

(1927) 12 CAL CK 0021
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Jalajbasini Debi

RESPONDENT

Date of Decision : 13-12-1927

Acts Referred:

Calcutta Municipal Act, 1923 — Section 141

Citation : AIR 1928 Cal 450

Hon'ble Judges : Rankin, C.J;Graham, J;Cuming, J;C.C. Ghose, J;Buckland, J

Bench : Full Bench

Judgement

Cuming, J.—The "facts of the case out of which this appeal has arisen are these : The respondent Srimati Jalaja Bashini Devi is the owner of premises No. 125, Harish Mukerjee Road. The Corporation of Calcutta in March 1924 assessed the land with the premises thereon to consolidated taxes. In arriving at the assessment the Chief Executive Officer valued the land at Rs. 2,750 a cotta and the house on it at Rs. 20,365. u/s 141, Calcutta Municipal Act, the assessee appealed to the Court of Small Causes at Sealdah. She objected both to the value of the house and value of the land. The learned Judge of the Small Cause Court held the value of the building was Rs. 18,123 and the value of the land was Rs. 2,200. Against this decision the Calcutta Corporation have appealed to this Court u/s 142(3), Calcutta Municipal Act.

2. There is also a cross-objection by the respondent. Her contention is that the burden of proof has wrongly been placed on her and that it was for the Corporation to prove that the present value of the land was more than it was in 1917 when she purchased the property. She also contended that Rs. 350, the price of the electric fittings, should not be included. The appellant contends first of all that the learned Small Cause Court Judge has wrongly placed on him the burden of proving what was the value of the land at the time of the assessment in March 1924, Secondly that the Judge has come to a wrong finding of fact on the evidence as to what the value should be of the land.

3. A preliminary point has been discussed at some length as to what are the

powers of the Court in dealing with this appeal. The appellant would seem to contend that it is open to us to go into facts. His contention would seem to be that this is not a second appeal as contemplated by the CPC and that Section 100 and Section 101, Civil P.C., have no application. It will appear that when the Corporation desire to make an assessment or re-assessment they proceed u/s 131(1). The valuation and assessment are apparently made by the Executive Officer.

4. A notice is given to the assessee to object if he so desires. The Executive Officer must hear and decide the objection and pass orders u/s 140, Calcutta Municipal Act. Against this order an appeal lies to the Judge of the Small Cause Court and against his decision a further appeal to the High Court.

5. In these circumstances what is the nature of the proceedings before the Executive Officer. If the order is an executive order pure and simple how can there be an appeal to the Small Cause Court Judge, a Court of law, with a further appeal to the High Court.

6. It has been suggested that as it has been held that the Land Acquisition Deputy Collector is not a Court, so it must be held that the Executive Officer making an assessment is not a Court.

7. There is no analogy between the two. Anyone dissatisfied with the award of the Land Acquisition Deputy Collector may ask the Collector to refer the matter, to the Judge and on such a reference the Judge hears and decides the matter.

8. But this is not an appeal against the order of the Deputy Collector and hence there is no analogy between the two cases. In the case of *Ezra v. Secy. of State* [1905] 32 Cal. 605, it was held that the Land Acquisition Deputy Collector was not a Court because the decision was merely a decision as to what sum shall be tendered to the owner of the land and was binding only on the Collector, and if a judicial determination was required the owner could obtain it by requiring the matter to be referred by the Collector to the Court.

9. In the present case, unless the valuation is objected to, it is final. Section 141 also provides that part 2 and part 3, Lim. Act, shall apply to every appeal presented under the section, and Sub-section (4) provides that no appeal shall be admitted unless an objection has been determined u/s 140. It seems difficult to escape from the conclusion that the appeal to this Court must be regarded as a second appeal and that the appeal does not lie on fact but on law only. It has been suggested that the order of the Executive Officer assessing the premises was an execution order. It might be that the first order of the Executive Officer by which he made the valuation and assessed the tax to be paid was an executive order but it is not against this order that an appeal lies. It is clear no appeal lies against that order See Section 141(4).

