 people are selected to pay up such a heavy amount. The Momins generally, who according to the authorities even now are responsible but from whom it is either inconvenient or impossible to recover the amount, are to be left practically exempt so far as the direct taxation is concerned. They will have to pay indirectly to some uncertain extent if they are effectively taxed through the medium of the saris. It is also pointed out that this class of shop-keepers is determined without any special inquiry with the result that the list includes according to the appellants three or four persons and according to both sides one person in whose (favour) an order for compensation has been in fact made. This has been stated on a comparison of the lists Exts. 164 and 166. In view of these facts it is urged for the appellants that the tax is wanton, arbitrary and oppressive. On the other hand we have the fact that these amounts are to be levied from the inhabitants of Malegaon. An attempt to recover it from the adult male Momins had failed in the case of Police charges and for the compensation money such an attempt was not or could not be made. The levy was of an emergent nature and for nearly one year nothing could be done. The Government and the authorities had to decide upon the best method of recovering it under difficult and somewhat baffling circumstances. They acted upon a basis which is intelligible. I have referred to these facts as representing the other side of the question. But we have to consider only whether there is any sufficient ground to hold that their judgment is so unreasonable under the circumstances as to make it practically not a valid decision under the sections, or, in the words used in Duke of Bedford v. Dawson (1875) 20 Eq. 353 : 41 L.J. Ch. 549 : 33 L.T. 156 whether it amounts to a manifest abuse of the powers conferred upon the authorities. I am of opinion that no manifest abuse of power by the authorities is made out; nor can I say that they have taken into consideration any matter which it was not legally proper for them to consider. To adopt the words of the argument urged on behalf of the appellants I am unable to

hold this tax to be wanton or arbitrary. There is a method in the taxation which is intelligible and according to the opinions of the authorities, the adult male Momins will be taxed indirectly. As regards its being oppressive it must be remembered that there is a certain degree of hardship in such punitive taxation in a disturbed area, which may be treated almost as a normal incident of it. We need not take that into account. There is no doubt a certain degree of extra hardship, and in my opinion a real hardship, in such taxation when only a small group is selected to make up such a large amount. But what we have to consider is whether its operation is calculated to be oppressive so as to render it liable to be set aside. On the materials on this record I am unable to hold that it could be justly described as oppressive in that sense. In my opinion the evidence led on behalf of the plaintiffs to prove that this has dislocated the business of some shop-keepers is not satisfactory and I hold that the allegation is not proved.. But the nature of the tax still has to be considered with references to its probable effect upon those who are taxed. It is clear that the nature of the tax is certain in its operation as regards the shop-keepers and very uncertain, in its operation as regards its ultimate adjustment among the dealers with the shop-keepers. After all it is a point in favour of the appellants that the class of shop-keepers is taxed more because the amount cannot be recovered from the adult male Momins than because the shop-keepers are themselves primarily liable. It is clear, however, that the orders represent an honest effort on the part of the authorities to arrive at the best working method of recovering the amounts leviable under the two sections, and they have proceeded with calculation and consideration in dealing with a difficult situation. I am, therefore, unable to accept the contention that these orders of the authorities are illegal on the ground of their being want on, arbitrary and oppressive. I must say that I have found this point more difficult than the other questions of law in the case. It is difficult to draw the line beyond which Civil Courts cannot examine this question. We have not to consider, whether this is a proper and just mode of taxing the inhabitants or any class of inhabitants within the area. It is for the District Magistrate with the previous sanction of the Commissioner to require the Collector u/s 25-A(1)(b) to recover the amount so determined in such proportions as he may, with the like sanction, draw from all inhabitants of the area declared under Sub-section (1) Clause (a)(ii) or from any section or sections or class or classes of such persons and it is for the Government to determine the same questions u/s 25 as to Police charges. A Civil Court can interfere only when the discretion is exercised in such, a manner as to enable the Court to say that it is not an exercise of the discretion within the meaning of these sections. I am unable to hold that the discretion is exercised in that manner in this case. Beyond this I express no opinion either as to the justice or the propriety of the direction given by the District Magistrate u/s 25-A(1)(6) or by the Government u/s 25, Sub-section (2).

