
(1952) 09 CAL CK 0014
In the Calcutta High Court
Case No : F.M.A. No. 80 of 1950

Corporation of Calcutta

APPELLANT

Vs

Chandoolal Bhai Chand Modi

RESPONDENT

Date of Decision : 09-09-1952

Acts Referred:

Calcutta Municipal Act, 1923 — Section 131(2), 141, 147

Citation : AIR 1953 Cal 773 : 57 CWN 882 : (1955) 1 ILR (Cal) 1

Hon'ble Judges : R.P. Mookerjee, J; Guha Ray, J

Bench : Division Bench

Advocate : Atul Chandra Gupta and Krishnalal Banerjee, for the Appellant; Santosh Kumar Bose, Probhat Kr. Sen Gupta and Sudhir Ranjan Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Mookerjee, J.—This is an appeal on behalf of the Corporation of Calcutta and arises out of proceedings initiated by the respondent assessee u/s 141, Calcutta Municipal Act, objecting to the assessment made in respect of premises No. 18/13 Dover Lane, Calcutta.

2. The principal objection raised on behalf of the assessee was that the assessment made would take effect from 1-7-1948 and not from 1-4-1946. For a proper appreciation of the point raised by the assessee reference need be made to the circumstances under which the present assessment was made.

3. The annual value of the premises in question was determined by the department u/s 127(a), Calcutta Municipal Act, with effect from the first quarter 1946-47 for the 6 yearly general revaluation of the Ward u/s 131(1) of the said Act. Objection was raised u/s 139 of the Act and the Deputy Executive Officer reduced the annual value from Rs. 1350 to Rs. 891 confirming the valuation under Clause (a) of Section 127. An appeal was taken to the Court of Small Causes by the assessee against that decision u/s 141 of the said Act. The learned

Judge of the Court of Small Causes set aside the valuation holding that the valuation should have been made under Clause (b) and not under Clause (a) of Section 127. This judgment was passed on 13-12-1947. The Corporation of Calcutta accepted the decision and did not prefer any appeal to this Court.

4. On 14-6-1948, the Assessor of the Corporation of Calcutta gave notice to the assessee in the following terms:

"Please take notice that the assessment of the above premises under Clause (a) of Section 127, Calcutta Municipal Act, 1923, which was to take effect from the first quarter of 1946-47 having been set aside by an order made by the Judge of the Small Causes Court at Sealdah on 13-12-47, the above premises has been assessed under Clause (b) of Section 127, Calcutta Municipal Act, 1923, at an annual valuation of Rs. 1491 and the said value will remain in force for 6 years from the commencement of the first quarter of 1946-47. Please note that the land value of the above premises is taken at Rs. 3000 per cottah."

5. On receipt of this notice objection was filed u/s 139 of the Act both about the quantum and the proposed period of currency of the said valuation. The Deputy Executive Officer of the Corporation disposed of the objection u/s 140 of the Act confirming the period of currency as from 1-4-1948 but reduced the quantum from an annual value of Rs. 1491 to Rs. 823.

6. Against this decision the assessee filed an appeal u/s 141 of the Act maintaining that the annual value at Rs. 823 would only operate u/s 131(2)(b) of the Act for the unexpired portion of the six years, viz., from 1-7-1948.

7. On behalf of the Corporation it was contended that the assessee was not entitled to file an appeal u/s 141 of the Act inasmuch as no objection was raised with regard to the quantum but the objection was limited only to the period of currency of the new assessment. Secondly if the Court was competent to enter into the point raised the assessment made would operate for the entire period of the General Revaluation from 1-4-1946. The learned Judge overruled the objections raised by the Corporation and held that the valuation as determined by the Deputy Executive Officer would take effect from 1-7-1948 for the unexpired portion u/s 131 (2)(b) and not from 1-4-1946. It is against this decision that the Corporation of Calcutta has preferred the present appeal.

8. The first question to be considered is about the scope of an appeal preferred by an assessee u/s 141, Calcutta Municipal Act.

