
(1962) 12 CAL CK 0006
In the Calcutta High Court
Case No : Matter No. 212 of 1961

Bengal Properties (P) Ltd.

APPELLANT

Vs

L.N. Bal and Others

RESPONDENT

Date of Decision : 13-12-1962

Acts Referred:

Calcutta Municipal Act, 1951 — Section 172(3)(c)

Citation : 67 CWN 382

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : T.K. Bose, for the Appellant; Sankar Ghosh, for the Respondent

Judgement

Banerjee, J.—The petitioner company, Bengal Properties Private Ltd., carries on cinema business. The company, in its business, is the lessee of premises No. 39, Bentinck Street, Calcutta, and in that premises runs a public cinema house under the name of Paradise Cinema. It is not disputed that under the terms of the lease, the petitioner company is alone liable to pay both the shares of the consolidated rates to the Corporation of Calcutta. Premises No. 39, Bentinck Street had been assessed to an annual value of Rs. 22,336/- with effect from the second quarter of 1955/1956. On account of certain re-constructions or improvement therein made, after the assessment aforesaid, there was started an intermediate assessment proceeding against the petitioner company, under the provisions of section 172(3) (c) of the Calcutta Municipal Act, 1951 (hereinafter referred to as the Act). At the intermediate assessment, the respondent Deputy Commissioner assessed the building on the following basis, as appears from his order, dated December 27, 1960:-

Take Rs. 7,09,796/- on account of Nett Annual ticket sale excluding Amusement Tax. Take Rs. 1500/- on account of monthly receipt from advertisement and take Rs. 500/- per month including taxes on account of rent of the stall.

2. On the aforesaid basis, the annual value was worked out at Rs. 36,389/-.

3. The petitioner company contends that the aforesaid method of valuation was an illegal method and opposed to the provisions of section 168(4) (i) of the Act.

4. Against the order of intermediate assessment on the aforesaid basis, the petitioner moved this Court, under Article 226 of the Constitution, praying for the quashing of the order of assessment and for a mandate on the respondents not to give effect to the said order of assessment and obtained the present rule.

5. The following facts are not disputed.

6. The petitioner company makes an annual sale of cinema tickets amounting to about Rs. 709,796/- and also receives by way of advertisement charges an annual sum of about Rs. 18,000/-. A portion of the building, which is let out as shops or stalls, yields an annual rental of Rs. 6,000/-. The total annual receipts thus come up to Rs. 7,33,796/-

7. The petitioner company contends that premises No. 39, Bentinck Street was being used as a public cinema house and, therefore, should have been assessed under the provisions of sub-section (4) (i) of section 168 of the Act. Under that sub-section, the gross annual rent of the building should have been taken at 5 per cent, of the gross annual receipts, including receipts from rent and advertisements and sale of admission tickets, namely, a sum of Rs. 7,33,796/-, calculated as hereinbefore stated. The grievance made by the petitioner company is that the respondent Deputy Commissioner assessed the premises No. 39, Bentinck Street on an illegal basis. He is said to have assessed the portion containing the cinema under the provisions of section 168 (4) of the Act on a supposed gross annual rent of Rs. 7,27,796/- (consisting of ticket sales amounting to Rs. 7,09,796/- and advertisement charges amounting to Rs. 18,000/-) but he assessed the portion let out as shops and stalls under the provisions of section 168 (1) on annual value of Rs. 6,000/-, being the amount of annual rent received from the shopkeepers. The petitioner company contends that the respondent Deputy Commissioner was not entitled by law to assess the premises, both u/s 168(1) and 168(4) of the Act, and the assessment, as such, should be quashed.

8. In order to evaluate the argument advanced on behalf of the petitioner, it is necessary for me to set out the material portion of section 168 of the Calcutta Municipal Act of 1951, which reads as follows :-

(1) For the purpose of assessment to the consolidated rate the annual value of any land or building shall be deemed to be the gross annual rent at which the land or building might at the time of assessment be reasonably expected to let from year to year, less, in the case of a building an allowance of ten per cent, for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent:

Provided that in respect of any land or building the standard rent of which has been fixed u/s 9 of the West Bengal Premises Rent Control (Temporary

Provisions) Act, 1950, the annual value thereof shall not exceed the annual amount of the standard rent so fixed.

(2) If the gross annual rent of any land not ordinarily let cannot be easily estimated, the gross annual rent of any land not ordinarily let cannot be easily estimated, the land for the purpose of subsection (1) shall be deemed to be five per cent, of the estimated present value of the land.

(3) If the gross annual rent of a building not ordinarily let cannot be easily estimated, the gross annual rent of the building for the purpose of sub-section (1) shall be deemed to be five per cent of the value of the building obtained by adding the estimated cost of erecting the building at the time of assessment less a reasonable amount to be deducted, on account of depreciation, if any, to the estimated present market value of the land valued with the building as part of the same premises.

(4) The provisions of sub-sections (1), (2) and (3) shall be subject to the following provisos, namely :--

(i) in the case of a building used as a public cinema house or theatre or other similar place of public resort recreation or amusement, the gross annual rent of the building shall be deemed to be not exceeding five per cent of the gross annual receipts in respect of the cinema house or place of public resort, recreation or amusement including receipts from rent and advertisements and sale of admission ticket but excluding taxes on the sale of such tickets.

9. Sub-section (1) of section 168 is the ordinary method of assessment and provides that the annual value of any land or building shall be deemed to be the gross annual rent at which the land or building might at the time of assessment be reasonably expected to be let from year to year. Sub-section (2) of section 168 provides for cases where the gross annual rental of any land not ordinarily let cannot be easily estimated. Similarly, sub-section (3) of section 168 provides for cases where the gross annual rental of a building not ordinarily let cannot be easily estimated. Sub-section (4) of section 168 is a proviso to sub-sections (1), (2) and (3) and provides for a special method of assessment in respect of buildings used as public cinema houses, the theatres or similar places of public resort, recreation or amusement.