71. As to the mistake of including a person or persons in whose favour compensation is allowed, I have no doubt it can be and will be corrected by the Commissioner u/s 25-A (2). In dealing with a large number of persons a casual

mistake of this kind is apt to occur: and it cannot be accepted as a ground for holding that the discretion is not validly exercised.

72. As regards the omission to make any inquiry it may be pointed out that Section 25-A does not provide for any inquiry as to orders u/s 25-A(1)(6). The words "after such inquiry as he deems necessary" are to be found in Sub-section (1) Clause (a), and do not govern Clause (b). There is no legal basis for this contention. The District Magistrate referred in his letter of the 7th March 1922 to some kind of inquiry as regards the Hindus: and the Government in their letter of the 5th April required the District Magistrate to make such inquiry. No such inquiry has been made. The Sub-Divisional Magistrate made inquiry as to the extent of the business done by each shop-keeper. 1 agree with the view of the Trial Court that this inquiry was fair, though it is possible that in such rough and ready calculation of the extent of the business some mistakes might have crept in. But the Sub-Divisional Magistrate Mr. Hulyal says in his evidence (Ex. 135, para. 9) that he made no other inquiry. Thus in point of fact even the inquiry suggested by the District Magistrate was not made. But as there is no legal obligation for making such an inquiry, I cannot attach any real importance to this omission. I cannot agree that the omission to hold an inquiry which was only departmentally arranged, is sufficient to vitiate the direction given by him u/s 25-A(1)(b). The provisions of Section 79 of the District Police Act would condone such an irregularity in procedure.

73. Lastly, I may mention that the point that it is not a rate on property was raised with reference to this part of the case also. But the point has been already dealt with; and 1 doubt whether it can apply to the compensation charges. Clause (6) of Section 25-A (1) is silent on this point. It does not refer to tax or rate assessed on property as Sub-section (2) of Section 25 does.

74. It is not suggested before us on behalf of the appellants that it was obligatory upon the District Magistrate to require the Municipality to assess and recover the amount of compensation under sub Section (1), Clause (c); and I do not see how it could be suggested in view of the wording of that clause,

75. I may mention that a fresh notification issued in May 1923 was referred to in the argument. It reduces the Police charges to some extent, and imposes the additional Police for the third year. In other respects it proceeds on the same lines as the notification in question, and does not affect the decision in this suit.

76. The result is that the appeal fails.

78. As to costs, though it may be said that the wording of the notification affords a basis for the suit, I do not think that there is any good ground to depart from the usual rule that the costs must follow the event.

79. I would confirm the decree of the lower Court with costs.

Kemp, J.

80. [After setting out the facts His Lordship proceeded:] The first point raised is the question of notice u/s 80 of the C.P.C., (Act V of 1908). The suit here is against two defendants, the Secretary of State and the District Magistrate and Collector. So far as the Secretary of State is concerned the words of the section are clear. No suit may be instituted against him until the expiration of the two months'' notice required by the section. The terms of the section are imperative and make no exception in the case of suits for an injunction and I do not consider that a Court of Law is entitled to graft on to the plain wording of the section a qualifying clause excepting suits for an injunction--a kind of relief which must have been in the contemplation of the framers of the Code when the section was drafted and redrafted. Nor does it to my mind make any difference that the injury apprehended is immediate or irreparable. On this point I entirely agree with the judgment of Sadasiva Ayyar, J. in Secretary of State v. Kalekhan 16 Ind. Cas. 947 37 M. 113 : 23 M.L.J. 181 : (1912) M.W.N. 786 : 12 M.L.T. 224.

