(1970) 04 CAL CK 0009

In the Calcutta High Court

Case No : L.P.A. No. 43 of 1964 in S.A. No. 1191 of 1955

Corporation of Calcutta APPELLANT

Vs

Probhat Kumar Banerjee RESPONDENT

Date of Decision : 21-04-1970

Acts Referred:

Calcutta Municipal Act, 1923 — Section 124, 133
Calcutta Municipal Act, 1951 — Section 1(3), 124, 133, 137(1), 143
Calcutta Municipal Rules, 1951 — Rule 172(2)

Citation : (1972) 1 ILR (Cal) 124

Hon'ble Judges : Bagchi, J;Amaresh Roy, J

Bench : Division Bench

Advocate : Saroj Kumar Chatterjee, for the Appellant;Smriti Kumar Roy Choudhuri, for the Respondent

Final Decision : Allowed

Judgement

Amaresh Roy, J.—This appeal has been preferred under cl- 15 of the Letters Patent, leave for which has been granted by the learned Judge of this Court who heard the Second Appeal.

2. Facts relevant for the appeal are that the premises No. 151 Russa Road, which now is numbered 29 Shyama Prosad Mukharji Road, was owned and possessed by Nagendra Nath Mukharjee. On his death that property has been inherited by his six sons and his widowed wife. They now jointly own the property in equal shares. Corporation of Calcutta had determined annual value of that property under the provisions of the Calcutta Municipal Act, 1923, at Rs. 5,789. On the basis of that annual value assessment of the consolidated rate at 2% under that Act of 1923 was made when the Calcutta Municipal Act was still in force. On March 7, 1952, the seven co-owners of the said premises made an application for apportioning annual valuation between the individual co-owners for convenience of payment of the taxes. Thereupon the Corporation of Calcutta issued separate bills for taxes in the name of each of those seven co-owners, apportioning the

assessed tax in those bills. The annual valuation were also shown at Rs. 327 in each of those apportioned bills, i.e. l/7th of the total annual value of Rs. 5,789. Earliest of those bills that has been produced in evidence in this case is for the 3rd quarter of 1952-53, i.e. October to December, 1952. The bills for the 1st and 2nd quarters of 1952-53 were also produced to show that they were joint bills.

3. In the meantime, the Calcutta Municipal Act of 1951 was passed by the Legislature. President''s assent was first published on February 14, 1952, and the Act was brought into force on May 1, 1952, by a notification under Sub-section (3) of Section 1 of that Act. By that Act of 1951 the Calcutta Municipal Act, 1923, has been replaced.

4. Section 172(1) of the Act of 1951 provides:

The valuation of any land or building situated in the several wards, the respective numbers and boundaries of which are specified in such V, which has been made before the commencement of this Act and which is in force at the commencement of this Act shall remain in force and be deemed to be the valuation for the purpose of assessment of consolidated rate on such land or building under this Act until a fresh valuation is made under this Act.

5. It appears that the co-owners of the property above-mentioned claimed the benefit of Clause (i) of Section 165 of the Calcutta Municipal Act of 1951 insisting that the annual valuation shown on the bills above mentioned being below Rs. 1,000, the consolidated rate should be assessed at the rate of 15 % on that annual valuation and not 22 % on the total annual valuation of the property which would be governed by Clause (iii) of that Section 165.

6. Claiming that benefit each of the seven co-owners filed suits on the same day, i.e. June 19, 1953. Those were T.S. Nos. 442, 443, 444, 445, 446, 447 and 448. In each of those suits the Corporation of Calcutta was the Defendant No. 1, and in each suit the other six co-owners of the property were made pro forma Defendants. Probhat (Kumar Banerjee was the Plaintiff in suit No. 444 of 1953. He was also the pro forma Defendant in each of the other six suits. As the seven suits involved the same question of law and in fact they were tried analogously.

7. The Defendant Corporation contested all the suits by filing same written statement in each of them. The Corporation alleged that upon the application of the co-owners only the assessment was apportioned without assigning separate number of the premises and was, therefore, bound to levy the consolidated rate at 33% of the annual valuation even u/s 174 of the Calcutta Municipal Act, 1951, read with Section 165 of that Act.

8. In the trial Court issues were framed:

(i) Is the Plaintiff liable to pay the consolidated rate in respect of the said property at 15 % of the annual value ?

(ii) Is the Plaintiff entitled to a permanent injunction restraining the Defendant

Corporation from levying the consolidated rate at 22%?

(iii) Is the Plaintiff entitled to refund all the amount claimed ?

(iv) To what relief, if any, is the Plaintiff entitled?

