(1957) 08 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from original order No. 276 of 1956

Corporation of Calcutta APPELLANT

Vs

Gour Krishna Bose RESPONDENT

Date of Decision : 13-08-1957

Acts Referred:

Calcutta Municipal Act, 1923 — Section 1(2), 12(3), 12(5), 127(6), 13(5)
Corporation of Calcutta (Temporary Supersession) Act, 1948 — Section 7
Evidence Act, 1872 — Section 106

Citation : (1958) 2 ILR (Cal) 491

Hon'ble Judges : Mitter, J;Lahiri, J

Bench : Division Bench

Advocate : Sunil Kumar Basu, for the Appellant;Hirendra Chandra Ghose, Rajendra Bhusan Bakshi, Durga Charan Roy Choudhury and Pravas Kumar Sur, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—The question that falls for determination in this appeal is whether the revision of the annual value of land and building in premises No. 194 Harish Mukherjee Road under 127(6) of the Calcutta Municipal Act (Act III of 1923) by a Special Officer before the expiry of the period of six years from the date of the previous valuation is valid. The immediately preceding valuation came into operation on January 1, 1946, and the disputed valuation is to have effect from October 1, 1950. u/s 131(2) of Act III of 1923 which shall hereinafter be referred to as the parent Act, the annual value of land and building once made by the Executive Officer is to remain in force for a period of six years and may thereafter be revised by him at the termination of every successive period of six years. The Calcutta Corporation was temporarily superseded by West Bengal Act VIII of 1948 which came into operation on March 24, 1948, and though originally intended to remain in force till March 31, 1949, its life was subsequently extended to April 30, 1952. By this Act, the powers, duties and functions of the Councillors, Aldermen, Mayor, Deputy Mayor, Corporation and committees of the

Corporation vested in an officer described as the Administrative Officer, and the powers and duties of Executive Officers were made subject to the control and revision by the Administrative Officer. Section 7 of Act VIII of 1948 requires the Administrative Officer to do, amongst other things, such acts, as in the opinion of the Provincial Government, are necessary in the interest of the rate-payers of the Corporation and as the Provincial Government may, from time to time, direct. By a notification, dated November. 22, 1948, and published in the Calcutta Gazette on November 25. 1948, the Provincial Government directed the Administrative Officer to revise the valuation of land and building of all the wards of Calcutta. That notification runs as follows:

No. L.S.G.IC/84/48-22nd November, 1948.

Whereas in the opinion of the Provincial Government revision of the annual value of lands and buildings in all wards of Calcutta for the purpose of assessment of the consolidated rate on the lands and buildings is necessary in the interest of the rate-payers;

Now, therefore, in exorcise of the power conferred by Section 7 of the Corporation of Calcutta (Temporary Supersession) Act, 1948 (W. Ben. Act VIII of 1948), the Governor is pleased to direct the Administrative Officer of the Calcutta Corporation to revise the annual value of lands and buildings in all wards of Calcutta for the purpose of assessment of consolidated rate of the lands and buildings notwithstanding the currency of the period of assessment of the lands and buildings as prescribed in Section 131 of the Calcutta Municipal Act, 1923.

2. So far as the present case is concerned, this notification had no legal effect, because u/s 131(2) of the parent Act, as it stood on the date of notification, nobody had any power to revise the valuation before the expiry of six years from the commencement of the previous valuation. The notification, therefore, directed the Administrative Officer to do something which he could not legally do. As soon as this mistake was discovered, West Bengal Act XXVIII of 1950 was passed and its object inter alia was to authorise the Provincial or State Government at any time between the commencement and expiry of West Bengal Act VIII of 1948 to direct that the annual value of land and building of any ward or wards be revised by the Executive Officer. This object was achieved by introducing Sub-Section 1(a) in Section 131 of the parent Act by Section 26 of the amending Act. West Bengal Act XXVIII of 1900, however, came into operation on April 12, 1950, and so it would not validate the notification, dated November 22, 1948. For that reason Section 2G was given retrospective effect and it was provided by Section 1(2) that Section 26 should be deemed to have come into operation on the date of commencement of West Bengal Act VIII of 1948, i.e., on March 24, 1948. The State Government, accordingly took power to revise the valuation during the currency of the period specified in Section 131(1) of the parent Act for the first time on April 12, 1950. But by appeal fiction this power related back to March 24, 1948. Even this legal fiction was not sufficient to authorise the Executive Officer to revise the valuation under the notification