81. The case of a public officer requires a little more consideration. The Secretary of State acts through his subordinates and an injunction against his subordinate can afford sufficient relief. The words of the section restrict in the public officer''s case the necessity of the notice to a suit for an act purporting to be done by him in his official capacity. The appellants contend that there was no such act by the District Magistrate or Collector but merely a threatened act. They say that at the date of the suit the District Magistrate had rejected their petition (Ex. III) to him and that what they are suing him for is to prevent him carrying out in his capacity as District Magistrate the order (Ex. 110) to the Collector to carry out the Government Notification No. 152 of 6th June 1922 and in his capacity as Collector the notices (Ex. 94) to the separate shop-keepers demanding the amounts at which they had been assessed under the same Government notification. They say the suit is in respect of something the 2nd respondent is going to do not in respect of something he has done. It is not in respect of the order Ex. 110 or the notices Ex. 94 but in respect of the further acts threatened under them. Paragraph 10 of the plaint states the appellants'' grievance on this point and prayer (b) of the plaint prays that both the defendants may be restrained from making the recoveries which were demanded by the Collector (purporting to act pursuant to Government Notification No. 152 of 6th June 1922 in Ex. 91). In my opinion, therefore, no notice is necessary so far as the suit is one for an injunction against the 2nd defendant in respect of the amount of compensation mentioned in prayer (6) of the plaint.

82. I think, however, in so far as the suit is for the declaration in prayer (a) so far as it relates to the compensation which is imposed u/s 25-A of the Bombay District Police Act, 1890, by the District Magistrate with the previous sanction and subject to revision by the Commissioner, the suit is one in respect of an act purporting to be done by the District Magistrate and Collector in his official capacity. The act purporting to be done in the case is, as regards this particular relief, the passing of Ex. 110 and the notices Ex. 91. So far, therefore, as this relief is concerned notice u/s

80 of the C.P.C. is necessary.

83. The case of Flower v. Local Board of Low Laylon (1877) 5 Ch. D. 347 : 46 L.J. Ch. 621 : 36 L.T. 760 : 25 W.R. 545 cannot be relied upon in considering the question of notice to the Secretary of State as the wording of Section 80, C.P.C., is, so far as the Secretary of State is concerned, entirely different to the wording of the particular Statute in that case.

84. I think that those decisions of the Bombay High Court which have been cited in the argument and which hold that where the damage threatened is immediate or irreparable, no notice is necessary either in the case of the Secretary of State or of any public officer in respect of an act purporting to be done by such public officer in his official capacity can be explained on the recognition of the application of equitable principles to the case of an act operating harshly or in a manner in which it was not intended to operate. Assuming that such equitable considerations could be admitted to override the plain words of Section 80 where the Secretary of State is sued, I am of opinion, for the reasons given hereafter, that the present is not a case of irreparable damage.

85. The respondents contend that the suit does not lie by virtue of the Bombay Revenue Jurisdiction Act (X of 1876), Section 4(f) which provides that no Civil Court shall exercise jurisdiction as to certain matters one of which in Clause (f) is claims against Government to set aside any cess or rate authorised by Government under the provisions of any law for the time being-in force. The appellants say that this is not a cess and that in so far as it is, if at all, a rate it is, as regards the order for compensation u/s 25-A of the District Police Act (Bom. Act IV of 1890) an order which it is only competent for the District Magistrate with the previous consent of the Commissioner to pass and not one that can be authorised by Government. They also say that the Act does not apply where an order is wholly illegal or ultra vires, [See Maganchand v. Vithalrao 17 Ind. Cas. 148 : 37 B. 37 : 14 Bom. L.R. 793 and Gangaram v. Dinkar Ganesh 20 Ind. Cas. 526 : 37 B 542 : 15 Bom. L.R. 665. They further say that u/s 5(a) of Act X of 1876 where they contest the liability altogether the Court may entertain the suit.. To understand this last argument it must; be mentioned that Government Notification Ex. 99 of 6th June 1922 makes these charges under it recoverable as an arrears of land revenue u/s 26(2) of Bombay Act IV of 1890; and by Section 3 of the Bombay Revenue Jurisdiction Act (X of 1876), the definition of "land revenue" would cover such charges.

