(1957) 11 CAL CK 0018

In the Calcutta High Court

Case No : Original Order No. 31 of 1956

Corporation of Calcutta APPELLANT

Vs

Bhimchandra Modak RESPONDENT

Date of Decision : 26-11-1957

Acts Referred:
Calcutta Municipal Act, 1923 — Section 127

Citation : (1959) 1 ILR (Cal) 151

Hon'ble Judges : Guha, J;Das Gupta, J

Bench : Division Bench

Advocate : Krishna Lal Banerjee, for the Appellant; Amarendra Nath Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Das Gupta, J.—On an appeal by the owner of premises No. P. 3 of the Calcutta Improvement Trust Scheme LIII against the assessment of the annual value of the said premises at Rs. 3,412 in a revaluation to be effective from August 3, 1951-52 the learned Judge of the Small Causes Court, Calcutta, has reduced the valuation to Rs. 2,187. The present appeal is by the Corporation of Calcutta against this reduced assessment by the appellate Judge.

2. The site of the premises admittedly covers an area of 1,085 square feet. It is equally admitted that in the front portion of the site there were at the date of the assessment four rooms, the construction of which was complete and which were being actually let out, to tenants. The sanctioned plan for the building shows that in addition to these four rooms, there was provision for another room contiguous north of the easternmost of these four looms while on the north-west portion of the site there is provision, according to this plan, for a staircase to the upper floor and also one bath room and privy. The plan shows provision for open space, on the north, east and west of the building, of the width of four feet. There is provision also for an inner open verandah lying east, west and north of the structure mentioned above. What would remain vacant land still is shown as

courtyard. The assessment by the Corporation authorities was made on the basis of gross receipts of Rs. 240 for the four roadside rooms at the rate of Rs. 60 per room per month and gross receipt at the rate of Rs. 1,080 a year for 12 chittaks of open land. The gross receipts for the four rooms being Rs. 2,880, the gross rental of this was calculated, after one deduction of ten per cent, on account of the occupier''s share of the rent and another deduction of ten per cent, on the resulting figure under the provisions of Section 127(a) of the Calcutta Municipal Act, 1923, as Rs. 2,332, The gross receipt for the land being calculated at the rate of Rs. 1,080 as mentioned above, the total annual value, was assessed at Rs. 3,412.

3. The owner''s objection against the assessment was two-fold. First his objection was that for the four roadside rooms the gross annual receipt should not have been calculated at Rs. 60 but at Rs. 50 per month. The second contention was that the entire ground floor having been constructed before the relevant date, there was no available vacant land which could fetch the sum of Rs. 1,080 per year or for the matter of that, any amount at all. The learned Judge of the Court of Small Causes was of the opinion that the gross annual receipts for the four roadside rooms could reasonably be calculated at the sum of Rs. 200 per month and not Rs. 240. He held further that the north-eastern room was also complete for all practical purposes but as it had no plastering and the door leaves had not been put in, it could be expected to fetch a gross rent of Rs. 25 per month only. He held further thai there was no such vacant land as could be expected to fetch any rent. On that basis, he calculated the annual value at Rs. 2,187.

4. The main point taken in appeal before us is that the learned court below was wrong in thinking that the vacant land should not be considered separately for deciding the annual value of the premises as a whole. Reliance was placed on a decision of this Court in the case of Corporation of Calcutta v. Dhurjati Charan Ghose (1954) 58 C.W.N. 748, in which Das and Guha Ray, JJ. laid down the rule that in finding out the annual value of any premises consisting partly of vacant land in occupation of the owner and partly of building in possession of tenants, the correct procedure is to ascertain the annual value of the land on the basis that it was let and also to ascertain the annual value of the building by taking the reasonable annual rent of the premises as the annual value of the building less the ten per cent, deduction for the costs of repairs, etc., and then to add the annual value of the vacant land and the annual value of the building. In this case, Das J. pointed out that the view taken in the case of Governor-General of India-in-Council v. Corporation of Calcutta (1947) 52 C.W.N. 173 : ILR [1948] 2 Cal. 85, that the building and the land are to be taken together and so have to be assessed together as one unit was in a case u/s 127(b) of the Calcutta Municipal Act, 1923, and so has no application to a case u/s 127 (a).