dated November 22, 1948, because the notification was a direction upon the Administrative Officer who was a totally different person from the Executive Officer. Accordingly, another legal fiction had to be resorted to by introducing an interpretation clause in Section 26(6) of the West Bengal Act XXVIII of 1950 to the effect that any direction given by the Provincial or State Government upon the Administrative Officer under Act VIII of 1948 before the coming into operation of Act XXVIII of 1950 to revise the valuation of land and building of any ward, shall be deemed to be a direction upon the Executive Officer under Act XXVIII of 1950.

3. The Special Officer Shri Mahendra Kumar Ghose who revised the valuation in the present case, was appointed on February 14, 1949, and he derived his authority to do so under an order of the Executive Officer dated June 22, 1949, by which the Executive Officer delegated his power to the Special Officer u/s 12(3) of the parent Act. That order runs as follows:

Special Officer, General Revaluation, is authorised to exercise the powers and functions vested in C.E.O. (Chief Executive Officer) except Section 140 under Chapter X of the Calcutta Municipal Act for purposes of General Revaluation. (See ex. D).

4. In exercise of the powers thus delegated to him, Shri Mahendra Kumar Ghose revised the valuation of the land and building in premises No. 194 Harish Mukherjee Road, and as a result of this revaluation, the annual value was increased from Rs. 1,830 to Rs. 2,548 u/s 140 of the parent Act. Being dissatisfied with the order passed u/s 140. the rate-payers filed an appeal to the Court of Small Causes, Sealdah, u/s 141. The learned Small Cause Court Judge has set aside the valuation made by the Special Officer on the ground that the Special Officer had no jurisdiction to revise the valuation. He has, nevertheless, held that the increase in land value as claimed by the rating authorities, is excessive. According to him, the value of land should be computed at the rate of Rs. 3,380 per Costa, instead of Rs. 4,500 per cotta as claimed by the Corporation. Against the decision of the learned Small Cause Court Judge, the Corporation of Calcutta has brought this appeal u/s 142(5) of the parent Act.

5. According to the learned Small Cause Court Judge, West Bengal Act XXVIII of 1950 has failed to achieve its object because the notification dated November 22, 1948, authorised the Administrative Officer to revise the annual value of land and building, and under that notification the Executive Officer of the Corporation of Calcutta acquired no authority to revise the valuation, and since the Executive Officer himself had no authority, the order of delegation dated June 22, 1949, could not confer such authority on the Special Officer. Unfortunately, the attention of the learned Judge does not appear to have been drawn to Clause (b) of Section 26 of Act XXVIII of 1950. Under that clause any order made by the Provincial Government under West Bengal Act VIII of 1948 before the commencement of Act XXVIII of 1950 directing the Administrative Officer to revise the annual value of land and building of any ward shall be deemed to be

and to have always been an order upon the Executive Officer to do the same. The effect of this clause is to covert the direction upon the Administrative Officer contained in the notification dated November 22, 1948, into a direction upon the Executive Officer. The notification fulfils all the requirements of Clause (b) and as such, it must be deemed to be a direction upon the Executive Officer under Clause (a). The conclusion, therefore, cannot be avoided that the learned Small Cause Court Judge was wrong in holding that the Executive Officer acquired no power under the notification dated November 22, 1948, to revise the valuation.

6. Mr. Hirendra Chandra Ghose appearing for the Respondents however, contended that assuming that the Executive Officer was authorised under the notification to revise the valuation, it cannot be said that he could validly delegate to the Special Officer a power duty or function conferred, imposed upon or vested in the Executive Officer, not under the Calcutta Municipal Act or any Rule or bye-law framed thereunder, but under a notification issued under the Act. A distinction was sought to be made between a power derived under the Act and a power derived under the direction given under the Act, and it was contended that u/s 12(5) of the parent Act only the former can be delegated but not the latter. This argument postulates that u/s 26(a) of Act XXVIII of 1950 the power to revise the valuation before the expiry of the period specified in Section 131(2) of the parent Act, vests in the Provincial or State Government, and that Section 26(a) merely authorises the Provincial or State Government to delegate that power to the Executive Officer. If that had been the true effect of Section 26(a), the delegation by the Executive Officer u/s 13(5) of the parent Act would also have been bad as offending against the rule of delegatus non potest delegare. In my opinion however, that interpretation cannot be attributed to Section 26(a). The true meaning of that section is that the power to revise the valuation remains in the Executive Officer but that power can be exercised on the fulfilment of a condition, namely, a direction in that behalf by the Provincial or State Government. The learned Small Cause Court Judge has correctly described this power as a conditional power". u/s 26(a) the Provincial or State Government is not vested with any power to revise the valuation, hut it can only direct that the annual value be revised by the Executive Officer. Upon this view of the true effect of Section 26(a), there can be no doubt that the power to revise the annual value is conferred upon the Executive Officer by the Act itself, and as such it can be validly delegated by him u/s 12(3) of the parent Act. The first objection of Mr. Ghose must, accordingly, be overruled.