9. In the Trial Court the learned Munsif held that the answer to the contention of the Plaintiffs must be found in Section 174 of the Calcutta Municipal Act, 1951. He also held that the term ''assessment'' used in Section 174(1) must necessarily mean the amount of the consolidated rate fixed in respect of premises of which the ownership had been sub-divided into separate shares and that the claim of the Plaintiffs was due to a misapprehension of the scope and purpose of Section 174(1) of the Calcutta Municipal Act, 1951. The learned Munsif dismissed the suits.

10. Against that decision of the learned Munsif each of the Plaintiffs appealed. Appeal by Probhat Kumar Banerjee was numbered as T.A. No. 894 of 1954. Corporation of Calcutta was the first Respondent and the other co-owners were the pro forma Respondents. In the six other appeals Probhat Kumar Banerjee was a pro forma Respondent also. The First Appellate Court also proceeded to decide the case under the provisions of the Calcutta Municipal Act, 1951. In doing so, however, the learned Subordinate Judge made two wrong assumptions, that the assessment which was prevailing in the first quarter of 1952-53 (April to June, 1952) was u/s 165 of the Calcutta Municipal Act, 1951, and that the Calcutta Municipal Act, 19511, came into force on February 14, 1952. We need only point out that though the Calcutta Municipal Act, 1951, received the assent of the President which was first published in the Calcutta Gazette Extra-Ordinary of February 14, 1952, the Act came into force on May 1, 1952, by dint of a notification No. MLA-19/52 which was published in the Calcutta Gazette on April 24, 1952 (pt. I, p. 1242). In that Appellate Court, on behalf of the Plaintiff-Appellant, the amendment of Section 174 introduced by the Calcutta Municipal (Amendment) Act, 1953, was relied upon. But the learned Subordinate Judge held that the said amendment was not relevant for the purpose of the case, because that Amending Act came into force only on July 6, 1953, i.e. after the suits had been instituted. The learned Subordinate Judge held that as the premises in the suit has not been sub-divided into seven separate premises with separate numbers but only the ownership has been sub-divided into seven shares without separate allotment, so the total assessment of the consolidated rate upon the local annual valuation has been merely apportioned amongst the shareholders according to the value of their respective shares without assigning any separate numbers. It was argued on behalf of the Plaintiff-Appellant in that Court that section of apportioned valuation in respect of each share in the tax bills, Ex. 1 series, amounted to fresh valuation and fresh assessment and, therefore, u/s 165(1) of the Calcutta Municipal Act, 1951, the consolidated rate should have been fixed at the rate of 15 %. The learned Subordinate Judge also held that Section 174 speaks of mere division of existing assessment and he dismissed the appeals. Against that decision the Second Appeal in this Court was

preferred by Probhat ''Kumar Banerjee alone. The other co-owners were jointed as pro forma Respondents in the Second Appeal, but they have neither preferred appeal themselves nor did Probhat Kumar Banerjee prefer any appeal from those six ''suits in which he was the pro forma Defendant nor did the other co-owners appear in the Second Appeal. This has obtained the result that the decision of the First Appellate Court in the six appeals by the other six co-owners in each of which Probhat Kumar Banerjee was a pro forma Defendant-Respondent has become -final and binding on all the parties.

11. However that may be, the Second Appeal preferred by Probhat Kumar Banerjee, S.A. 1191 of 1955 was heard by our learned, brother R N. Dutt J. sitting singly. Before his Lordship, on behalf of the Appellant Probhat ''Kumar Banerjee, the learned Advocate Mr. Roy Choudhuri submitted that there was apportionment of the valuation into separate shares and, therefore, under Clause (i) of Section 165 of the Calcutta Municipal Act, 1951, the consolidated rate should be 15 % on that apportioned annual valuation which was Rs. 827 in each share. On behalf of the Corporation the learned Advocate Mr. Chatterjee first argued in that Second Appeal that Section 165 is attracted to the case of existing buildings after the general valuation under Rule 172(2) of the new Act. That argument was not accepted by R. N. Dutt J. by holding that with the coming into operation of the new Municipal Act from May- 1, 1952, consolidated rate will be levied on the existing valuation of land and buildings in accordance with the provision of Section 165. It was next argued by Mr. Chatterjee in the Second Appeal that "the unit for the purpose of calculation of the consolidated rate should.be ''land and buildings'', i.e. the annual valuation of lands and buildings should be the basis in accordance with which consolidated rate should be imposed. Mr. Chatterjee contended that the building did not mean the part of the building. That argument of Mr. Chatterjee also, was not accepted by R. N. Dutt J. The learned Judge, however, proceeded to decide the case on the footing that--

Here in this case there" has been apportionment of valuation amongst the seven co-sharers under Clause (i) of Section 174.

