
(1964) 12 CAL CK 0033

In the Calcutta High Court

Case No : Appeal from Original Order No. 345 of 1959

Corporation of Calcutta

APPELLANT

Vs

Messrs. India Exchange Ltd.

RESPONDENT

Date of Decision : 16-12-1964

Acts Referred:

Calcutta Municipal Act, 1951 — Section 168(1), 183

Citation : 69 CWN 237

Hon'ble Judges : S.K. Datta, J; R.N. Dutt, J

Bench : Division Bench

Advocate : Nripal Chandra Rai Choudhury, for the Appellant; P.N. Mitter, N.C. Talukdar and Nagendra Mohan Saha, for the Respondent

Judgement

R.N. Dutt, J.—The Corporation of Calcutta has filed this appeal against an order passed in appeal u/s 183 of the Calcutta Municipal Act, 1951 by a Judge of the Small Causes Court, Calcutta directing assessment of consolidated rates in respect of the premises No. P-28 & 29 C.I.T. Scheme XLV, Calcutta owned by the respondent, Messrs. India Exchange Ltd., on an annual value of Rs. 2,41,106/- with effect from the 1st quarter of 1956-57. The facts are short and are now more or less undisputed. The ground floor of the premises was still incomplete when the Corporation made an intermediate assessment in respect of the 1st to the 6th floors. The 7th, 8th and 9th floors were thereafter completed but the ground floor still remained incomplete. The Corporation made a further intermediate assessment in respect of the 1st to the 9th floors on an annual value of Rs. 3,34,389/- with effect from the 1st quarter of 1956-57. The respondent raised objections and the Deputy Commissioner No. 1 under the Corporation reduced the annual value to Rs. 2,60,975/-. The respondent then filed the appeal u/s 183 of the Act before the Small Causes Court, Calcutta and a Judge of that Court further reduced the annual value of Rs. 2,41,106/-.

2. It is not disputed that the annual value of the 1st to the 6th floors was arrived at on the basis that these floors fetched a rental of Rs. 21362/- per month. The

learned Judge, found that the fair and reasonable rent in respect of the 7th to the 9th floors is Rs. 5,799/- per month. The learned Judge has thus found that the rent at which the building might, at the time of the assessment, be reasonably expected to let was Rs. 27,161/- per month. There is no dispute now about this. The learned Judge has allowed certain deductions from this rent to come to the gross annual rent within the meaning of section 168(1) of the Act. The deductions allowed are as follows: (a) Rs. 225/- per month for maintenance of three lifts, (b) Rs. 235/- per month as salary for four Lift men, (c) Rs. 171/9/- annas per month as wages and bonus of three darwans, (d) Rs. 146/6/6 pies per month as pay of an Electrician and Rs. 66-3-3 pies as pay of an Assistant Electrician, (e) Rs. 623/5/- annas as monthly pay and allowance of a Caretaker for the building, (f) Rs. 267/- per month as pay and bonus of five sweepers and (g) Rs. 130/- per month for expenses on account of purchasing disinfectants in order to keep the building in proper sanitary condition. The total deductions came to Rs. 1864/- per month. The learned Judge allowed a further deduction of 10 per cent. of the balance of the monthly rent for costs of repair and for all other expenses necessary to maintain the building in a state to command the said gross rent. The learned Judge allowed a further deduction of 113/4 per cent. on the finding that the monthly rent of Rs. 27,161/- included the occupier's share of Corporation Taxes.

