(1955) 07 CAL CK 0040

In the Calcutta High Court

Case No : A.F.O.O. No. 95 of 1954

Corporation of Calcutta — APPELLANT

Vs

Union Jute Co. Ltd. — RESPONDENT

Date of Decision : 12-07-1955

Acts Referred:

Calcutta Municipal Act, 1923 — Section 127
Evidence Act, 1872 — Section 101, 102, 103

Citation : AIR 1957 Cal 230 : 60 CWN 153

Hon'ble Judges : Mallick, J;Bachawat, J

Bench : Division Bench

Advocate : Krishna Lal Banerjee, for the Appellant; Sudhir Ranjan Banerjee, Soumendra Nath Mukherjee and Bijoy Kumar Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Bachawat, J.—This is an appeal from an order of the Small Cause Court Judge, Sealdah, relating to the valuation of premises No. 10, Radhanath Choudhury Road in Ward No. 19 of this city,

2. The premises was assessed u/s 127(b) of the Calcutta Municipal Act, 1923, for the second quarter of 1941-42 at an annual valuation of Rs. 8669/-.

3. There was a general re-valuation of the premises with effect from the 1st of July, 1947 upto 30th of September, 1950. This valuation formed the subject matter of Municipal Appeal No. 335 of 1951. This appeal is from the order passed by the learned Judge of the Court of Small Causes in Municipal Appeal No. 335 of 1951, There was also a general re-valuation of the premises with effect from the 1st of October, 1950. This valuation formed the subject matter of the Municipal Appeal No, 247 of 1951.

4. It is common case that on the same date on which the Judge of the Small Cause Court delivered his judgment in Municipal Appeal No. 335 of 1951, he also delivered his judgment in Municipal Appeal No. 247 of 1951, Mr. Sudhir Ranjan

Banerjee appearing on behalf of the respondent asserted that no appeal has been filed by the Corporation of Calcutta from the judgment of the learned Judge of the Court of Small Causes in Municipal Appeal No. 247 of 1951. Mr. Krishna Lal Banerjee, appearing on behalf of the Corporation of Calcutta stated that in the absence of instruction he was not in a position to admit whether or not an appeal has been filed. It is however common case that the decision in appeal No. 247 of 1951 does not amount to res judicata even if no appeal has been filed from the judgment in that appeal. It is also common case that this judgment in Municipal Appeal No. 335 of 1951 will not affect in any way the assessment of the valuation made in Municipal Appeal No. 247 of 1951.

5. As I have said already, at the general revaluation with effect from the second quarter of 1941-42 the premises was assessed on the basis that it was not erected for letting purposes and was not ordinarily let. In course of the valuation under appeal both parties were agreed, however, that the valuation should be made u/s 127(b) of the Calcutta Municipal Act, 1923, on the basis that the building was ordinarily let.

6. On that basis the annual value of the premises assessed by the Corporation of Calcutta was a sum of Rs. 11880/-. This figure was arrived at on the basis that Rs. 1100/- was the reasonable monthly rental of the premises and that 10 per cent of the rental should be deducted from the annual rental calculated on the basis of the above monthly rental.

7. The respondent was dissatisfied with this valuation and gave due notice, of objection to that valuation. The Special Officer heard the objections. He sent the matter for enquiry and report. The inspector reported that the actual rental realised from the premises was Rs. 151/8/- per month including tax and that the rent per room as realised from the tenants was, however, low and that in view of the fact that all the tenants are employees of the owner, assessment on dwelling basis should perhaps be more justified or fair rents are to be taken. The Special Officer duly considered the report of the Inspector and passed a final order assessing the annual valuation of the property to be Rs. 8669/-. The relevant part of the note of the final order of the Special Officer is as follows:

803 x 12 - 9636 1100 x 12-13200 10 % 964 10% - 1330 8672 11880

Rent too low. Let to employees. Seen record and report. Heard party. O. V. R. on rental basis. Kept fair at Rs. 8669/-."

8. We read the order of the Special Officer to mean that the rent actually realised from the property was too low and was, therefore, not the proper criterion of the reasonable rental of the premises and in the absence of further materials the old valuation of Rs. 8669/- ought to be accepted as the reasonable annual rental of the premises and that on that basis the monthly reasonable rent works out to be Rs. 803/-.

9. From this order the Municipal Appeal No. 335 of 1951 u/s 141 of the Calcutta

Municipal Act 1923, was filed by the respondent assesses.

10. The respondent-assessee called only one witness named Girish Chandra Sarder, who was the Head Clerk of the respondent for the last 26 years.