7. The second objection raised by Mr. Ghose is to the effect that the Notification issued by the Provincial Government on November 22, 1948, u/s 7 of Act VIII of 1948 is not valid inasmuch as it is not necessary in the interest of rate payers that the annual value should be revised during the currency of the previous assessment. It is pointed out that the Provincial Government was empowered by Section 7 to require the Administrative Officer to do "such other acts as in the opinion of the Provincial "Government, are necessary in the interests of the rate-payers of "the Corporation and as the Provincial Government may, by "''order or

otherwise, direct from time to time." It is contended that although the notification states that in the opinion of the Provincial Government a revision of the annual value is necessary in the interest of the rate-payers, it is not really so, because a revision will always result in the increase of the annual value which is against the interest of rate-payers. This objection was not raised by the Respondents before the Small Cause Court, and it has been raised for the first time before us. There are several answers to this argument. In the first place in view of the language of Section 7, it is extremely doubtful if the opinion of the Provincial or State Government on the question whether a particular act is necessary in the interest of rate-payers is justiciable in a court of law. As the constitutional validity of Section 7 has not been challenged, it seems to me, upon the language of Section 7 that the opinion of the Provincial or State Government is final.

8. In the second place, as a result of introduction of Section 26(6) of Act XXVIII of 1950, the direction u/s 7 of Act VIII of 1948 has undergone a radical transformation. In the eye of law, it is deemed to be a direction u/s 26(a) which does not require that the direction by the Provincial or State Government should be necessary in the interest of the rate-payers, but gives an unqualified power to the Provincial or State Government to order that the annual value shall be revised by the Executive Officer provided that power is exercised within the period mentioned in the section.

9. In the third place, I am not prepared to assume as a matter of law that the revision of annual value will always be against the interest of rate-payers under all circumstances. Assuming that such revision will always and inevitably result in an increase of valuation the Corporation may require additional funds for providing greater amenities to the rate-payers and in that case, the revision will be in the interest of the rate-payers. As this is. a mixed question of law and fact and as the Respondent did not raise it before the Court of Small Causes, I am not prepared to allow them to raise it for the first time in the appeal. For these reasons, the second objection raised by Mr. Ghose appear to me to be without substance.

10. Turning now to the question of valuation, it appears that the annual value has been raised from Rs. 1,830 to Rs. 2,548 on the ground of alleged increase in land value between January 1, 1946 and October 1, 1950. At the time of the last valuation, land was valued at Rs. 2,500 per cotta, and the Corporation claims that the present valuation should be made on the basis of Rs. 4,500 per cotta. The question is whether there has been an increase of land value to the extent claimed by the Corporation during the period of four years and ten months. The Corporation led evidence about the rateable value of some other premises in the locality, viz., premises Nos. 127 and 200/2/6A Harish Mukherjee Road and attempted to prove that the land value of the said premises had been assessed at Rs. 4,000 and Rs. 4,500 per cotta, and the Corporation also proved a site plan, (ex. C). This evidence, however, was not accepted by the Small Cause