3. Mr. Rai Choudhury, who appears for the Corporation, submits that the deduction of 10 per cent. as provided for in section 168(1) of the Act covered all deductions on account of expenses necessary to maintain the building in a state to command the gross rent. He argues that this 10 per cent. deduction should cover the expenses for the Lift, the darwans, the Electricians, the Caretaker, the sweepers and the disinfectants. He next contends that there is no evidence to hold that the rent of Rs. 27,161/- included the occupier's share of Corporation taxes. He therefore, submits that the learned Judge was not justified in first allowing a deduction of Rs. 1864/- and finally a deduction by 11 3/4 per cent. Mr. Mitter, who appears for the respondent, submits that the annual value of the building u/s 168(1) of the Act is to be determined by making a deduction of 10 per cent from the gross annual rent of the building. So the first thing to be determined is: what is the gross annual rent? He argues that the rent payable by the respective tenants includes some payment for services rendered by the landlord to the tenants. The rent payable by the respective tenants is not all rent for the occupation of the flat or building, but some part of the rent is payable for the services or other amenities provided for by the landlord for the benefit of the tenants. Mr. Rai Choudhury argues that the allowance of 10 per cent. covers not only costs of repair but "all other expenses necessary to maintain the building in a state to command such gross annual rent". But these words do not speak of services or amenities; they speak of expenses necessary to maintain the "building" in a state to command such gross annual rent. So before one considers the question of this 10 per cent. allowance, one has first to determine the gross annual rent. Can it be said in respect of a building where the landlord

provides for certain services or amenities for the tenants that the rent payable by the respective tenants is all rent for the flat or the building and no part of it is towards payment for such services or amenities? This question is gradually becoming important in the city as residential and office flats are now being built which provide for certain amenities or services. Such flats or buildings would no doubt be let out at higher rents than flats or buildings which do not provide for such services or amenities. Should it be said in such circumstances that the rent payable by the tenants in respect of the flats or buildings which provide for such amenities or services is all rent for the flat or the building and no part of it is towards payment for the services and amenities? This question arose, though in different form, in (1) *Messrs. Clive Building Calcutta Ltd. v. The Corporation of Calcutta* (Misc. Appeals Nos. 284 to 305 of 1953 and 21 to 41 and 73 to 85 of 1954) decided by a Division Bench of this Court in 1955. There in that case the rent bills issued to tenants showed separate amounts as rent and separate amounts as payment towards services and amenities. The learned Judges held in that case that the gross annual rent would be the total amount of the rent portion of the rent bills and would not include the payment for the services and the amenities. The learned Judges while discussing the principles made an observation to this effect "Even if a lump sum payment is made by the tenant of a flat as rent for Use and occupation of the flat and for services and other amenities, that part of the payment which is made for services and other things, in no way forming part of the charge for the use and occupation of the flat must be ascertained and deducted from the lump sum payment and only the remainder represents the rent for use and occupation of the flat for which it is rateable." The present case is such a case of lump sum payment by the tenants. If the landlord provides for certain services or amenities for the tenants, some part of the lump sum rent must be deemed to be payment for such services and amenities and that part should be deducted from the lump sum rent in order to find the gross annual rent within the meaning of section 168(1) of the Act. This interpretation of section 168(1) of the Act finds support in the decision in (2) *Bell Property Trust Limited v. Hamstead Borough Assessment Committee*, reported in 1940 All England Law Reports, Volume III, page 640. The same question arose in that case. The owners of a block of flats let them to tenants at rents including payments for services and amenities provided by them. The owners claimed to deduct from the gross rent the costs of the services and the amenities provided. The Court of appeal held that the cost of providing the services and amenities would properly be deductible from the gross rent for the purpose of determining the gross value. It was held that it was to be first found out what proportion of the gross sums reserved by the leases as rent represented the value of the services and amenities provided by the lessors and when that were deducted, the balance left represented the true gross value. Mr. Rai Choudhury submits that the definition of the words "gross value" in the English Valuation Metropolis Act, 1889 is different from the meaning of the words "gross annual rent" in section 168(1) of the Act; The words used in the English Act are gross value and rateable value, defined as follows: The term "Gross value" means the annual rent