9. Chapter 10, Calcutta Municipal Act, 1923, deals with the Consolidated Rate. Section 131(1) provides, inter alia, that an assessment made by the Executive Officer is to have effect for 6 years. On a valuation being fixed u/s 131, the Executive Officer is to cause u/s 137 to give public notice when the valuation has been completed and where the list may be inspected. In every case where the premises is for the first time valued or where the valuation previously made is increased u/s 131 a special notice is required to be given to the owner or

occupier u/s 138 of the Act.

10. Section 139 provides:

"Any person who is dissatisfied with a valuation made under this Chapter may deliver at the Municipal office a written notice stating the grounds of his objection to such valuation."

11. Section 140 requires that the Executive Officer or some other officer authorised "shall hear the objection" and determine the said objection.

12. It is manifestly clear that Section 139 does not, in any way, limit the nature of objection which may be raised by the assessee. The objection raised need not be only about the quantum of the valuation made. The assessee, if dissatisfied may raise any objection and u/s 140 "all such objections" shall have to be heard and decided by the Executive Officer. "Any person dissatisfied with the order passed" u/s 140 may u/s 141 appeal to the Court of Small Causes.

13. It is clear that the Legislature has not, in any way, circumscribed the nature of the objection which may be raised by the assessee before the Chief Executive Officer. He may also take any objection before the Court of Small Causes.

14. It is argued on behalf of the Corporation that the only objection which may be raised before the Executive Officer should be about the quantum without raising any question on law about the jurisdiction far less about the period of currency of the valuation fixed. We do not think that there is any substance in this contention. As observed in -- Government of Bengal Vs. Corporation of Calcutta, , an order of the Executive Officer comes within the scope of an appeal u/s 141.

15. It is incontestable that the period for which a valuation is being enforced is an integral part of the order appealed against. That which the Court is called upon to determine is the question of the liability of the assessee and the date from which the liability is to take effect is prima facie a matter for determination by the Tribunal which has to consider the liability of the assessee. The period for which the liability is to exist is inseparable from and is an integral part of the question about the determination of the liability. In this view, it must be held that it is competent for the Court of Small Causes to decide the question about the period of currency of the valuation fixed.

16. We have now to consider whether the annual value as fixed by the Deputy Executive Officer on 28-8-1949 u/s 140 of the Act after hearing an objection filed by the assessee is to take effect from 1-4-1946, as contended on behalf of the Corporation of Calcutta, or from 1-7-1948 as decided by the Court of Small Causes upholding the contention raised by the assessee.

17. According to the assessee the valuation as had originally been proposed having been cancelled by the Court of Small Causes on 30-12-1947, Clause (b) of Sub-section (2) of Section 131 of the Act is attracted. The new valuation as

notified by the Assessor's letter dated 14-6-1948 (Ex. 1) could be levied only for the unexpired portion of the six-year period and not from the beginning of the first quarter, 1946-47.

18. On behalf of the Corporation it is contended that Clause (b) of Sub-section (2) of Section 131 could not be attracted in the present case as the Small Causes Court had not cancelled the previous valuation "on the ground of irregularity" but because the basis of calculation only was modified and it was declared that the annual value should have been fixed not under Clause (a) but under Clause (b) of Section 127 of the Act. The annual value as notified to the assessee by Ex. 1 on 14-6-1948 was really a revised valuation in consequence of an objection made by the assessee and an order passed after "an appeal is preferred u/s 141". Section 147 of the Act makes a special and specific provision which would apply under such circumstances and

"the revised valuation shall take effect from the quarter in which the first mentioned valuation would have taken effect"

i.e., from the beginning of the 1st Quarter 1946-47.

19. It is the common case of both the parties that the annual value now being fixed is under Sub-section (1) of Section 131 of the Act and the relevant portion of the Sub-section provides that the annual value as may be fixed by the Executive Officer, of lands and buildings situated in the several Wards of the City

"shall after such assessment has been made by the Executive Officer, have effect for a period of six years and may be revised thereafter by the Executive Officer at the termination of successive period of six years."

