

(1898) 08 CAL CK 0014
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Bhupati Roy Chowdhry

RESPONDENT

Date of Decision : 22-08-1898

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 25

Citation : (1899) ILR (Cal) 74

Hon'ble Judges : Francis W. Maclean, J; Banerjee, J

Bench : Division Bench

Judgement

Francis W. Maclean, K.C.I.E., C.J.—The facts necessary to be stated for the decision of this rule are shortly as follows: In a valuation made by the Corporation of Calcutta to take effect from the 1st April 1891, the annual value of certain premises belonging to the opposite party was fixed by the Commissioners at 651 rupees. On the 2nd April 1891, the opposite party objected to that valuation, but, owing, as it is said, to the great number of objections taken by other rate-payers, the objection was not determined until the 28th January 1895, when the Vice-Chairman reduced the annual value to 487 rupees. Under the "Calcutta Municipal Consolidation Act, 1888" (Bengal Act II of 1888) fresh valuations are to be made every six years, and, in 1897, the Commissioners made a fresh valuation to take effect from the 1st April 1897 and the annual value of the above property was fixed at 566 rupees. On the 10th July 1897 the opposite party, u/s 135 of the Act, gave (notice of his objections to the last valuation. These objections were heard by the Vice-Chairman on the 10th December 1897, and the valuation was reduced to 540 rupees. The opposite party appealed u/s 157 to the Court of Small Causes at Sealdah, and the Judge of that Court, on the 23rd May 1898, allowed the appeal, and determined that the said valuation was illegal, inasmuch as a period of six years had not expired from the date of the last preceding valuation, and set aside the last valuation. Under these circumstances we are invited by the present rule to interfere u/s 25 of the Small Cause "Courts Act (IX of 1887).

2. To this rule two objections are raised:

First.-That, unless the Judge of the Small Cause Court had no jurisdiction to determine the matter, this Court cannot interfere, either u/s 25 of the Small Cause Courts Act, or u/s 622 of the Code of Civil Procedure, or u/s 15 of 24 and 25 Vic., c. 104.

Secondly.-That, if the above point be decided adversely to the opposite party, the Judge was right on the merits.

3. It has not been disputed by Mr. Hill, nor could it well be disputed on the authorities, as they stand, that if the Judge of the Small Cause Court had jurisdiction to determine the matter, this Court will not interfere u/s 15 of Statute 24 and 25 Vic., c. 104 (see the cases collected in the case of *Tejram v. Harsukh* (1875) ILR 1 All 101. Save in cases cognizable by the Small Cause Court, we could not interfere u/s 25 of the Small (Cause Courts Act by reason of Sub-section (e) of Section 3 of that Act. As regards Section 622, although this Court may interfere in regard to certain errors other than those of jurisdiction, no such errors have been suggested in the present case. But the Corporation contend that the Judge of the Small Cause Court had no jurisdiction to determine the question of the legality of the valuation in the sense of whether or not the Corporation could make the valuation at the time they did, and it becomes necessary to decide this question at the outset, for if it be decided against the contention of the Corporation, the second question, as to the merits, will not arise.

4. The contention of the opposite party is that, upon the true construction of the Act I have referred to (Bengal Act II of 1888), the Corporation were premature in re-valuing his house, as six years had not elapsed from the date of the last "valuation," viz., the 28th January 1895. The question of jurisdiction appears to me to hinge upon what is meant by the term "valuation" in Section 135 of the Act, for the person dissatisfied with that "valuation" may object if he comply with the provisions of the section. The Corporation contend that the term "valuation" means "the amount of the valuation" or the amount at which any particular property is valued, and that it is only to the amount of the valuation that the rate-payer can object; and it is only such an objection with which the Small Cause Court has jurisdiction to deal. The point is, perhaps, not free from doubt, but the first criticism on this contention is that the Act speaks of "valuation", not amount of the valuation," and it would be rather incongruous if the dissatisfied person, i.e., the rate-payer, can object to the payment of part of the valuation, but cannot challenge the valuation in its entirety. The opposite party here, i.e., the rate-payer, says that he objects, not to a part of the valuation, but to the valuation in its entirety, and that he objects to that valuation, because it is premature, i.e., made before the Corporation were entitled to make it, and consequently that it imposes upon him a liability to pay the new assessment from a date from which he is not bound to pay it. He argues that this goes to the very root of the matter, and consequently that he objects to the entire valuation.

It is a little difficult to see why this is not an objection to the valuation. What does the term "valuation" mean? Is it confined merely to the amount at which the property is valued, or does it cover the process or act of valuation? Section 125 speaks of a valuation being cancelled on the ground of irregularity, which points to something beyond the mere question of amount. If a valuation were made before the proper time it would be irregular. Again Section 132, which speaks of the valuation of districts, imports that the term "valuation" cannot be construed in the restricted sense for which the Corporation contend, for the valuation of a district cannot mean the mere amount of the valuation, but must include the process or act of valuation itself. A valuation is the act of valuing, and the opposite party may u/s 135 object to that act of valuing, and here he objects to the whole act of valuing on the ground that it is unauthorised and premature.

5. I think then the contention of the opposite party is well founded, and that we should be placing a narrow construction on the section if we were to adopt the argument of the Corporation. In my opinion, then, the objection raised by the rate-payer was an objection to the valuation within the meaning of Section 135, and that being so, the Judge of the Small Cause Court had jurisdiction to deal with it, and it is not open to us to interfere.

6. I do not propose to enter into the merits, i.e., as to whether or not the Judge of the Small Cause Court has placed a right construction on the Act, but I cannot refrain from saying that the language of the Act is very far from clear upon the point, and that the view taken by the Judge of the Small Cause Court is open to the criticism, on the score of confusion and inconvenience in the working of the assessment of the Corporation, to which Mr. Hill has subjected it. However, we have nothing to do with that; if the Act does not meet, in this respect, the reasonable requirements of the Corporation, it may be advisable to amend it. That, again, is a matter for the consideration of the Corporation.

7. For these reasons the rule must be discharged with coast.