11. It appears from his evidence that the premises is a one-storied asbestos shed consisting of 285 rooms in all, including a shop room and four rent-free quarters. There is no electric light inside of the rooms. There is no kitchen. There are common bath stands and common latrines. The premises may be correctly described as a cooly barrack. Only the coolies of the respondent assessee were allowed to live in this barrack. Outsiders were not permitted to live there. The witness stated that in these 285 rooms some 1100 coolies might live. Each room had a door, a window and a verandah. The shop rooms had ah area of 19'' 7" x 9'' 7" and were let out at a rent of Rs. 10/- per month. A cooly room measured 9'' 7" x 9'' 7''''. Rent of -/2/- per'' room was realised from the coolies. The sole witness called on behalf of the respondent-assessee admitted that the rent of -/2/- per week was concession rent.

12. We have carefully considered the- materials on the record and, we are satisfied that a rental of -/2/- per week per room is not reasonable rental of the cooly rooms. We have taken into consideration amongst others, the following facts:

13. The size of the room is 9'' 7" x 9'' 7". The shop room measuring 19'' 7" x 9'' 7" has been let out at Rs. 10 per month. Although the rent of the shop room is not the true criterion of the rent of a cooly room we note the great difference between the rental of the shop room and the rent of the cooly room. We also note that the only witness called on behalf of the assessee admits that the rent charged was concession rent.

14. u/s 127(a) of the Calcutta Municipal Act, 1923, we have to determine the gross annual rent at which the premises might at the time of assessment reasonably be expected to let from year to year. We are satisfied that the annual rent assessed on the basis of two annas per week is not the gross annual rent at which the premises might at the time of assessment reasonably be expected to let from year to year.

15. The Special Officer assessed the annual valuation of the premises at Rs. 8669/-, taking into consideration the fact that (a) the rent actually realised was too low and (b) the fact that the premises was formerly assessed at the same annual valuation, u/s 127(b) of the Calcutta Municipal Act, 1923. We are satisfied that the Special Officer did not take into account any irrelevant consideration.

16. The subject matter of enquiry in an assessment of annual value u/s 127 (a) of the Calcutta Municipal Act, 1923 is always the gross annual rent at which the premises might at the time of assessment reasonably be expected to let from year to year. The rent which is actually realised from the premises may in ordinary circumstances be taken to be the rent at which the premises might

reasonably be expected to let. The presumption that the actual rent is the reasonable rent is, however, rebuttable. We are satisfied that on the facts of this case the presumption that the actual rent realised from the premises is reasonable rent has in fact been rebutted in this case. The matter is then left at large. Actual rent realised not being the criterion of the reasonable rent one is free to assess the reasonable rent by recourse to other material considerations. We are satisfied that in the absence of any other evidence of the reasonable rental at which the premises might be let from year to year a fair return on the capitalised value of the building may in a proper case represent the reasonable annual rent at which the premises might be let.

17. In the Municipal Appeal filed by the assessee the orius is upon the assessee to show that the order of the Special Officer and his annual valuation was wrong. In our opinion assessee entirely failed to discharge that onus. He called a witness to prove the actual rent which was realised and who also at the same time admitted that the rent so realised was concession rent. The evidence of the witness called by the respondent assessee showed clearly that the rent actually realised from the premises could not be the rent at which the premises might reasonably be expected to let from year to year.

18. Mr. Sudhir Ranjan Banerjee vigorously argued the appeal on behalf of the respondent. He contended that the doctrines of rebus sic stantibus must tie applied. That doctrine of rebus sic stantibus of the Calcutta Municipal Act, 1923 means that full effect must always be given to the words "at the time of assessment" in S. 127 of the Calcutta Municipal Act, 1923. We must, therefore, take the property as it is. We must assess the property on the basis that it is a cooly barrack and adapted for the purpose of being let out to the coolies and operatives of the respondent-assessee. We cannot assess the premises as a shop room or as the residential quarters of middle class men. Still we must determine the annual rent at which the premises might at the time of assessment reasonably be expected to be let from year to year to a cooly. The actual rent, if it is merely a nominal rent, is not the criterion of the rent at which the premises might reasonably be let. Giving full effect to the doctrine of rebus sic stantibus and to the words "at the time of assessment" in Section 127 of the Calcutta Municipal Act, 1923 we are clearly of the opinion that the rent actually realised from the premises could not be the basis of valuation in this case.

19. We, therefore, allow this appeal, set aside the judgment of the Small Cause Court Judge, Sealdah and restore the order of the Special Officer passed in this case.

20. We declare that this judgment in no way affects the judgment of the Small Cause Court Judge, Sealdah in Municipal Appeal No. 247 of 1951.

21. There will be no order as to costs in this appeal.

Mallick, J.

22. I agree.