which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent." The term "rateable value" means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance and other expenses as aforesaid: "The words used in section 168(1) of the Act are "gross annual rent" and "annual value". Assessment is to be made on the basis of the "rateable value" in the English Act and "annual value" in section 168(1) of the Act. The "rateable value" and the "annual value" are to be found by making certain deductions from the "gross value" and the "gross annual rent" respectively. The question is how should the "gross value" under the English Act or the "gross annual rent" u/s 168(1) of the Act are to be found, that is, whether the "gross value" or the "gross annual rent" would represent the total sum paid by the tenants or the total sum paid by the tenants less an amount towards payment for the services and amenities provided by the landlord. The court of appeal in (2) Bell Property's case has held that the "gross value" should be taken to be the gross sum payable by the tenant less an amount towards payment for services and amenities. On similar principles, the "gross annual rent" should also mean the gross rent payable by the tenant less an amount towards payment for services and amenities. We hold, therefore, that before the annual value of the building can be determined the true gross annual rent should be determined and for determining the same, there should be a deduction from the gross rent a sum towards payment for the services and amenities provided for by the landlord on the facts and circumstances of this case. We have no doubt that Lifts are one of such services and amenities. We have also no doubt that the electricians appertain to such services and amenities. We also hold that the sweepers and the disinfectants also appertain to such services and amenities. We however think that the darwans and the Caretaker cannot be said to render services or amenities to the tenants. They are primarily kept for the landlord to safe-guard the building and to keep it in proper care. They render services mostly to the landlord. Expenses for them should not be said to appertain to services or amenities for the tenants. We would therefore allow a deduction of Rs. 225/- per month for the maintenance of the Lifts, Rs. 235/- per month as salary for the Lift men, Rs. 146-6-6 pies per month and Rs. 66-3-3 pies per month for the electricians and the Assistant electrician and Rs. 267/- per month as pay and bonus for the swpeers and Rs. 130/- per month for purchasing disinfectants. The total deduction, therefore, comes to Rs. 1069-9-9 pies per month. We should mention in this connection that in the first intermediate valuation of the 1st to the 6th floors, the Corporation itself allowed a deduction of Rs. 800/-per month on account of services from the gross rent of Rs. 21,362/- per month. Be that as it may, the gross annual rent comes to Rs. 26091-6-3 pies per month, i.e., Rs. 27161/- less Rs. 1069-9-9 pies.

4. Mr. Mitter at one stage of his argument submitted that at least for the Lifts the

respondent would be entitled to a deduction in view of clause (ii) of section 168(4) of the Act. This argument cannot be sustained because clause (ii) of section 168(4) is attracted only when the value of a building is to be calculated for the purpose of assessment to the consolidated rate. For an assessment u/s 168(1) of the Act, the value of the building is not required to be calculated. For the purpose of assessment u/s 168(3) the value of the building is to be calculated and so clause (ii) of section 168(4) will be attracted when the value of the building is to be calculated u/s 168(3). Moreover clause (ii) of section 168(4) itself says that in the case of a Lift a deduction is to be made only after a Lift has been valued. For assessment u/s 168(1) of the Act the Lifts as such are not valued and so there is no question of deduction on account of the lifts under clause (ii) of section 168(4) in respect of assessment u/s 168(1) of the Act.

5. From the gross rent of Rs. 26091-6-3 pies there should be a deduction of 10 per cent as provided for u/s 168(1) of the Act. This is not disputed. The learned Judge allowed a further deduction of 11 3/4 per cent on the finding that such gross annual rent includes the occupier's share of Corporation taxes. Mr. Rai Choudhury submits that there is no evidence from which it can be said that the rents payable by the respective tenants include the occupier's share of taxes. From the record it appears that the parties all along proceeded on the footing that the rents payable by the tenants included the occupier's share of taxes. There is no dispute that the respondent has been paying both the owner's share and the occupier's share of the Corporation taxes. Mr. Rai Choudhury submits that merely because the respondent has been paying the occupier's share of taxes does not prove that the rents payable by the tenants included such occupier's share of taxes. He submits that the respondent might separately realise the occupier's share of taxes from the tenants. There is however no such allegation and there is no such evidence. On the materials before us we are not prepared to interfere with the finding of the learned Judge that the rents payable by the tenants were inclusive of the occupier's share of taxes and as such we agree that there should be a further deduction of the gross annual rent by 11 3/4 per cent. The annual value therefore comes to Rs. 2,48,683/-.

6. In the result the appeal is allowed in part. The annual value of the 1st to the 9th floors of the premises in question is determined at Rs. 2,48,683/- with effect from the first quarter of 1956-57 for the purpose of assessment of the consolidated rate on the same. We make no order as to costs.

S.K. Datta, J.

I agree.