Sub-section (2) of Section 131 of the Act makes provision when the annual value fixed by the Chief Executive Officer under Sub-section (1) of that section may be amended or the effect of the annual value as fixed being suspended before the expiry of the six year period.

20. Clause (a) of Sub-section (2) above mentioned makes it possible for the valuation to be fixed annually and not sexennially.

21. Clause (b) of the same Sub-section will be considered later on after we have referred to the ether sub-clauses.

22. Clauses (c) and (d) provide for a revaluation of the premises during the six-year period. If during the currency of such period either any substantial alteration and improvement is made or if any new building is erected. In both these cases the new intermediate valuation is to remain in force until the expiration of the original six-year period.

23. Clause (e) of that Sub-section allows on the fulfilment of certain conditions the assessee to apply for revaluation if during the currency of such six year period the building standing thereon is demolished or there is depreciation of value on grounds beyond the control of the owner or occupier. In these cases

also the revised valuation is to be in force for the remaining period of six years.

24. Clause (f) of the sub-section gives authority to the Corporation to revalue a premises if after valuation is reduced under Clause (e) above on the ground that subsequent to the depreciation above mentioned if substantial alterations and improvements had been made to the building. This second revision during the currency of the six years period would have effect for the remaining portion of the six year period.

25. Clauses (g), (h) and (i) provide for revision of valuation during the currency of the six year period when a property is acquired by the Calcutta Improvement Trust or when a transfer is effected by the Trust of properties already vested in it. In each of these three contingencies the new valuation as may be fixed on the altered conditions and circumstances would take effect from 1st date of the quarter following the date of acquisition or transfer as the case may be.

26. Clause (b) of Sub-section (2) of Section 131 on which reliance is placed on behalf of the assessee may be quoted in extenso.

"(b) Any land or building the valuation of which has been cancelled on the ground of irregularity, or which for any other reason is not annual value assigned to it under this Act may be valued by the Executive Officer at any time during the currency of the period prescribed in respect of such land or building by Sub-section (1), and such valuation shall remain in force, and the consolidated rate shall be levied according to it, for the unexpired portion of such period."

27. The two conditions under which the Corporation may value a property, not at the beginning of the six year period referred to in Sub-section (1) of Section 131 but during the currency of the period are

1. when the valuation of a premises has been cancelled on the ground of irregularity or
2. when for any other reason "no annual value is assigned" to it under the Act.

28. What is really meant by the expression that a valuation has been cancelled on the ground of irregularity? Mr. Gupta on behalf of the Corporation frankly stated that the real implication on the first part of this clause is not at all clear but it seems that the legislature intended to limit the application of this clause to cases where the valuation has been cancelled "on the ground of irregularity", that is, where a valuation is to be cancelled on the ground of some procedural defect. This clause will not be attracted when the valuation is found to be illegal or when a valuation is either directed to be revised or is revised for which specific provision is made u/s 147 of the Act.

29. Mr. Gupta contends that though the language used in Clause (b) of Sub-section (2) of Section 131 of the Act is far from being clear it appears that those provisions will be attracted if and when an assessment is made by a person other than one competent to make the valuation. The valuation so made or fixed is

wholly without jurisdiction and assessment made on such illegal valuation would be set aside. In such circumstances the proper steps which are taken for the first time for determining the annual value under Sub-section (1) of Section 131 will have the effect, from when the correct valuation is made, and not from the beginning of the six-year period till the end of that period.