Interpreting Section 174 the learned Judge, held that the unit, in case where valuation have been sub-divided under Clause (i), (ii) or (iii) of Section 174 should be the apportioned valuation or the valuation after separation of shares and not the valuation of the entire building. Referring to the Amending Act of 1953 the learned Judge noticed that in Section 174 before the amendment the word used was ''assessment'' and he held:

The word ''assessment'' was used in the sense of valuation in the Act of 1951. But since the word ''valuation'' was used in Section 165 the amendment was made to bring the language of Section 174 at par with the language of Section 165 The amendment has not, in fact, made any change in the Jaw. Section 174, as it stood when the suit was instituted, also meant that the consolidated rate should be determined in accordance with Section 165 on the apportioned valuation.

On that views of law R.N. Dutt J. held:

That with effect of coming into operation of the new Act, 1951, consolidated rate should be determined in accordance with Section 165 on the sub-divided or apportioned valuation the Appellant.had the valuation apportioned in June 1952. Consolidated rate in accordance with Section 165 will therefore be levied from the 3rd quarter of 1952-53 and not the 1st quarter of 1952-53 as claimed by the Appellant.

His Lordship, therefore, allowed the appeal in part setting aside the judgment and decree of the Courts below and the Appellant''s suit Was decreed in part by declaring that the Appellant was liable to pay taxes at the consolidated rate of 15% at Rs. 827 from the 3rd quarter of 1952-53 till new valuation was made u/s 172 of the Act. Permanent injunction was, however, not granted'' as it was brought to his Lordship''s notice that new valuation had been made from the 4th quarter of 1957-58. He directed that the parties would bear their own costs throughout.

12. Leave to appeal under Clause 15 of the Letters Patent was granted and the Corporation of Calcutta has preferred this appeal against the judgment and decree passed by R. N. Dutt J. For the Appellant Corporation the learned Advocate Mr. Saroj Kumar Chatterjee has appeared and for the Respondents the learned Advocate Smriti Kumar Roy Choudhuri appeared before us. The learned Advocates placed before us the materials on record and the evidence that was adduced to draw our attention to the outstanding fact that in support of their contention the Plaintiffs have, adduced as evidence only a copy of the application made by the seven co-owners which have been marked Ex. 2A and the. bills issued by the Corporation marked Ex. 1 series and also notice u/s 58(3) of the Calcutta Municipal Act, 1951. The application, Ex. 2A, is addressed to the Assessor, Corporation of Calcutta, and is dated March 7, 1952, but does not bear signature of the Applicant. At that date the Calcutta Municipal Act, 1923, was in force. The learned Subordinate Judge was in ''error in thinking that the Calcutta Municipal Act of 1951 came into force on February 14, 1952. That Act was brought into force only on May 1, 1952, by a notification under Sub-section (3) of Section 1 of that Act, though the President''s assent to the Act was first published in the Calcutta Gazette on February 14, 1952. Besides the fact evidenced by the bills, Ex. 1 series, that the Corporation issued apportioned bills from the 3rd quarter of 1952-53 (October to December, 1952) there is no evidence at all when and how the application, Ex. 2A, was dealt with by the Corporation. No order by the Corporation in that respect has been brought in evidence, either oral or documentary. In the plaint itself it has no doubt been mentioned that the order was made sometime in June 1952. But in the notice u/s 586 before the suit was filed it has been said that the order was made during the 1st quarter of 1952-53, i.e. April to June of 1952, which makes it probable that it may have been made before May 1, 1952. No evidence has been given by any party when the order of apportionment was made by the Corporation.

Therefore, there is no basis in the whole of the records to warrant the finding of the Trial Court and the First Appellate Court that the order of apportionment was made by the Corporation in June 1952. Because the two Courts below had said so in their judgment, R. N. Dutt J. also in the Second Appeal accepted as fact that--

Sometime in June 1952, on an application by the seven co-shares the Corporation made an order apportioning the valuation of the holding into seven equal shares the annual value of each share being assessed at Rs. 827.

In the application, Ex. 2A, appointment of valuation was prayed for, but in the plaint it has been stated that assessment was apportioned. The law then prevailing was the Act of 1923, and in the relevant Section 133 of that Act only apportionment of assessment was provided -and. there was no provision for assessment of valuation though Section 124 mentioned valuation. It may be mentioned that in the Act of 1951 also as originally enacted the corresponding Section 174 provided for apportionment of assessment only and not of valuation. It is true that by the Amending Act of 1953 the word assessment, when-ever it occurs in Section 174, has been replaced by the word valuation. But that Amending Act came into force on July 6, 1953, i.e. after the suit was filed on June 19, 1953. That Amending Act of 1953 has, therefore, no application in the present case.