86. I think in so far as the objection that the compensation must be imposed by the District Magistrate with the previous consent of the Commissioner u/s 25-A of Act (IV of 1890) is concerned, Exs. Nos. 107, 108, 109, 90 and 110 and the Government Notification No. 152 (Ex. No. 99) show that even if Government notified the charge by Government Notification No. 152. the District Magistrate was the originator of the proposal and adopted the terms of the Government notification in his letter to the Collector Ex. 11.0, dated 12th June 1922 under the terms of Section 25-A (6). Any

defect there may have been in this procedure was, in my opinion, cured by the provisions of Section 79 of Bombay Act IV of 1890. The proposal for the recovery of the compensation emanated from the District Magistrate was ultimately approved by the Commissioner and notified by Government.

87. It seems, however, on the decided cases in this Court that there is more substance in appellants'' contention that the Bombay Revenue Jurisdiction Act (X of 1876), Section 4, does not stand in the way of a suit in respect, of a wholly illegal and unauthorized cess or rate purporting to be authorized by Government or a public officer See Maganchand v. Vithalrao 17 Ind. Cas. 148 : 37 B. 37 : 14 Bom. L.R. 793, Gungaram v. Dinkar 20 Ind. Cas. 526 : 37 B, 542 : 15 Bom. L.R. 665. The validity of the respondents'' objection on this point would, therefore, depend on the illegality of the Government, Notification No. 152.

88. As, however, appellants contend they are not the persons liable to pay the charges on the ground that they are not the persons responsible for the riot the Court has, u/s 5(a) of the Bombay Revenue Jurisdiction Act, jurisdiction to entertain this suit. Nor can the respondents'' objection apply to the compensation which is imposed by the Commissioner and the District Magistrate u/s 25-A of the Bombay District Police Act, 1890 and not by Government.

89. Then the respondents contend that the suit is barred for want of notice u/s 80(4) of Bombay Act IV of 1890. Section 80, however, seems to refer to suits for damages against a Commissioner, Magistrate or Police Officer, and as this is not a suit of such a character, Clause (4) of s.80 would not apply.

90. Nor does Section 81 of the same Act bar this suit. That section refers to orders of the nature of those mentioned in Section 38 of the same Act. The Advocate-General was constrained to admit that Section 81 had no application to the present case, Moreover, the order as to compensation has to be made by the District Magistrate u/s 25-A of Bombay Act IV of 1890 and not by Government.

91. The respondents'' next contention is that the District Magistrate''s order u/s 25-A (1) of Bombay Act IV of 1890 is final under Clause (4) of that section, i.e., it cannot be questioned by a Civil Court. The appellants say it can, and further, that the District Magistrate having once made his order u/s 25-A cannot review it by passing a fresh order under Government Notification No. 152, dated 6th June 1922, (Ex. 99). The order, they say, the District Magistrate first made was one under the Commissioner''s order of. 16th August 192l (Ex. 134). Now it will be seen that the scheme of Section 25-A of Bombay Act IV of 1890 is that the District Magistrate can make orders with the previous sanction of, and subject to revision by, the Commissioner. With these qualifications the District Magistrate''s order is to be final. The Commissioner is the reviewing authority. Now what were the facts here On 16th August 1921 the Commissioner passed his order Ex. 134 and the appellants say that the District Magistrate must have given effect to it by passing an order u/s 25-A in

