

(1927) 06 CAL CK 0036
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Sheikh Keamuddin

RESPONDENT

Date of Decision : 20-06-1927

Acts Referred:

Calcutta Municipal Act, 1923 — Section 141
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 1927 Cal 802 : 103 Ind. Cas. 533

Hon'ble Judges : Page, J;Graham, J

Bench : Full Bench

Judgement

Page, J.—This is an appeal from an order of the learned Chief Judge of the Court of Small Causes passed u/s 141, Calcutta Municipal Act, 1923. It appears that on the 17th of January 1923 the executive officer of the corporation, pursuant to the power with which he was invested under Sections 127 to 138, Municipal Act, assessed the property in suit, No. 6, Raj Mohan Street, Calcutta, for the consolidated rate of Calcutta at an annual value of Rs. 14,310. u/s 139 of the Act the assessee lodged an objection to the amount of the annual value which had been assessed upon his property. u/s 140 the executive officer investigated the assessee's objection, and passed an order reducing the amount of the original assessment from Rs. 14,310 to Rs. 10,278. The assessee, being dissatisfied with the order of the executive officer, appealed to the Court of Small Causes pursuant to Section 141 of the Act. The learned Chief Judge of the Court of Small Causes further reduced the assessment, and held that the annual value of the house at the time of the assessment was Rs. 5,508. The Corporation of Calcutta have preferred the present appeal u/s 142 of the Act from the decision of the learned Chief Judge of the Court of Small Causes. It was contended by the learned advocate who appeared for the assessee that this Court had no jurisdiction to entertain an objection to the amount of the valuation which had been assessed by the learned Chief Judge of the Court of Small Causes because the determination of the annual value of the premises was a finding of fact which this Court u/s 100, Civil P.C. could not override in second appeal. In my opinion,

there is no substance in this contention.

2. The appeal to the High Court u/s 142 is not preferred under the Civil P.C., but pursuant to the special jurisdiction conferred upon the Court of Small Causes and the High Court under the Calcutta Municipal Act. Further, even assuming that Section 100, Civil P.C. is applicable, in my opinion, this appealing not an appeal within the ambit of Section 100, Civil P.C., because the order passed by the learned Chief Judge of the Court of Small Causes was not an appeal from an order passed by a judicial officer. The scheme of the Calcutta Municipal Act provides that in the first instance the executive officer should ascertain, by such means as are available to him, the annual value of the premises to be assessed, and such annual value

shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year, less, in the case of a building, an allowance of ten per cent, for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent.

3. Having estimated the annual value of the premises as best he could in the light of such information as was available to him it became the duty of the executive officer to give the notices provided in the Act in order that any person dissatisfied with the valuation might lodge an objection against it. An objection duly lodged is then to be investigated by the executive officer and after the investigation has been concluded, an order will be passed by the executive officer stating the amount which he holds to be the annual value, and this order is recorded in the official register. In my opinion in performing the functions prescribed under Sections 127 to 140, Calcutta Municipal Act, the executive officer is acting in an administrative and not in a judicial capacity. That this is so, I think, is clear from a consideration of the relevant sections of the Act, but if the analogous functions of the collector under the Land Acquisition Act (Act I of 1894) are regarded, it will be observed that the powers of the collector are wider than those which the executive officer under the Municipal Act is invested, and yet it has been held that in performing his functions with respect to the valuation of land acquired under the Land Acquisition Act the collector is acting in an administrative and not in a judicial capacity : *Durga Das Rakhit v. Queen Empress* [1900] 27 Cal. 820 and *Ezra v. Secy. of State* [1905] 32 Cal. 605. The reasoning upon which those cases were based is applicable in the present case, and, in my opinion, both upon principle and upon authority, the functions of the executive officer under Sections 127 to 140, Calcutta Municipal Act, are those of an administrative and not of a judicial officer. Both in India and in England it is the policy of the legislature that in the preliminary stages of assessment for local and general taxes the assessing officer should endeavour amicably to settle assessments without the investigation being circumscribed by the restrictions of the law of evidence.