13. The question remains whether the Act of 1923 or the Act of 1951 will apply, in the present case. If the order ''of apportionment was made by the Corporation of Calcutta before May 1, 1952, it could be made only u/s 133 of the Act of 1923, and that Act will be applicable to the present case. If, however, the order of apportionment was made after May 1, 1952, it could be made u/s 174 of the Act of 1951 as originally enacted. As we have mentioned already Section 133 of the Act of 1923 and corresponding Section 174 of the Act of 1951 as originally enacted both provided for apportionment of assessment and not valuation. If the word assessment was used to convey the same meaning in both the Acts, then whichever of those two Acts would apply, the effect in law will be the same. If, however, the'' word assessment was used in s~. 174 of the Act of 1951 to mean the same thing as valuation as R. N. Dutt J. has held and if that Act applies in the present case, then only the Plaintiff''s contention would succeed. Even if the word assessment in Section 133 of the Act of 1923 bore the meaning of valuation and if that Act applies to the present case, then also the Plaintiff''s contention cannot succeed, because in the Act of 1923 whatever the annual valuation of the premises Section 124 provides the fixed rate not exceeding 23 % on the annual valuation for assessing the consolidated rate. The gradation of 15 %, 18 %, 22 %, 23 % and 33 % depending on the amount of annual valuation was for the first time introduced by Section 165 of the Act of 1951. Mr. Roy Choudhuri, therefore, very cogently submitted that if the Act of 1923 is applicable to the case instead of the Act of 1951, then his client must fail. He also rightly conceded that the Amending Act of 1953 cannot apply to this case.

He, therefore, based his contention on the meaning of the word ''assessment'' used in Section 174 of the Act of 1951 as originally enacted and submitted that'' it meant valuation as has been held by R. N. Dutt J. That is the important question of law that has been argued before us.

14. Mr. Chatterjee for the Appellant Corporation in this Letters Patent Appeal has first contended that application for apportionment having been made under the Act of 1923, and as there is nothing to show that the order of apportionment was made under the Act of 1951, the previous Act of 1923 shall apply to the present case although the suit was instituted after the Act of 1951 had come into force. He also contended that even if the Act of 1951 applies to the case under the provision of Section 174 of that Act only assessment could be apportioned and not valuation. He argues that in that section the word ''assessment'' was used as distinct from valuation and cannot bear the same meaning. He submitted that the interpretation put on Section 174 by R. N. Dutt J., which we have quoted above, is not correct.

15. By anxious consideration to the contentions raised on both.sides and with great respect to our learned brother R.N. Dutt J. we have reached the conclusion that Mr. Chatterjee''s contention in respect of the meaning of the word ''assessment'' as it occurred in Section 174 of the Act of 1951 as originally enacted should prevail, and we cannot agree with the view of the learned Judge in the Second Appeal that the word assessment in Section 174 of the Act of 1951 was used to convey the meaning of annual valuation. For that view we proceed to give our reason. Both in the Act of 1923 and the Act of 1951 in the scheme contained in the chapter headed ''Taxation in Act of 1923'' (chap. X of pt. IV) and in the Act of 1951. Chapter XI in pt. IV, assessment of annual valuation and assessment of consolidated rate calculated on the basis of annual valuation are distinct and different processes. In both the Statutes the process of fixing the annual valuation culminates into a valuation list, in the Act of 1923 Section 137(1) and in the Act of 1951 Section 178(1). The other distinct document in the process of assessment of the consolidated rate in both the Statutes is the assessment book, in the Act of 1923 Section 143 arid in the Act of 1951 Section 185. Keeping that in mind it has to be noticed that in the Act of 1923 after providing for consolidated rate calculated as the basis of annual valuation in Section 124, the Act of 1923 provided in Section 133 for apportioning the assessment. It is nobody''s case that in 1923 Act the word assessment in Section 133 meant annual valuation. Mr. Roy Ghoudhuri has not contended so. Of course, insofar as the Act of 1923 provided for a flat percentage for assessing consolidated rate, even if annual valuation was meant by the word assessment in Section 133, it would not make any difference in the result. But the Act of 1951 has retained not only the same language in Section 165 (corresponding to Section 124 of the 1923 Act) though by Section 165 the said Act introduced graduated consolidated rate on the annual valuation but also retained in Section 174 the word assessment as had been used in the corresponding Section 133 of the 1923 Act, providing for apportioning the assessment. If in the 1951 Act the