accordance with its terms. I may point out, incidentally, that there is no such order of the District Magistrate on the record. Exhibit 146 dated 30th December 1921 which has been relied on, is 4 months later, and in any case is no such order. Exhibit 150 dated 8th March 1922 is still later and refers to the Muhammadan Income Tax payers whose liability is continued in the Government Notification No. 152, dated 6th June 1922 (Ex. 99). Assuming, however, he made such an order, could the District Magistrate legally pass the fresh order of 12th June 1922 (Ex. 110) in review of the first order? I think with the previous sanction of the Commissioner and subject again to revision by him the District Magistrate may. In effect, he obtains the revision of the reviewing authority. That the District Magistrate''s order, Ex. 110 was approved by the Commissioner is clear because the latter passed the District Magistrate''s proposals on to Government and signified his agreement with them in his letters Ex. 107 dated 9th March 1922, and Ex. 147, dated 14th January 1922. The review of the first ! order was clearly, therefore, by the authority having power to review. Indeed, I am not at all certain that tinder the General Clauses Act (Bom. Act I of 1904), Section 21 the District Magistrate himself may not review his first order subject to the prior assent of and revision by the Commissioner. That it had such assent, I have already pointed out, is clear from Ex. 107, dated 9th March 1922, and, Ex. 147, dated 14th January 1922. Further, I wish to point out that although the Commissioner by his order dated 16th August 1921 (Ex. 134), specifically provided for other inhabitants of the town being assessed for compensation by any subsequent order that might be passed, if it be contended he has substituted another class of persons, the District Magistrate passed no orders on Ex. 134.

92. I see nothing in the scheme of Section 25-A to suggest that no fresh order can be passed by the District Magistrate in accordance with a revision of his first order by the Commissioner. It might lead to unfortunate results to adopt such a construction because the Commissioner and District Magistrate would be unable to, correct any order passed u/s 25-A on a misapprehension of the true facts or by mistake. To understand the way in which the word "final" is used by the Legislature, it is permissible, though with caution, to look at other instances in which the Legislature has used the word. In Section 629 of the C.P.C. of 1882 an order made under that section was described as "final" i, e., non-appealable. The new C.P.C. of 1908, Order XLVII, Rule 7, substituted the word "shall not be appealable" for the word "final." This was merely a verbal alteration and shows the Legislature meant to exclude any appeal from the order. See also the use of the word in the Court Fees Act (VII of 1670) Section 5 and the case of Balkaran Rai v. Gobind Nath Tiwari 12 A. 129 : (1890) A.W.N. 39 : 6 Ind. Dec. 831; and in the Public Demands Recovery Act (Ben. Act I of 1895) Section 19, Sub-section (4) and the case of Matangini v. Girish Chunder 30 C. 619 : 7 C.W.N. 433. A. similar meaning is given to the use of the word "final" in Section 13 of the Bombay Revenue Jurisdiction Act (X of 1876); and to the word "determinative" in s.121 of the Land Revenue Code (Bom. Act V of 1879). [Bai Ujam v. Valiji Rasulbhai 10 B. 456 : 5 Ind. Dec. (N.S.) 692. But if we limit the scope of the

discussion to the Bombay District Police Act (Bom. Act IV of 1890), Section 25-A alone--and the case of the Bank of England v. Vagliano (1891) A.C. 107 : 60 L.J.Q.B. 145 : 64 L.T. 353 : 39 W.R. 657: 55 3 V. 676 lays down that the particular Statute should be considered with reference to its language--I see nothing in that section or in the Act to suggest the word "final" -\\ means the District Magistrate can only make his order under that section once and for all. To adopt this construction would limit the power of the Commissioner to exercise of a single revision and the words of this clause do not justify this. In Stroud''s Judicial Dictionary, Second Edition, the word ''final'' is defined thus: "Where a Statute provides that a specified determination shall be ''final,'' e.g, the decision of a Poor Law Auditor qua an un-taxed Solicitor''s "Bill, Section 39, 7 & 8 Vict. c. 101--it is not open to review even though the Court does not see the reasonableness of the provision," It might easily be that facts might come to the notice of the District Magistrate after passing an order u/s 25-A which would require it to be reviewed by a fresh order. The scheme of the section is to make the Commissioner and not the Court the reviewing authority. Clause (5) of the same section specifically excludes a suit in respect of loss or injury for which compensation has been granted under the section. I think this shows that the jurisdiction of the Courts was intended to be excluded. The order of the District Magistrate, Ex. 110, dated 12th June 1922, u/s 25-A not having been revised by the Commissioner is, therefore, as regards the recovery of compensation final and cannot be reviewed by the Court.

