
(1952) 08 CAL CK 0015
In the Calcutta High Court
Case No : A.F.O.O. No. 18 of 1951

Corporation of Calcutta

APPELLANT

Vs

Raj Kumar Narsing Pratap Singh Deo

RESPONDENT

Date of Decision : 01-08-1952

Acts Referred:

Calcutta Municipal Act, 1923 — Section 131, 131(1), 131(2), 3(46)

Citation : AIR 1954 Cal 20 : 57 CWN 925 : (1954) 2 ILR (Cal) 150

Hon'ble Judges : Renupada Mukherjee, J; R.P. Mookerjee, J

Bench : Division Bench

Advocate : Krishnalal Banerjee, for the Appellant; Bankim Chandra Banerjee and Gaganendra Krishna Deb, for the Respondent

Final Decision : Partly Allowed

Judgement

R.P. Mookerjee, J.—This appeal is directed against an order passed by the Court of Small Causes cancelling an intermediate valuation fixed by the Corporation of Calcutta under Clause (c) of Sub-section (2) of Section 131, Calcutta Municipal Act (Act 3 of 1923).

2. The premises in question is No. 199, Park Street. This had originally been let out at Rs. 300/- per month when the last general revaluation had been given effect to from the third quarter of 1946-47. From the first quarter of 1947-48 there was an intermediate revaluation on the ground that there had been substantial additional structures put up, and the annual value was fixed on the basis of Rs. 330/- per month being the fair rent of the premises. With effect from the fourth quarter of 1947-48, the Corporation proceeded to revalue the "entire" premises on the allegation that there had been subsequent to the previous intermediate revaluation substantial improvements effected. On this occasion, the annual value has been fixed by the Corporation on the basis of a monthly rental of Rs. 700/-. For the general revaluation as also for each of the two succeeding intermediate valuations the Corporation allowed a deduction from the amount of the gross rental value to two ten per cents. As to why it was so done

does not appear from the records before us. On the assessee's own case, the tenant pays the occupier's share of the taxes.

3. The assessee appealed to the Court of Small Causes, and raised various objections. The learned judge has come to the conclusion that the structural alterations effected were not in respect of an existing building but in reality new constructions. Even if they were taken to be "alterations", they were not substantial ones. Further, in any view of the case, the new annual value, fixed by the Corporation on the basis of a rental of Rs. 700/- per mensem was an exorbitant one, unsupported by any evidence on the record. The entire regulation has been cancelled.

4. The Corporation has come up on appeal to this Court. It has been urged that the assessment made with effect from the fourth quarter of 1947-48 was valid and proper.

5. To appreciate the questions of law which have been raised before us it will be necessary to refer in brief to the structural additions or alterations which were effected at the different Stages as also the nature thereof.

6. The premises in question covers an area of a little over 9 cottas. When the general revaluation was made in 1946-47 there were three brick-built structures on the plot, one of them being two-storied one and the others one-storied. One of the one-storied structures had been described as a garage the total area covered at this stage was 3400 square feet.

7. The changes effected before the intermediate revaluation which took effect from the first quarter of 1947-48 were that the garage referred to above was demolished and a larger area, including a portion originally covered by the garage was built upon with an asbestos covered shade resting on steel structures. At one end this new structure was attached to the two-storied building- The structures which were raised on this occasion covered an area of 1515 square feet. At this time, as stated already, Rs. 30/- was added to the monthly rent of Rs. 300/- as being the increased rental value of all the structures then standing.

8. The structures which were raised immediately before the fourth quarter of 1947-48 covered a total area of 674 square feet. The structures which were admittedly raised were: (1) a verandah with asbestos sheet roof and a room attached to the remaining one-storied "pucca" building which had been there from before the general revaluation; (2) another corrugated iron sheet covered room attached to the now asbestos sheet covered roof referred to above; and (3) another asbestos sheet entered verandah attached to the two-storied building which were standing from before the last general revaluation.