10. The appeal lies against his order made u/s 140 which he makes after hearing objection. It may seem perhaps somewhat remarkable that the same person who

made the assessment should determine the objection to the assessment. It might well be argued that he is the defendant and also the Judge in the matter. Possibly, so far as the objection is concerned, the objector must be considered as one party and the Corporation the other, But it seems to me that if there is an appeal against the order to the Judge of the Small Cause Court and second appeal to the High Court the order must be considered as a judicial order. I cannot conceive a purely executive order being the subject of an appeal first to the Small Cause Court Judge and then to the High Court.

11. Both parties have argued that the burden of proof has wrongly been thrown on them by the Judge. The Corporation urges that it is for the assessee to show that the assessment made is incorrect, in other words to prove what the present value of the land is. The assessee on the other hand contends that it is for the Corporation who desire to raise the assessment to show what the present value of the land is. The Judge has found that there is no evidence" whatever "to prove what the present market value of the land is.

12. There is only evidence as to the value, of land in the locality in 1921-22 at a time when the land boom was on. Admittedly since then the value of land has fallen. He goes on to state that these prices cannot be accepted for the purpose of assessment now. He concluded by saying:

Considering the position of the disputed land and also the fact that the price of land has considerably fallen I assess the value of the land at Rs, 2,200 a kata.

13. The figure is a obviously purely arbitrary one arrived at on no data whatever the Judge having himself stated that there is no evidence of the point. There being no evidence admittedly as to what the present value is, the question of onus is all important.

14. If the onus is on the Corporation they have absolutely failed and if on the assessee she has equally failed. The onus I think is obviously on the Corporation. The Corporation seek to increase the assessee's assessment. It is for them to show that the value of the land has increased and not for the assessee to show it has not increased.

15. It cannot for one moment be open to the corporation to fix any arbitrary valuation that they please as has clearly been done in this case, for there is admittedly no evidence whatever to show what the present value of the land is, and then say to the assessee that he has to prove it as something different. Even if there were a presumption that the assessment was correct and the burden lay on the assessee to prove it was incorrect she has clearly done so, for she has proved that the corporation had no material whatever on which they could have based the present assessment. An assessment based on no material whatever cannot be considered as a valid assessment. I would, therefore, dismiss the appeal of the corporation and allow the cross-objection of the assessee as to the value of the land, the land to be valued for the purpose of assessment at Rs. 1,200 per cotta. On both the appeal and cross-objection my learned brother has

taken an entirely different view. He would allow the appeal and dismiss the cross-objection.

16. There is a further objection by the assessee which relates to the value of the premises for the purpose of assessment. The Judge for some reason or other has included in the valuation of the buildings Sections 350 for the electric light installation. The corporation never claimed to include it and it is perhaps difficult to understand why the Judge should give the corporation a relief they never asked for. The assessee is entitled to have Rs. 350 deducted.

17. The result is that both the appeal and the cross-objection as to the value of the land must fail and are dismissed with costs. The cross-objection of the assessee regarding the valuation of the building is allowed with costs. We assess the hearing-fee in the appeal and also in the cross-objection in so far as it is dismissed and in so far as it is allowed at one gold mohur in each.

Graham, J.

18. (After stating facts the judgment proceeded). The learned vakil for the appellant before us stated at the outset that the appeal was confined to the value of the land, and he contended that the burden of proof being upon the respondent, who had failed to adduce any evidence as to the market value of the land at the time of assessment, the Court below ought not to have reduced the assessment of the value of the land.