93. Then, the appellants contend that Government having once declared by Government Notifications 6423 (Ex. 96) and 6801 (Ex. 97) Avho were responsible for the riots and, therefore, to pay the additional Police charges and the Commissioner by Ex. 134 having decided who was to pay compensation u/s 25 A no fresh order tinder Government Notification No. 152, Ex. 99, could be passed. In other words, that the powers given, once exercised, were exhausted. Moreover, they say that it was not open to the Commissioner in Ex. 134 to make a reservation for others to be brought in afterwards as liable to compensation. As regards this it will be noted that both with regard to the additional Police charges and the compensation the right to include others is reserved (see. Ex. 96 and 131). I see nothing wrong in this. As to the power once exercised being exhausted it seems to me that the case is covered by Section 21 of the General Clauses Act (Bom. Act I of 1904). The finality provided for an order u/s 25-A, Clause (4) of Bombay Act IV of 1890 means, in my opinion, to give a final effect to the ultimate order that the District Magistrate with the previous assent of the Commissioner may, subject to revision by the Commissioner, or in accordance with any such revision pass. Clause (4) is not, in my opinion, intended to exclude the powers which by Section 21 of Bombay Act I of 1904 are included in a power to issue an order.

94. The next objection raised by the appellants is that when the Government Notification No. 152 Ex. 92 was passed it lay on the Municipality in the first instance u/s 25, Clause (4), of Bombay Act IV of 1890 to attempt to recover the tax and rate

for the additional Police. Whatever obligation there may have been on Government or the District Magistrate [I note that it has not been contended that the District Magistrate''s "discretion" in Section 25-A(1)(c) is only for one of the two alternatives of a tax or a rate] to use the Municipality in the first instance as the collecting agency, it is clear from the correspondence that the Municipality were afforded an opportunity to recover the cost of additional Police and were utterly unable to collect it. Government were, therefore, justified in directing the Collector u/s 26(1) proviso to recover it. There was no point in directing the Municipality again to recover the charges after the fresh Government Notification No. 152 (Ex. 99) when it was clear the same circumstances existed then as prevailed when the Municipality attempted to recover the cost of additional Police after the Government Notification No. 6801 (Ex. 97) of 11th July 1921. On 19th July 1921 the District Magistrate wrote to the President of the Municipality asking the Municipality to raise the cost, of the additional Police by a rate on the male adult Muhammadans of Malegaon. The Municipality appears to have made every effort to do so but without success. The failure of their attempt is recorded in the President of the Municipality''s letter of 1st December 1921 (Ex. 105), and the Collector himself recognized that the Municipality was powerless in the matter. Any attempt to raise the money by indirect taxation of the Momins through the shop-keepers must have met with the same fate. Nor am I satisfied that any irregularity there may have been in this respect is not covered by Section 79 of Bombay Act IV of 1890. Moreover, the Municipality has neither paid the charge from the Municipal fund nor assessed the rate u/s 25 Clause (4) of Bombay Act IV of 1890. The obligation is on them to do so and there has, therefore, been a default in recovery u/s 26(1) proviso of the Act. The force of this argument might, however,'' be affected by the fact that although the Municipality had notice of Government Notification No. 152 of 6th June 1922, that Government Notification requires the compensation to be recovered by the Collector. The objection cannot affect the validity of the Government Notification No. 152 (Ex. 99 itself).

95. Again, the appellants urge that the rate under Government Notification No 152 of 6th June 1922 levied on the purchases of saris and sales of yarn by the shop-keepers was not a rate on property. In this connection it is to be noted that Section 25-A does not require the rate for the compensation to be assessed on property although the word "rate" would seem to imply the ownership of property. The point, however, is immaterial as if the charge for additional Police is not a rate on property, it is a tax, however it may be described and is, therefore, within the powers of Government to levy u/s 25. Any objection to the form of this Government Notification is, in my opinion, cured by Section 79 of Bombay Act IV of 1890.