10. The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. (Vide Craies on Statute Law, 5th edition, pages 201-202).

11. Therefore, when a building is used as a public cinema house, nothing in sub-sections (1), (2) and (3) of section 168 shall apply thereto and the provision

applicable shall be the special provision of sub-section (4) of section 168.

12. Mr. Sankar Ghosh, learned advocate for the respondent Deputy Commissioner, however, contended that the whole of the premises No. 39, Bentinck Street was not being used as a public cinema house and part of it stood let out to different stall-holders and shopkeepers. He, therefore, contended that unless the entirety of the premises was being used as a public cinema house, the provisions of sub-section (4) of section 168 would not be applicable to the entirety thereof. According to him the portion of premises No. 39, Bentinck Street, which stood let out to shopkeepers and stall-holders, need be valued under the provisions of sub-section (1) of section 168, and the cinema portion thereof under the provisions of sub-section (4) thereof. Since that was the method which was applied by the respondent Deputy Commissioner, he submitted, the assessment should not be interfered with.

13. Premises, which are of a hybrid character, for example, part of which is used as a cinema house and part of which is used for other purposes, raise a difficult problem for assessment. A similar problem arose under the Calcutta Municipal Act, 1923 in the case of (1) Corporation of Calcutta v. Moti Chand Chowdhury & Ors., (L.R. 66 IndAp 42). That case concerned the assessment of a building, roughly half of which was in actual occupation of the owner and the other half utilised for letting purposes. The Executive Officer of the Corporation of Calcutta assessed the premises on the basis that it had not been erected for letting purposes, under the provisions of section 127(b) of the Act of 1923. The assessee appealed to the Court of the Chief Judge of Small Causes, and the learned Chief Judge solved the problem of valuation by valuing one half thereof under paragraph (a) of section 127 as being ordinarily let and one half of it under paragraph (b) as not ordinarily let and arrived at the valuation of the building as a whole by adding together the products of the two calculations. On further appeal by the Corporation of Calcutta, this Court endorsed that method as the right one to adopt. The Corporation of Calcutta appealed to the Judicial Committee of the Privy Council. The Privy Council upheld the method of assessment as made by the Executive Officer of the Corporation, with the following observations :--

Of a building as to one-half ordinarily let and as to one-half not ordinarily let it cannot be predicated that it is ordinarily let, for only a part of it is ordinarily let. But it can be predicated of it that it is not ordinarily let if only a part of it is ordinarily let, for the whole of it is not ordinarily let. The test must be applied to every building as a whole, and one or other method of valuation must be applied to it as a whole. There may possibly be cases where the portion ordinarily let, or the portion not ordinarily let, is so negligible in proportion to the whole of the building that the building might on the principle of de minimis be reasonably held as a matter of fact to be not ordinarily let, or ordinarily let, as the case may be, but the present is clearly not such a case.

14. The aforesaid decision was given on a construct on of the provisions of

section 127 of the Calcutta Municipal Act of 1923. Section 168 of the Calcutta Municipal Act of 1951 is not in pari materia with section 127 of the old Act, but still I am of the opinion that in the matter of assessment of a single premises, only one or other method of valuation as provided in section 168 shall be applied and the assessing authorities must not be permitted to apply the provisions of more than one of the different sub-sections of section 168 in the matter of assessment of a single premises. In the instant case the respondent Deputy Commissioner fell into that error when he applied the provisions of section 168 (1) and (4) together in the matter of assessment of the premises.

15. There are other infirmities as well in the matter of assessment. There is nothing to show that the portions of the premises which were let to shopkeepers or stall-holders constituted a very substantial portion of the premises, which would justify the assessing authorities in not treating the entirety of the premises as a public cinema house. Against an annual income of Rs. 7,27,796/-, from sale of tickers and advertisement charges, the rent received from shop-keepers and stall-holders amounted only to Rs. 6,000/- per annum. This may be some indication that considerable part of the building had not been let to shop-keepers and stall-holders. Lastly, clause (1) of sub-section (4) of section 168 of the Act of 1951, itself indicates that if a portion of a building, used as a public cinema house, be let out to others on rent, that does not deprive the building of the benefits of assessment under sub-section (4) of section 168 of the Act. The gross annual receipt in respect of a cinema house, according to the sub-section, includes receipts from rents, advertisements and sale of admission tickets. The use of the word "rent" indicates that if a part of a cinema house be let, say to shop-keepers and stall-holders on rent, that does not take out that part out of the public cinema house and make that part liable to assessment under the provisions of sub-section (1) of section 168 of the Act. A cinema house is a place of recreation or amusement. In furtherance of recreations or amusement, the keeping of some stalls catering refreshments and other amenities is ordinarily part of the general recreation and amusement scheme. In my opinion, it would not be reasonable to read sub-section (4) as applying only to the portion of the premises occupied by the auditorium, the projector room, the ticket sale room and approaches thereto and not by stall-holders or shop-keepers who may add to the recreative or amusement value of the place.

16. In the view I take I hold that the premises should have been wholly assessed under the provisions of subsection (4) (i) of section 168 and not partly under sub-section (1) and partly under sub-Section (4) (i) of section 168.

17. In the aforesaid view, I quash the assessment made and restrain the respondents from giving effect thereto. Let a Writ of Certiorari and a consequential Writ of Mandamus accordingly issue. I make it, however, clear that the Corporation will be at liberty to make a fresh assessment of the premises according to law. There will be no order as to costs.