9. On behalf of the assessee it is contended (1) that the structures which have now been raised were not substantial additions or alterations which would attract the provisions contained in Clause (c) of Sub-section (2) of Section 131, Calcutta Municipal Act; they were in the nature of new buildings; (2) that the structures

raised, even though they fall within the category of additions or alterations, they were not substantial ones; and (3) that in any view, the annual value fixed by the Deputy Executive Officer on the basis of a monthly rental of Rs. 700/- was much in excess of what could reasonably be expected to be obtained from a tenant from year to year.

10. The learned Judge in the Court of Small Causes has given effect to all the contentions raised on behalf of the assessee.

11. The first question for consideration by us is whether the structures raised were new buildings coming under Clause (d) of Sub-section (2) of Section 131.

12. Clause (46) of Section 3, Calcutta Municipal Act defines a "new building" as meaning and including -

"(a) any building "erected from the ground upwards" after the commencement of this Act,

(b) any building which having collapsed or been demolished or burnt down for more than one-half of its cubical extent, is re-erected wholly or partially after the commencement of this Act, whether the dimensions of the re-erected building are the same as those of the original building or not,

(c) any hut which is converted into a masonry building after the commencement of this Act, and

(d) any building not originally constructed for human habitation which is converted into a place for human habitation after the commencement of this Act,"

13. During what circumstances would a building be considered to have been "erected from the ground upwards?"

14. According to the Corporation the new structures raised could not be deemed to be new buildings. One of the principal grounds being that they were attached to and were component parts of the pre-existing building. Mr. Bankim Chandra Banerjee on behalf of the assessee, on the other hand, argues that a structure should be deemed to be a new building if such a structure had been erected from the ground upwards irrespective of the question whether one of the walls was a party wall between the old existing structure, or that the new and old structures were attached to one another.

15. If a new building is not limited to structures which are in their entirety raised from the ground upwards, which are distinct and separate from the existing structures, various complications are bound to arise. If certain additions are made to an existing building using one of the walls of the latter as a support, which portion of the building is to be considered as constituting a new building? The new structure cannot stand by itself without taking into consideration the support which it receives from the old existing structures which had already been taken into consideration for assessing the annual value on the previous occasion.

16. Take another example when two pre-existing walls are used as support for resting a roof thereon. Two other new walls are raised from the ground on the two remaining sides up to the level of the new roof. Will this be considered to be a new building? If so, which portion of the structure is the "new building"? The position becomes much more difficult and intriguing if the two previously existing walls are parts of pre-existing buildings which have already been valued in their entirety.

17. If we scrutinise the different classes of structures referred to in Clause (46) of Section 3, Calcutta Municipal Act, defining a "new building", it will be apparent, leaving out Sub-clause (a) for the present, that Sub-clause (b) definitely includes re-erection of a partially demolished or burnt down structure being considered to be a new building and the manner in which they are to be so determined. Sub-clause (c) changes the character of the structure altogether, a hut being converted into a masonry building. Sub-clause (d) brings a pre-existing building, originally not constructed for human habitation, on conversion into a place for human habitation within the category of a new building. The pre-existing building thus is deemed to be a new building. The entire building is thus considered to be a new building and not any portion of the pre-existing building.

18. Under the different Sub-clauses of Clause (46) of Section 3, Calcutta Municipal Act, there is no possibility of a part of a building being considered to be a new building while another part is not.

19. On the facts already stated, it must, therefore, be held that the structures which were raised before the last intermediate revaluation with effect from the fourth quarter of 1947-48 were not new buildings.

20. The next question that arises for our consideration is whether the structures raised are in the words of Clause (c) of Sub-section (2) in the nature of any "alteration and improvement made in any building", and whether such alteration and improvement can be deemed to be "substantial" ones.

21. It was faintly suggested at one stage that the expression used in Clause (c) of Sub-section (2) of Section 131 referred merely to alteration and improvement and did not include additions to a building. This is not well founded. The term "alteration" used in this clause makes it abundantly clear that it includes changes and additions as well. Take for instance the case when on the top of an existing building an additional floor is put up. This is an alteration in the existing building which improves it. The limitation imposed is that the alteration would be an improvement upon the old structure. Such alteration as may depreciate the value of the premises are covered by Clause (e) of Sub-section (2) of Section 131 of the Act. The assessee is under such circumstances entitled to a deduction. Under Clause (c) of Sub-section (2) of Section 131, only such alterations as may introduce improvements can only be taken into account.