5. I do not think there can be any dispute about the proposition that in finding out the annual value of the land and the annual value of the building u/s 127(a)

of the Calcutta Municipal Act, 1923, the annual value of the land has to be added to the annual value of the building, if there is, in fact, an annual value of the land distinct from the annual value of the building. Thus, if there is a one bigha plot on two cottas of which a building has been erected for letting purposes and the other eighteen cottas of vacant land can reasonably be expected to fetch a rent, if let-out, the annual value of the land itself thus ascertained has to be added to the annual value of the building ascertained on the basis of the rent minus the 10 per cent, allowance for costs of repairs, etc., to get the correct figure of the annual value. On the other hand, if on a one bigha plot, 13 cottas have been built upon in such a manner that the remaining seven cottar are so situated that they cannot be expected to be let out separately from the building and to fetch any rent. It shall be unreasonable to ignore the realities of the situation and to think that though the 7 cottas of open land cannot be expected to be let out separately from the building, still something must be discovered to be the rent at which it can be let out from year to year. The whole question is to ascertain for the land as well as for the building the annual rent at which the land or the building might at the time of assessment be reasonably expected to let from year to year. In finding this out, one need not even worry about the portion of the site that has to be left vacant under the Corporation rules. If in a certain case, the one-third area which has to be kept vacant, can be expected, in fact, to fetch a rent, I do not see why that expected rent should not be taken into consideration in deciding the gross annual rent at which the land or the building might, at the time, be reasonably expected to let. The question is not whether the land has been kept vacant under the Corporation rules or because the owner wished it. The real question is whether the land, as it is, could, at the time of assessment, be expected to be let at all and if it could be let, one has to ascertain the annual rent at which the land might be expected to be let.

6. Applying these principles to the facts of this case, I have come to the conclusion that the learned Small Cause Court Judge is entirely right in his view that there is no reasonable expectation of any rent from the vacant land. There appears to have been some dispute as to what should be treated as vacant land. The evidence, however, clearly shows that at the relevant date the entire first storey had been constructed except for the fact that the room in the north-east had no plastering or door leaves. We are asked to hold that as this room had no plastering or door leaves, it was a room in the course of construction. With this, I am unable to agree. While there can be no doubt that door leaves form an important part of a room and that plastering also is necessary to make the construction complete, it is, I think, reasonable to hold that a room without plastering or door leaves must be held to have been erected and in this case the erection was -for letting purposes. There is no scope, therefore, of notionally considering the land on which the north-eastern room had been built as land as distinct from building for the purpose of ascertainment of the annual value. The evidence convincingly establishes the fact that the staircase and the bath room had also been constructed The land on which these were constructed could not

be considered to be vacant land as distinct from building. Proceeding on the basis, as I think it is reasonable to do in the state of the evidence, that the entire first storey had been constructed, the open space that would remain is so little and so situated that it could not reasonably be expected to be let out on rent. The learned Judge, therefore, rightly held that the assessment of any annual value for the vacant land was unjustified.

7. On the question of rent to be expected from the four roadside rooms, the evidence shows that actually for a considerable time these rooms were let out at Rs. 50 per month although on one occasion one of the rooms was let out at a rent of Rs. 60. In this state of the evidence, the learned court below was,- in my opinion, right in proceeding on the basis that the gross annual receipt from these rooms including the occupiers'' share of the tax was Rs. 50 per room per month. The north-eastern room had not been let out. So there was no direct evidence as to what rent it would fetch, if let out. The view of the court below that a hypothetical tenant would pay at the rate of Its. 25, that is, half the rate of the roadside rooms, does not seem to be unreasonable.

8. I have, therefore, come to the conclusion that the decision of the court below is right.

9. There is an accidental error in the ordering portion of the judgment which ought to be corrected. The learned judge has said that the assessment would have effect from the third quarter of 1950-1951. 1950-1951 is an obvious mistake for 1951-1952. We direct that the reduced assessment would be effective from 1951-52. With this modification in the order, the appeal is dismissed with costs.

Guha, J.

10. I agree.