96. A further point has been raised by the appellants that there was no summary enquiry as required by Section 25-A of Bombay Act IV of 1890. This refers to the compensation. But it appeals that on 21st April 1922 the District Magistrate by Ex. 108 directed the Sub-Divisional Magistrate to make the summary enquiry. Such an enquiry was held. It was such an enquiry as the District Magistrate "deemed

necessary" and there was no obligation on him, that I pan see, to repeat it after the Government Notification No. 152of 6th June 1922.

97. We now come to the appellants'' main contention. Shortly put, it may be illustrated by the proposition that Government cannot tax A to recover a tax or charge due by B, Appellants say that the real offenders responsible for the riots were the Momin weavers of Malegaon and that Government so regarded them and have merely taxed the Muhammadan and Hindu shop-keepers referred to in order to make them a collecting agency for the amounts the Momins refused to pay. I think the correspondence shows clearly the charges could not be recovered from the Momins. It is unnecessary to refer in detail to the letters on this point. Exhibit 105, dated 1st December 1921 from the President of the Municipality to the Collector clearly states the reasons why the cost of additional Police cannot be recovered from the Momins. Obviously, an attempt to recover the compensation charges from the Momins would have been equally futile. Government Notification No". 152 of 6th June 1922 speaks of recovering the balance of the charges from the shop-keepers "on behalf of the Momin adult weavers". Exhibit 106 dated 7th March 1922 calls the shop-keepers "agents for collection". But in para. 6 of the written statement defendants plead they intended to recover the charges from the shop-keepers in their own individual capacity as being primarily responsible and not as agents for the weavers. Certainly Government and the District Magistrate apparently considered it would be a good thing to punish the weavers but I think Government also acquiesced in the suggestion to tax the shop-keepers because the District Magistrate in his letters of 7th December 1921 (Ex. A), 15th December 1921 (Ex. B) and 7th March 1922 (Ex. 106) considered the shop-keepers had fostered the movement which led to the disturbances and should, therefore, participate in the collection of the charges imposed. It is not, therefore, a case of taxing an innocent party A for a guilty party B but a case of recovering the charges for which both A and B were answerable by making A recover B''s share of the charges. If Government thought, rightly or wrongly, that they could recover the charges to be imposed on both the shop-keepers and Momins by recovering them from the shop-keepers leaving them to recover wholly or in part from Momins that surely was a case of leaving the parties responsible to decide between themselves how they should apportion the payment. The Court is not concerned with whether Government have judged correctly the party who should pay, provided Government, has exercised its judgment on the point. That is a matter left to Government u/s 25 and to the District Magistrate, with the previous sanction and subject to revision by the Commissioner u/s 25-A. Section 25-A was not, I think, intended to permit the Court to enquire into the question of who were the persons really responsible for an outbreak of this sort. There seem ample grounds for holding that the shop-keepers were not the innocent persons they profess they were. The majority of them are Muhammadans and as the persons to whom the Momins sold saris and from whom the Momins bought yarn were in a position to have exercised control over them. The contention that

they were coerced into subscribing to Khilafat Funds and ranging themselves on the side of those actively assisting in fomenting discontent in Malegaon is theoretically untenable, whatever may have been the real facts, because theoretically there was always the protection of the law to fall back upon, and if the authorities were tolerant of the activities of the fomenters of trouble in Malegaon that was no reason for the shop-keepers to lend their influence to the forces of disorder and discontent in the town. I am unable, therefore, to hold that the imposition of these charges on the shop-keepers was tyrannical, oppressive or arbitrary. If the appellants had come before this Court as admittedly innocent parties the position might have been different.

98. I have held that Government had power to make the Government Notification No. 152 of 6th June 1922, at any rate as regards the charges for additional Police, and that the District Magistrate may be considered under the circumstances as having passed the order for compensation u/s 25-A. The order in the Government Notification to recover the compensation was made at the direct request of the District Magistrate and with the consent of the Commissioner (see Exs. 109 dated 21st April, 1922, 147, dated 14th January 1922 and A, dated 7th December 1921). The Collector, who in this connection is also the District Magistrate, was also responsible for the suggestion to lump the two charges together (Ex. 147), dated 14th January 1922 and Ex. B dated 14th December 1921). The District Magistrate on 12th June 1922 (Ex. 10) subsequently asked the Collector to carry out the Government Notification of 6th June 1922. Both impositions were, therefore, according to law and I fail to see how the lumping of the two sums for the purposes of recovery into one--which after all is a defect that could in any case be cured by Section 79--is a breach of the terms of Clause (1)(6) of Section 25-A. The convenience of the procedure adopted speaks for itself.