22. It was next contended on behalf of the assessee that the alteration and improvement referred to is as may be made "in" any building" as distinct from

alteration and improvement made "to" a building. We have been asked to accept the position that only such alterations as may be effected within the four walls under the roof may be taken into consideration. The erection of a varandah or of some room attached to the existing structures, or even the addition of another floor cannot make the rate-payer liable for an intermediate valuation. The preposition "in" does not always mean or is limited to "inside" of a particular thing. The connotation of the preposition "in" will depend on the context. The word "building" though used in the singular includes the plural and the alterations effected in any of the different structures or in respect of any part thereof which may be existing or standing would attract the provisions of this clause. Taking the relevant provisions into consideration, the word "in" should be taken to mean "in respect of or "in relation to."

23. Bearing in mind the interpretation of the expression "alterations and improvements in any building" as made above, we have now to consider as to what are the tests to be applied for determining whether the alteration and improvement had been substantial or not. The word "substantial" qualifies "alteration" and "improvement" and not the word "building", as was attempted to be suggested at one stage. The sense in which the word "substantial" is used when qualifying "alteration" and "improvement" can give rise to no difficulty whatsoever. "Substantial" refers to the fact that the alteration and improvement had neither been illusory nor inconsiderable; it was not merely nominal or flimsy, but it was an alteration and improvement which in comparison with the structures already standing can be deemed to materially alter the previous dispositions of the property, or the conveniences which were available. It is not possible to lay down any clear and specific definition of the word "substantial". It must be a relative one. Sometimes, the comparison of the floor area, sometimes the value of the structures, and on other occasions other considerations may weigh with the authority for determining whether in the particular facts of a case, the alterations and improvements can or should be deemed to be substantial ones.

24. The word "substantial", as it does not qualify the word "building", does not refer to the strength and durability of the structure, It cannot always be stated that if in effecting alteration and improvement, structures of a different type are introduced; that by itself will rule out the application of this clause. It is not the nature of the structure, but as stated already, the relative value, the area covered, and the material increase of the conveniences which would determine whether the structures raised are Substantial or not.

25. It will be necessary at this stage to consider another contention which has been raised on behalf of the Corporation. It is contended that for determining whether there has been any substantial alteration and improvement, the Court is required to examine the quantum and quality of the alteration and the improvement effected since the last general revaluation) i.e., inclusive of alterations and improvements which had been effected and which had already

been taken note of by the Corporation and had already been responsible for an intermediate revaluation. Or, in other words, the Corporation insists that the structures which were raised" before the intermediate revaluation for the first quarter of 1947-48 are to be added to the alterations which were effected before the fourth quarter of 1947-48. "

26. We do not think that we can give effect to this very wide proposition. Under Clause (c) of Sub-section (2) of Section 131, reference is made to alteration and improvement effected "during the currency of any period prescribed by Sub-section (1)" i.e., during the period following a general revaluation. There is, however, no provision in this section or in any other part of the Act which authorises the Corporation to apply Clause (c) of Sub-section (2) of Section 131 successively for the same alteration and improvement during the currency of the period following a general revaluation. This is, moreover manifestly inequitable. If the Corporation has already taken into consideration the fact that certain alterations and improvements effected support an intermediate revaluation that cannot again be taken advantage of when some more alterations and improvements are effected later on.

27. The right of the Corporation to change a valuation once fixed, whether it be one made under Sub-section (1) of Section 131, or one in revision of the earlier valuation and made subsequently under Clause (c) of Sub-section (2) of Section 131, it must be for the Corporation to show that the alterations and improvements effected after such intermediate valuation are really substantial ones.

28. It will, therefore, be necessary for us to consider whether the alterations and improvements effected in the premises in question, subsequent to the intermediate valuation brought into force from the first quarter of 1947-48 were substantial ones or not.