Court Judge as there was nothing to show that those premises were comparable units. There is an additional reason why that evidence cannot be accepted. There is nothing on the record to show at what rate land was valued at the time of the last assessment of those two premises. The increase in land value claimed by the Corporation in the present case works out at more than 73 per cent, during a period of 4 years and 10 months. Who is to prove that there has been this phenomenal increase in land value during this short period? On behalf of the Corporation it has been contended that the onus of proving that the annual value determined by the Executive Officer is wrong, is always upon the asses see, and reliance has been placed upon the decisions in the cases of Corporation of Calcutta v. Sk. Keamuddin (1927) 31 C.W.N. 1040, Corporation of Calcutta v. Sm. Jalajbashini Devi (1927) 32 C.W.N. 378, Corporation of Calcutta Vs. On the death of Sm. Rajlakshmi Debi her heirs Nani Gopal Mukhopadhyay and Another, and Corporation of Calcutta v. Union Jute Mills (1956) 60 C.W.N These decisions undoubtedly support the view that the burden of proof is upon the asses see. In the case of Lalchand and Sons Vs. Corporation of Calcutta, , however, it was held that though the initial onus is upon the asses see, that onus is discharged as soon as it is proved or admitted that the annual value has been raised by the rating authorities on the ground of rise in rental value or land value. There is much to be said in favour of the view taken in Lalchand''s case. The question whether there has been an increase in land value to the extent claimed is a matter within the special knowledge of the rating authorities and there is no reason why Section 106 of the Indian Evidence Act should not be given its full effect. Again, Section 136 of the Calcutta Municipal Act empowers the Executive Officer to gather all relevant materials relating to the determination of annual value materials which are not available to an asses see. The Corporation undoubtedly can, only if it will, place before the court all possible materials relating to the valuation of all the premises in a particular locality, and it is manifestly unfair and unjust to allow the Corporation to withhold these materials and call upon the asses see to prove that the valuation made by the Executive Officer is wrong upon the view that there is an inexorable burden upon the asses see which never shifts. On a proper occasion the question may have to be examined by a larger Bench. For the purpose of the present case, however, I am not troubled by the conflict of authorities, because before the Court of Small Causes the Corporation took upon itself the responsibility of justifying the valuation made by the Special Officer and actually led evidence to justify it. After having failed in that attempt, the Corporation cannot turn round in the appellate court and fall back upon the abstract law of onus and raise a point that the burden was upon the asses see to prove that the Special Officer''s valuation was wrong.

11. After having rejected the evidence adduced by the Corporation in support of the valuation made by the Special Officer, the learned Judge of the Court of Small Causes might have totally set aside the valuation made by the Special Officer, but instead of doing that, he relied upon the valuation made by himself in

another Municipal Appeal in respect of premises No. 19B Harish Mukherjee Road in Municipal Appeal No. 211 of 1951. In that appeal the learned Judge found that the valuation of the land was Rs. 3,600 per cotta and acting on that basis, he has determined the valuation of the land in the disputed premises at the rate of Rs. 3,380 per cotta.

12. Mr. Bose has contended that the learned Judge was wrong in taking the valuation of premises No. 19B as the index of the land value in the absence of any material to show that the land of premises No. 1973 was of similar advantages and amenities as the land of premises No. 194 Harish Mukherjee Road. If we are to give effect to this contention, we must set aside the valuation made by the Special Officer in its entirety and dismiss the appeal because the Corporation undertook to support the valuation made by the Special Officer and has failed in its attempt to do so and there are no materials in support of the valuation. If the Court of Small Causes committed any mistake in proceeding upon the land value of premises No. 19B Harish Mukherjee Road, that mistake has been in favour of the Corporation which cannot make any grievance of it in appeal but there is nothing to support that premises No. 19B cannot be accepted as a comparable unit. What is or is not a comparable unit depend largely upon the discretion of the court, because no two premises can be comparable in the absolute sense. In determining a valuation under the law of rating, the court has to proceed upon the principle of approximation and has to deduct from the value of the comparable unit if the amenities of the premises in dispute be less, and add to the value of the comparable unit if the amenities are greater. In this case, the Small Cause Court Judge has, in the exercise of his discretion, deducted a sum of Rs. 220 per cotta from the value of the land in premises No. 19B Harish Mukherjee Road and fixed the rateable value of the land in the disputed premise at Rs. 3,380 per cotta. We are not prepared to interfere with the discretion, because it represents an increase of about 30 per cent on the last valuation which, in our opinion, is quite fair and proper.

13. In the result, we allow the appeal in part and set aside the order of the Court of Small Causes and direct that that Court will now proceed to determine the annual value of the land and building on the basis that the rateable value of the land is Rs. 3,380 per cotta.

14. As the success is divided, we direct that the parties will bear their own costs throughout.