19. There are two preliminary matters which it is I think necessary to determine before dealing with the appeal on its merits : firstly,, the question of the burden of proof just referred to above ; and secondly, the question of the form of the appeal, and whether it is a first appeal or second appeal. I will deal first with the second point. A decision on this point would ordinarily be necessary in order to ascertain what our powers are in disposing of the appeal, since if it is a first appeal, we can go into the evidence, whereas if it is a second appeal, we cannot disturb the findings of fact. It happens, however, that in the particular circumstances of this case the question involved is one of merely academic interest because neither party adduced the necessary evidence either affirmative or in rebuttal, and, that being so, there is no evidence for us to consider, even if the appeal be treated as a first appeal. It follows that the decision of the appeal will turn entirely upon the question of onus. Incidentally I may say that in my judgment the appeal is in proper form and is a first appeal against an original order. It can not, I think, come within the purview Section 100, Civil P.C., since the appeal before the Small Cause Court is not an appeal against a decree, but is rather in the nature of an appeal against an executive order. Speaking for myself I do not see how the Executive Officer or Deputy Executive officer can be regarded as a judicial officer merely because at the second stage of the assessment proceedings he is required to decide the objection after hearing the assessee.

20. With regard to the first point, question of burden of proof : my learned

brother, while recognizing that it is all important, has come to the conclusion that the onus was upon the corporation, and in that view of the matter holds that the appeal, should be dismissed. I have the misfortune to differ from him. That the question of onus is important I entirely agree. Indeed, having regard to the nature of the evidence adduced in the Court below, or rather the absence of any such evidence as remarked above, the determination of the appeal really hinges, as I have said, upon this question. If the onus was on the corporation, the appeal must succeed. If it was upon the assessee, the appeal must fail. Now what is the right answer to this question? Was it incumbent upon the corporation to prove in the Small Cause Court that the assessment was right, or was it the duty of the assessee, the appellant, to establish that it was wrong? The rule of onus stated in general terms as that the burden of proof is upon the party who would fail if no evidence is adduced by either side. If this test be applied the burden was on the assessee, since, if she failed to adduce any evidence, the assessment must stand. In this connexion reference may be made to certain sections of the Calcutta Municipal Act in order to ascertain the scheme and purpose of the Act. These sections, it seems to me, throw some light upon the question of onus. Section 131 provides for assessment of annual value and duration of the assessment. Section 138 requires notice to be issued when valuation is first made, or increased and objection to such valuation is provided for in the following section. u/s 140 all such objections are to be investigated and determined by the Executive Officer or a Deputy Executive officer, and in Section 141 an appeal is given against the order of that officer to the Small Cause Court. u/s 142, there is a further appeal to the High Court. It is important to note that under Sub-section (1), Section 142 every valuation made by the Executive Officer u/s 131 is final, subject to the provisions of Sections 139, 140 and 141. And under Sub-section (2) of this section similarly every order passed by the Executive Officer, or Deputy executive Officer, u/s 140 is subject to the provisions of Section 141 final. Thus it seems to be clear that the orders made by the executive officers of the corporation at the two first stages of the proceedings are according to the scheme of the Act to be treated as final subject to the right of appeal provided in the Act whereby those orders may, if so desired, be subject to the test of the judicial determination.

21. My learned brother has observed that it cannot for one moment be open to the corporation to fix any arbitrary valuation that they please, but I do not think it ought to be assumed that officers holding responsible positions will act in an arbitrary manner or abuse their powers. And, even if they do so, a remedy is provided in the judicial proceedings in the Small Cause Court where the assessee has the right and opportunity to prove that the assessment is wrong, and there is in addition the further appeal to this Court.

22. My learned brother has observed that, even if the burden lay on the assessee, she has discharged that onus, since she has shown that the corporation had no materials whatever on which they could have based the present assessment. Speaking for myself I do not understand how the assessee

has proved that there were no materials. There could, not be any such materials before the Small Cause Court which had previously been before the Executive Officer because there was not at the former stage any judicial proceeding and, therefore, no record. The proceedings became for the first time judicial proceedings in the Small Cause Court, and it was at that stage that it was incumbent upon the assessee qua plaintiff to place before the Court the necessary evidence to establish that the assessment was wrong.

23. For the reasons I have given, I regret, that I am unable to agree with the conclusion arrived at by my learned brother. In my judgment the appeal succeeds, and should be allowed with costs in both Courts.