30. He further contends that if a valuation is made which is objected to as not having been properly made, as when a property is required to be valued under Clause (a) of Section 127 is initially valued under Clause (b) or vice versa. If such an error is committed, that is not on a question of procedure but one affecting the jurisdiction of the valuing authority, such an error may be detected either by the Chief Executive Officer when hearing an Objection u/s 140 or by the Court of Small Causes u/s 141, or by this Court when hearing an appeal from the decision of the Court of Small Causes. In the latter case Clause (b) of Sub-section (2) of Section 131 cannot be attracted. It is contended that in such a case the steps taken by the Chief Executive Officer in valuing a property under Sub-section (1) of Section 131 are not washed out. The effect of such an order is merely to authorise the Chief Executive Officer to take further steps for completing the valuation. It is that what has been done by the Chief Executive Officer after such an order is made. It is not a new valuation, it is in continuation of the previous steps taken. The revised valuation so made is in consequence of an objection made u/s 139 or Section 140(2) or in consequence of an appeal having been preferred u/s 141. Section 147 of the Act clearly refers to such revised valuations and they are to take effect and are to be in force for the period for which the original valuation which had not been found acceptable would have taken effect, i.e., from the beginning of the six year period.

31. In our view such an interpretation of the provisions contained in Clause (b) of Sub-section (2) of Section 131 and of Section 147 is not well founded. To us it appears that the circumstances under which the provisions contained in the two sections can be attracted are clearly distinguishable. There is a clear distinction between a "cancellation" of the annual value and a "revised" value referred to in Section 147 of the Act.

32. Mr. Gupta could not ask us to overlook the fundamental difference indicated above; he wants, however, to restrict the operation of Clause (b) of Sub-section (2) of Section 131 to a case of "cancellation" on the ground of irregularity as contra-distinguished from a cancellation case on "legal objections". There is no foundation for such differentiation in the present case. The provisions contained in Clause (b) are of a very general character. It does not limit the order for cancellation by any particular officer or authority. The order for cancellation by any authority will attract this provision. The term "irregularity" is used in the ordinary dictionary meaning without predicating any special legal significance. The valuation which cannot be sustained either being wrong on legal objections or for a procedural defect will be equally hit by Clause (b) above.

33. This interpretation will be clear from the other clauses appearing in Clause

(b). If in respect of a property no annual value has been assigned to it for whatever reason it may be, the attempts made by the Chief Executive Officer to assess it for the first time under Sub-section (1) of Section 131 will have effect not from the beginning of the six year period but for the unexpired portion of such period. The circumstances under which Clause (b) may be attracted are of the same species--there is no existing annual value fixed for the premises, either because the earlier valuation is cancelled or that no annual value had been assigned.

34. Reference was made in this connection in the lower court and also before us to an unreported judgment of this court in the matter of "North British and Mercantile Insurance Co. Ltd. v. Corporation of Calcutta (Judgment delivered by S. R. Das J. on 13-5-1943) (B). The order in this case was made on the court being moved u/s 45, Specific Relief Act. A particular premises belonging to the assessee North British Mercantile Insurance Co. Ltd. had been valued under Sub-section (1) of Section 131 for general revaluation u/s 127 (a) of the Act. The objection raised by the assessee was overruled by the Deputy Executive Officer and an appeal was taken therefrom to the Presidency Small Cause Court. That court on consideration of the evidence adduced held that the assessment made u/s 127 (a) could not be sustained and it was accordingly set aside. The Court further observed

"the case is remanded and the respondent Corporation is directed to assess the valuation of the premises in accordance with law".

This direction by the Court was taken to be in the nature of a remand order and fresh assessment made after splitting up the premises into 3 separate numbers and this order was placed before the learned Chief Judge. The assessee raising an objection to the procedure followed the court did not further consider the fresh assessment made. The Corporation during the hearing of the application u/s 45, Specific Relief Act, accepted the position that the procedure followed by the Corporation was one which was not contemplated by law. The Corporation thereafter without taking any further step for determining the annual value under Sub-section (1) of Section 131 issued rate bills in connection with the premises with effect from the beginning of the 6-year period and at the rate which was in force during the previous six-year period. The assessee came to this court to restrain the Corporation of Calcutta from realising the amount mentioned in the rate bills. This Court held that the Corporation was not entitled to issue the rate bills on the basis of the old valuation and that the further direction given in the concluding sentence in the judgment of the Court of Small Causes was wholly without jurisdiction. A restraint order was accordingly issued.