It is, to say the least, perfectly intelligible that the expert official charged with

the duty of fixing a value should be possessed of all the information in the hands of the department, and should at the same time avail himself of all that is offered at the enquiry, his ultimate duty being not to conclude the owner by his so-called award, but to fix the sum which in his best judgment is the value and should be offered. It is not implied in this observation that the collector would be precluded by anything in the statute from inviting at the enquiry the criticism of the owner on any information he had in his hands, if he thought that in the circumstances this would advance knowledge:

Per Lord Robertson in *Ezra v. Secy. of State* [1905] 32 Cal. 605.

4. His Lordship further observed that if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the collector to the Court.

5. These observations of the Judicial Committee are not only apposite in the present case, but, in my opinion, set out the general policy of the legislature in connexion with assessments for local or general taxation. The learned advocate for the assessee, however, endeavoured to distinguish the cases relating to land acquisition upon the ground that under the Land Acquisition Act a person dissatisfied with the valuation of the collector is entitled to call upon the collector to refer the question of the valuation to the Court, whereas u/s 141, Calcutta Municipal Act, it is provided that

any person dissatisfied with the order passed on his objection may appeal to the Court of Small Causes.

6. But the language in which the two enactments are couched does not connote any real difference in the jurisdiction which is exercised. In my opinion, the functions exercised by the collector and the executive officer respectively are substantially, if not identically, the same in each case the officer acts in an administrative capacity, and if the party concerned is dissatisfied with the result of the officer's investigation into the assessee's objection to the valuation, it is open to the assessee to have the valuation adjusted in a judicial proceeding by the Court. From the order of the Court of Small Causes an appeal lies to the High Court u/s 142(3), Calcutta Municipal Act, but, in my opinion, that is not a second appeal within the ambit of Section 100, Civil P.C., and in such an appeal it is open to the High Court to reconsider the findings of fact arrived at by the Court of Small Causes. In support of the appeal the corporation contended that the finding of fact arrived at by the learned Chief Judge of the Court of Small Causes ought not to be sustained for this reason : that u/s 142 of the Act an order passed by the executive officer subject to the decision of the Court of Small Causes is final and, the onus being upon the assessee to rebut the correctness of the valuation arrived at by the executive officer, that he had failed to make out his case. The corporation called no evidence before the Court of Small Causes. They contended upon the evidence adduced by the assessee that the order of the executive officer ought to be affirmed. The only evidence on behalf of the

assessee was that of his gumastha who stated that he let out certain rooms at a rental of Rs. 510 per month. It was upon that evidence that the learned Chief Judge of the Court of Small Causes based his decision, but, in my opinion, the evidence of Abdul Rahman, the assessee's gumastha, was wholly insufficient to justify the learned Chief Judge in disturbing the order of the executive officer. Abdul Rahman did not state for what period or in what year he collected Rs. 510 per month as rent for the premises. He did not state whether Rs. 510 represented the rent of the whole house or only of part of the house. He did not produce his master's account books showing the rental for that house. He did not produce any rent receipts to support his oral testimony. He did not state that Rs. 1,250 a month was not a proper and reasonable rent which a landlord might have expected to realize for No. 6 Raj Mohan Street in January 1923, nor did he state what, in his opinion, was a proper sum to be taken as the annual value of the premises at the time of the assessment. On the contrary, the witness admitted that in February 1923, about the time when the assessment was made, the premises had been let at Rs. 1,250 a month; but the lease was not produced, and the witness added that the lease was cancelled in June 1923, and that the lessee absconded after having failed to pay four months rent. The best evidence of what reasonably might be expected to be obtained as rent for premises at any particular period is the rent what was actually paid or payable, although, of course, that evidence is not conclusive of the matter. Having regard to the evidence adduced before the learned Chief Judge of the Court of Small Causes, in my opinion, the order that the executive officer passed after investigation of the assessee's objection ought not to have been disturbed. The executive officer's assessment of Rs. 10,278 is equivalent to a rent of about Rs. 940 per month. That was considerably less than the Rs. 1,250 per month for which the premises were in fact let, at or about the time when the assessment was made. In my opinion, the assessee failed to sustain the burden which was upon him to satisfy the Court that the valuation at which the executive officer had arrived was either excessive or wrong.