24. In the cross-objection two points are involved : firstly as to the value of the land, and whether it should be Rs. 1,200 as claimed by the assessee or Rs. 2,760 as fixed by the Executive Officer; and secondly, with regard to the sum of Rs. 350 for electrical installation included by the Judge in the Court below in the valuation. As to the first point I have already expressed my opinion that the onus was on the assessee and that she has failed. As to the second point : it does not appear to be clear whether the electric installation Had been made at the date of assessment or not and the Corporation did not at that time make any claim on that account. That being so I am of opinion that this item should not have been included by the learned Judge and to this extent only I would allow the cross-objection with costs in proportion.

25. (A Letters Patent appeal, No. 1 of 1927 was filed against the judgment: The judgment therein was as follows:)

Rankin, C.J.

26. This is an appeal under the Letters Patent from a judgment pronounced by my learned brother Mr. Justice Cuming in a case in which he differed from Mr. Justice Graham. The appeal to the High Court was an appeal brought by the Corporation of Calcutta and was directed against a decree or order of the Judge of the Court of Small Causes of Sealdah dated 6th August 1925. That order was made in what it is apparently a custom of that Court to call a municipal appeal.

27. It seems that there was a certain piece of land which in 1917 was bought by the present appellant from the Corporation for the price of Bs. 1,200 per cotta. It seems that up till 1921 the annual value for the land was taken for the purpose of assessment at Bs. 223, but this was increased in February 1921 to Bs. 510. In March 1924 the property was being re-assessed by reason of the fact that a new building had been put upon the land and it was necessary to value the land and the building together. The Chief Executive Officer of the Calcutta Corporation who had in the first instance the duty of putting a figure on the value of the land put a value of Bs. 730 and to that the assessee objected in the manner prescribed by the Calcutta Municipal Act. Thereupon it became the duty of the Chief Executive Officer to deal with her objection and, so far as the present question is concerned, he overruled her objection. If the matter had stood there then the

annual value of Rs. 730 would have been a final determination, but the lady took an appeal as is provided by Section 141, Calcutta Municipal Act of 1923 to the Court of Small Causes. That appeal was brought on 2nd July 1924 and it was heard and decided in August 1925.

28. The evidence (so far as it matters) adduced before the learned Small Cause Court Judge was the evidence of Babu Jodu Nath Majumdar, the lady's husband. So far as it matters, the evidence adduced by the Corporation was that of their Sub-Assessor, Babu Rajendra: Lai Dutt. It is quite true that no expert evidence giving an expert opinion in favour of a particular figure was adduced on the part of the lady. It is equally true that the person who was responsible for fixing the value of the land, namely, the Corporation Assessor, was not called on their behalf though the Sub-Assessor was called who had taken-a part in valuing the new building.

29. Now, when one looks at the evidence given by the lady's husband one finds that it is perfectly sensible and relevant evidence going to the value of the property. He states the date of the purchase and the price Rs. 1,200 per cattah. He states the annual valuation in past-years. He states what the building is that has been put upon the property. He points out that from 1917 onwards-till 1920 there was a land boom, but he says from his own knowledge that since 1921 the price has gone down. He then describes the particular road and he explains that the premises are at present rented and what rents are obtained therefrom. He points out that this-particular part of Harish Mukherji Road is not the most valuable part and is not so valuable as the northern portion near to the Calcutta maidan. He says that-it has huts on its eastern boundary and has got a municipal night soil depot and mehtars' quarters not very far away. He-says that in these circumstances the most that by way of annual value should be put upon the land is Rs. 1,500 per cottah, the land having been bought in 1917 at Rs. 1,200 per cottah. On that he is cross-examined and a particular transaction is put to him of a vacant plot of land enclosed by pucca walls at 64, Harish Mukherji Road. That is very much further to the north and presumably therefore is a much more valuable site. That apparently, although it was 17 cottas, fetched a price of Rs. 2,573 per cotta in April 1924, which was the time with which we are concerned.

30. Further evidence is given, and when the Corporation witness is put into the box he gives evidence of the sale of premises No. 192, Harish Mukherji Road, in September 1922 at Rs. 3,000 per cotta and of other sales in 1921 and 1922 of more valuable parts of that road at prices at and above Rs. 3,000 per cottah.