35. An appeal had been taken against this decision by the Corporation of Calcutta in Appeal No. 6 of 1943 but it appears from the records (which we had called for) that the appellate bench was intimated on 9-11-1943 that the appeal would not be proceeded with. The appeal was accordingly dismissed with costs.

36. S. R. Das J. came to the conclusion that there was no connection between Section 131 (2) (b) and Section 147 of the Act. The latter section would be attracted only when either the Chief Executive Officer or the Court on an appeal being preferred to it modifies a valuation made by the Chief Executive Officer and substitutes a new revised valuation. Section 131 (2) (b) on the other hand applies in cases where the authority hearing the objection cancels a valuation made without fixing a new valuation in the order. On such cancellation the property has no valuation and the steps which are to be taken by the Corporation, if such further steps are available to the Corporation under the law, are that the Corporation starts the proceedings from the beginning. The objection which had previously been raised by the assessee on the original valuation fixed by the Corporation is finally determined and disposed of and the same proceedings did not continue thereafter.

37. When the Corporation proceeds to fix the annual value after the previously fixed annual value is cancelled, the assessee has again the right to file objections to the new valuation and the whole gamut of the procedure laid down from Section 138 is available to the assessee. Such objections raised to the new valuation have to be heard by the authorities concerned giving further right to the assessee to come up on appeal under Sections 141 and 142 of the Act.

38. On the other hand when a valuation fixed by the Corporation is modified by the Chief Executive Officer while hearing an objection u/s 140 or by the court either u/s 141 or Section 142 and such valuation is revised substituting another figure for the original one, the assessee has no right to file any fresh objection u/s 139 of the Act. Except for the ordinary right of taking an appeal from the decision of one to another u/s 141 or Section 142 of the Act, no other right enures to the benefit of the assessee.

39. While in the case of Section 131 (2) (b) there is no revised valuation but a new valuation, in the case of Section 147 a reference is made to a revised valuation.

40. In passing, reference may be made to what appears to be a clear printing mistake appearing in Section 147 which has made a part of that section wholly meaningless. Section 147 as it now stands begins with

"When the valuation of any land or building is revised in consequence of an objection made u/s 139 of Section 146, Sub-section (2) or an appeal is preferred u/s 141, the revised valuation shall take effect"

The phrase "or an appeal is preferred u/s 141" does not fit in with the grammatical structure of the section. Further, when an appeal is preferred, that fact by itself cannot always lead to a revised valuation. Only if an appeal is successful and the Court fixes a revised valuation the contingency referred to in that section may arise. The whole sentence gives a correct and complete sense if in place of "an appeal is preferred u/s 141" we read "or an appeal preferred u/s 141". With the omission of the word "is" there can be no doubt whatsoever as to

what the legislature had meant, -- the section to be attracted only when the valuation is revised in consequence of an objection u/s 139 or Section 146 (2) or an appeal under section. It is worthy of note to refer to the fact that Section 147 in Act 3 of 1923 was Section 169 in the old Repealed Act 3 of 1899. The language now appearing in Section 147 in the present Act is exactly in the same terms as in Section 169 of the Repealed Act, with this exception that the word "is" absent in the old section between the words "an appeal" and "preferred u/s 141".

41. We have not been able to trace out how and when this word "is" appearing in the 1923 Act, which introduces doubts and makes the section meaningless, was introduced. The present case is one of those very rare occasions where the Court will interpret the section ignoring the word "is" as redundant and meaningless. The position would have been otherwise if the section could have been given some sense with the word "is" being present -- the Court would have had no jurisdiction to interpret the section ignoring the word "is".

42. The provisions which we are required to interpret are in the nature of a taxing provision and the provisions have to be strictly interpreted and if there be any doubt the Court must lean in favour of the assessee.

43. The result, therefore, is that the Court of Small Cause had rightly decided the issue about the date from which the assessment now made is to take effect that is from 1-7-1948.

44. This Appeal is accordingly dismissed with costs.

Guha Ray, J.

45. I agree.