99. Therefore, I think, the orders passed were not illegal or ultra vires. This really disposes of the appeal.

100. We may, however, consider whether the injury threatened by defendants was irreparable. Here, I wish to observe that the appellants all had an opportunity of objecting to the manner in which they have been assessed. Section 25-A (2) gives any person aggrieved the right to apply to the Commissioner for exemption. Admittedly, none of the appellants availed themselves of this right. They preferred to come to the Courts. Appellants complain that the effect of collecting these charges has been to compel many shop-keepers to close their businesses and will drive others to do the same, I will review the oral evidence on this point. Champalal, the 4th plaintiff and the manager of the shop of Rangildas Devchand, says his shop has been assessed at 90,000 saris and he has stopped purchasing saris since the Sub-Divisional Magistrate served the notice dated 21st April 1922 (Exs. 89-91) on him. He also says other firms have also stopped purchasing saris. He does not say whether this was by way of passive resistance or inability or reluctance to recover

the tax from the Momins. We are asked to infer his business has been ruined. It appeals from his evidence that from 1st July 1921 to 30th June 1922 his shop purchased 27,103 saris. He has been assessed in 90,000 saris. It appears that he did not care to attend even under protest before the Sub-Divisional Magistrate to assist in calculating the amount at which he should, if liable at all, be charged. If he has been over-assessed it looks to me that, having the opportunity of going to the Commissioner and appearing before the Sub-Divisional Magistrate he preferred to cease purchasing saris. As to the amount at which he has been assessed I cannot see that under the circumstances I can now listen sympathetically to his complaint. The next witness Bhika Dugdu, apparently the 25th plaintiff, of the firm of Bajirao Ramchandra was assessed by the Sub-Divisional Magistrate at 5,000 saris. He says he purchased only 798 saris between 1st July 1921 to 5th September 1921. He was arrested for not paying the amount claimed from him and committed to the civil Jail. It appears that the shop of Bajirao his master is still going on and making purchases of saris. The witness says that he stopped trading himself when the suit was filed. The next witness is Lal a Tarachand, the munim of the firm of Lalchand Laxmi and presumably the 39th appellant. He says the business in saris stopped after the first payment of the punitive charges. He appeared before the Sub-Divisional Magistrate and says he told him that only 13,558 saris had been purchased whilst he has been assessed in 25,000 saris. The Sub-Divisional Magistrate has given evidence showing how he arrived at the calculation of the amount due from such shop-keeprs. He swears that the shop-keepers are making the collection of the cess and that since 21st April 1922 no new merchant has come to Malegaon to trade in saris and yarns.

101. On this evidence, the distress and general imminent stoppage of business alleged by the appellants sinks to insignificant proportions. Only 3 witnesses for the appellants swear to stopping their own businesses. One of them, Bhikoba Dagdu, admits that his master''s business is still going on and making purchases of saris. Nor does any of these witnesses swear that his business was stopped as it was ruinous to carry it on any longer. They merely swear they have stopped business. I am not at ail satisfied on this evidence that the stoppage of these three businesses is unconnected with the desire to defeat the recoveries which the authorities are attempting to make. Champalal says other firms have stopped purchasing saris but none of the representatives of the other firms has been called to give evidence; which is surprising. Nor has a single witness been called to prove that new firms have ousted the old ones in consequence of the action taken by the District Magistrate and Collector. In fact, this complaint of oppression and injustice appears to me, on investigating the evidence, to be without foundation. No irremediable damage appears to have threatened or done. In my opinion, the suit was properly dismissed and I would confirm the order of the lower Court and dismiss this appeal with costs.