31. In these circumstances the learned Judge dealt with this matter and considered the materials. He had to arrive at a finding of fact like a jury and he did not have the assistance of any expert surveyor. He came to the conclusion that he would assess the value of the land at Rs. 2,200 per cotta.

32. The only observation that has to be made upon his judgment is that, when he was dealing with the question of the value of the building, apparently by

mistake, a sum of Rs. 350 was added which he had no right to add. This refers to the cost of electric installation; and, by consent at the hearing before us, it has been agreed to treat that Rs. 350 as wrongly included by the Small Cause Court Judge. Except as to that small point of Rs. 350 with the map of this locality before me and the evidence before me which was before the learned Small Cause Court Judge, I ask myself what is there wrong in his finding of Rs. 2,200 per cottah as a fair value of this land? I am of opinion that there is nothing wrong in that finding and that it is a fair and reasonable finding arrived at on proper materials by the learned Judge who was no doubt competent to give an opinion on that point.

33. That being the position, the rest of this case appears to me to be a comedy of errors, because the Corporation brought their appeal and the contention apparently before this Court, when that appeal came on for hearing, was that the learned Judge had proceeded upon no evidence at all and that there was no evidence on either side. Accordingly much interesting discussion arose as to the party upon whom the burden of proof lay in an appeal of this character from the determination of an objection to an assessment by the Chief Executive Officer to the Judge of the Court of Small Causes. That was not the only point of argument, but another question was argued as to whether an appeal to this Court from the Court of Small Causes was a special appeal, that is to say, a second appeal of the limited character defined in Section 100, Civil P.C.

34. Mr. Justice Cuming held that the burden of proof was on the Corporation. He further held that the appeal to the High Court was not one in which it was open to the High Court to discuss questions other than mere questions of law. In my judgment, the learned Judge's decision on both of these points was wrong and, so far as both of these points are covered by the judgment of a Division Bench in the case of the Corporation of Calcutta Vs. Sheikh Keamuddin, , I agree with that decision of Mr. Justice Page and Mr. Justice Graham.

35. The view taken by Mr. Justice Graham, who also proceeded upon the footing that there was no evidence before the learned Judge, was that in the absence of evidence it was the learned Judge's duty to dismiss the appeal and confirm the assessment.

36. I agree with Mr. Justice Graham that if it be really true that there was no evidence before the Judge of the Court of Small Causes it would follow that this particular kind of appeal would fail. The appeal which is given to the Court of Small Causes by the Calcutta Municipal Act is really a proceeding by which an administrative act is challenged before a judicial tribunal. It is quite clear that it is intended that it should not be treated as an ordinary appeal from a civil Court, but is an occasion on which the party complaining must have an opportunity of adducing evidence if he wants to show that the decision of which he complains is wrong. If, therefore, it had really been the case that no evidence at all, to show that the Chief Executive Officer's determination was wrong, had been laid before the Court of Small Causes I should have agreed with the view of Mr. Justice

Graham. In my judgment that is not the position in the present case. The moment it was shown what price for this property had been paid in 1917, the moment it was shown what had been, considered to be a fair assessment of the annual value in past years, the moment evidence was given as to the character of the site and the price paid for other properties and so on, materials were laid before the learned Judge of the Court of Small Causes on which he was entitled, if he thought fit, to put a figure on the value of this property.

37. In my judgment, the result of this appeal is that the appeal of the Corporation cannot succeed and it must be dismissed with costs; but, in my judgment, the reasons given by Mr. Justice Gaming in favour of this conclusion were not sound. It seems to me that this matter was properly disposed of in August 1925 when the Small Cause Court came to its finding. The result is that this Letters Patent appeal is dismissed with costs and the Corporation are also to pay the costs of the assessee of the hearing before Mr. Justice Cuming and Mr. Justice Graham. We assess the hearing-fee in this Court at five gold mohurs. We do not say anything on the cross-objection.

C.C. Ghose, J.

38. I agree.

Buckland, J.

39. I agree.