word ''assessment'' did not mean annual valuation but meant assessment of the consolidated rate, then the amount of tax assessed could only be apportioned after that assessment has been made according to the provision of Section 165 of that Act on the basis of annual valuation. If, however, the word assessment was used to mean annual valuation, then by the result of apportioning that annual valuation effect would be very much different, because which of the clauses of. Section 165 would be applicable that will depend on the amount of annual valuation obtained by apportioning annual valuation in the share of each co-owner. By that not only the tax realisable by the Corporation will dwindle but also each co-owner of the property, even when the ownership has been sub-divided into two or more shares with separate allotment, would derive substantial benefit by a lesser percentage in Section 165 being applicable. The total ownership will also gain to that extent

16. Not only so, it would also be possible to contemplate that if one of the several co-owners by making all application u/s 174(1) obtains an order apportioning the annual valuation in his share only and the other co-owners have not applied for or obtained such order, then for the same premises, which has not been separated in ownership, one co-owner would pay consolidated rate at a lesser rate on the basis of apportioned annual valuation in. his share, but the other co-owners would pay consolidated, rate at a higher rate on the basis bf total annual valuation of the premises.

17. The question, therefore, would the law makers use the same word to connote a different meaning that would bring about such wide and loudly different results ? In our view, it cannot by any rule of interpretation of Statutes. The doctrine of beneficial inter predation of taxing statute in favour of the rate-payer also does not in our view permit such an interpretation. We, therefore, hold that the word ''assessment'' in s: 174 of the Act of 1951 was used to connote the same meaning it did in Section 133 of the Act of 1923 and in both those enactments the word ''assessment'' meant the assessment of the consolidated rate of tax and not of annual valuation of the land and building.

18. What is important to notice in Section 174, both before and after amendment by the Act of 1953 and also in Section 133 of the Act of 1923 is that the three clauses herein make distinction according as the separate portions are or are not entirely independent and capable of separate enjoyment. Clause (i) deals with, cases when they are not; Clause (ii) deals with cases when they are but are not in conformity with She provisions of the Act; Clause (iii) deals with cases when they are so and also are in conformity with the provisions of the Act.

19. In our view, the Amending Act of 1953which-has replaced the word.''assessment'' by ''valuation'' intended to bring about a change in the law by enabling the Corporation to apportion equal valuation itself that would give such benefit to the rate-payer by application of Section 165 if the order apportioning valuation u/s 174 was made by the Corporation. It has also to be noticed that in Section 174 while els. (1)(i) and (ii) give discretion to the

Commissioner either to make an order or not by use of the word ''may'' while in Clause (iii) where that is applicable, the Commissioner has no discretion but to make order because the word used in that clause is ''shall''. Our learned brother R. N. Dutt J. in his judgment has noticed the use of the word ''may'' in els. (i) and (ii) but does not appear to have noticed that in Clause (iii) the word is ''shall''. That Legislature made the amendment in Section 174 by the Amending Act of 1953 is indicative of the intention to change the law, because if assessment before amendment meant annual valuation then there was no reason for the amendment by changing the word to ''valuation''. We, therefore, hold that the view of law that prevailed with R. N. Dutt J. is not correct, and that the decision of the learned Munsif and the learned Subordinate Judge were the right decisions in law and should not have been set aside in the Second Appeal.

20. We have reached that conclusion by application of law under the Act of 1951. Rut in our view, on the facts proved in this case, the Act of 1923 is applicable because the application for apportionment was made under that Act on March 7, 1952, before the Act of 1951 was brought into force and there is nothing in the pleadings or evidence in the case to show that order of apportionment was made under the Act of 1951, under the provisions of the Act of 1923 whether apportionment was of assessment of consolidated rate or of annual valuation rate it was 22 % of annual valuation either of the whole premises or apportioned annual valuation. Mr. Roy Choudhuri has rightly submitted that if the Act of 1923 applies, this Letters Patent Appeal must succeed. We hold that the Act of 1923 applies to the case and not the Act of 1951.

21. Regarding the contentions of Mr. Chatterjee that Section 165 applies only to the general valuation and that building does not include part of a building we agree with R. N. Dutt J. that those contentions cannot be accepted.

22. This Latters. Patent Appeal is, therefore, allowed by setting aside the judgment and decree passed in the Second Appeal and restoring those of the learned Subordinate Judge and the Munsif dismissing the suit. The Appeal, therefore, succeeds, but in the circumstances of the case the parties shall bear their own costs throughout.

Bagchi, J.

I agree.