29. As we have stated already, the total area covered, as a result of the alterations and improvements after the first quarter of 1947-48 was 674 square feet as against the original covered area of 3400 square feet, and the structures raised in the first quarter of 1947-48 covered an area of 1515 sq. ft. According to the report submitted by the engineer examined on behalf of the assessee, Ex. 7 in the case, the value of these subsequent additions and alterations was Rs. 2860/-. The value of the alterations and improvements which had been effected before the first quarter of 1947-48 less the value of the structures which were demolished was about Rs. 9000/-. Taking all the facts into consideration, in our view, the alterations and improvements which were effected on the last occasion were substantial ones and not illusory or nominal ones.

30. We have, therefore, to consider what would be the effect of these alterations and improvements being considered to be substantial ones. On behalf of the assessee, an engineer was examined, and he has submitted a report. The structures which were raised, though with an asbestos roof, were on Steel frames

with "pucca" floors. He had put the maximum rent as at Rs. 348/- per month. In the present case, the original rent of the premises, accepted by the Corporation was Rs. 300/- per month. On alterations and improvements being effected, it was raised to Rs. 330/- per month. The case of the Corporation, as made, is that the present rate of rent for the premises in question would be Rs. 700/- per month.

31. The Corporation attempted to adduce some evidence by examining an inspector from the Assessment Department. The procedure followed by the Corporation in the present case as was disclosed by this witness makes a sorry reading. It appears that this particular assessing inspector had no special or technical qualifications. He had no experience of building construction, and it was not his duty to fix the rent or assess the annual value. Such duties are performed by the assessor or a sub-assessor, probably with the requisite qualification. Unfortunately, the Court has not the advantage in the present case of being informed as to the manner in which the unusual increase from Rs. 330/- to Rs. 700/- per month could be substantiated by a responsible officer.

In the present case, the assessing inspector stated that the Second Deputy Executive Officer had fixed the rental at Rs. 700/- per month after a personal inspection of the premises. We have no materials before us to determine what is the rent of similar premises in the locality. The deposition of this witness giving reference to certain "rates per unit of covered area" is of no assistance. It is impossible to fix a certain uniform rate of rent for all buildings for assessment of rates on the basis of a unit of covered area without taking into consideration the various particulars of each premises. The difference if any so far as the dispositions of the structures are concerned, size of the rooms, the conveniences available, the locality and various other considerations are to be taken into account. With the exception of a meager reference made to one or two continuous premises by the assessing inspector of the Corporation, the only other evidence available in this case is such evidence as has been adduced on behalf of the assessee.

32. It is an admitted fact that at the time when the last intermediate revaluation was made with effect from the first quarter of 1947-48 Rs. 330/- was considered by the Corporation to be a fair rental for the entire premises for determining the annual value. The engineer examined on behalf of the assessee has stated that the fair rent with the additional structure may be taken at Rs. 348/-. He has not, however, supported his rate of rent with reference to any existing premises in the locality. We cannot, therefore, accept the "ipse dixit" of this amount of rent as stated by the engineer. The engineer, however, has stated the estimated costs for effecting the alterations and improvements to be Rs. 2860/-. There is no evidence to the contrary. Proceeding on the basis that the value of the structures so raised was near about Rs. 3000/-, the addition to the annual value for the alterations and improvements will be near about Rs. 600/- in round figure. Considering the character of the structures and the alterations effected, we do

not see any reason to accept the position (in the absence of relevant evidence) that the conveniences which were available to the tenant previously were altered to such an extent as would justify the increase of the rental value by more than a hundred per cent.

Considering all the circumstances of this case and the value of the structures as put by the assessee's engineer, the fair monthly rent may be fixed at Rs. 380/- with effect from the fourth quarter 1947-48.

33. The result therefore is that this appeal is allowed in part. The order passed by the Court of Small Causes is set aside, and the annual value as put by the Corporation is modified, and the assessment is to be made on the footing of the gross rental being Rs. 380/-per month subject to the deductions of two ten per cents, which had been allowed by the Corporation when the last intermediate revaluation was made. The parties will bear their respective costs in this Court.

Renupada Mukherjee, J.

34. I agree.