7. In my opinion, this appeal ought to be allowed; the order of the learned Chief Judge of the Court of Small Causes is set aside, and the assessment of Rs. 10,278 by the executive officer restored and affirmed. The appellants will be entitled to their costs of this appeal, the hearing-fee being assessed at two gold mohurs,

Graham, J.

8. I agree. There are two preliminary matters which require decision before dealing with the merits of this appeal : firstly whether the appeal is in proper form, and whether it is a first or second appeal; and, secondly, there is the question of the burden of proof, and whether it lay upon the corporation, now the appellant, to justify the order of assessment, or upon the assessee, the present respondent, to show that the assessment was wrong. The decision on the first point is necessary in order to see what our powers are in dealing with the appeal,

If the appeal is a second appeal and comes within the purview of Section 100, Civil P.C., then we are, in that case, precluded from going into the facts : and, as there is evidence, however meagre that evidence may be, to support the finding of the Court of appeal below, that finding must stand, and there is an end of the matter. If, on the other hand, it is a first appeal from an original order, then we can go into the evidence and deal with the appeal on its merits. In my judgment the appeal has been filed in proper form. It is clearly not a second appeal falling with Section 100, Civil P.C., as the appeal to the lower appellate Court was not against a decree, but was against an executive order.

9. Then as to the question of onus : it seems to me that it was clearly upon the assessee who was the appellant before the Small Cause Court. In this connexion a brief reference may be made to certain sections of the Calcutta Municipal Act (Act 3 of 1923, B.C.). u/s 131 the assessment of the annual value is made by the executive officer of the corporation, u/s 138 that officer is required to issue notice on the assessee when the valuation is made for the first time, or is increased. Section 139 provides for notice of objection to the valuation. u/s 140 such objections are required to be investigated by the executive officer, or by the deputy executive officer. Against an order u/s 140 an appeal is provided for in Section 141 to the Small Cause Court, and u/s 142, Sub-section (3) there is a further appeal to this Court. It is important to note that under Sub-section (1), Section 142, every order passed by the executive officer u/s 131 is, subject to the provisions of Sections 139, 140 and 141, final. Similarly, under Sub-section (2) of this section, every order passed by the executive officer or deputy executive officer u/s 140 is, subject to the provisions of Section 141, final. It is thus clear that the order-3 passed at the first two stages by the officers of the corporation are final subject to the right of appeal which is provided for in the Act. The appellant challenged the assessment or the value upon which that assessment was based. It was, therefore, incumbent upon him to show that the order complained of was wrong, From a judicial point of view the matter is res integra when it comes before the Small Cause Court, and it then becomes the duty of the assessee, the appellant, to adduce necessary evidence in order to satisfy the Court that the assessment is erroneous.

10. The question then arises whether the respondent in the present case discharged the onus which was upon him. In my opinion, he signally failed to do so. My learned brother has dealt with the evidence adduced by him. The appellant did not himself go into the witness-box and give evidence in this case. He deputed his guraastha, who gave verbal evidence to the effect that the annual value was only Es, 510. No document of any kind was produced before the Court; no receipt was forthcoming. In my opinion the evidence, such as it is, is wholly insufficient for the purpose of discharging the onus which was upon the assessee. The learned Chief Judge of the Small Cause Court has observed in his judgment as follows:

The Corporation argues that because a lease was in force in April 1923 that is the

correct basis of a valuation. But they do not contradict the appellant's evidence that the lessee had left and was paying no rent. It seems clear that this lease was taken during the boom and that the value of the house is Rs. 510 a month.

11. It seems to me that the learned Judge approached the case from a wrong standpoint, and that virtually the effect of his judgment is to place the onus upon the corporation, for he goes on to say that the corporation did not contradict the appellant's evidence. The real point, it seems to me, was whether the evidence adduced by the appellant was sufficient in itself to show that the assessment was wrong.

12. For these reasons I agree that the appeal must be allowed and with the order which my learned brother has made.