(1958) 02 CAL CK 0042

In the Calcutta High Court

Case No : Original Order No. 132 of 1956

D.P. Dutta APPELLANT

Vs

Corporation of Calcutta RESPONDENT

Date of Decision : 12-02-1958

Acts Referred:

Bengal General Clauses Act, 1899 — Section 8
Calcutta Municipal Act, 1923 — Section 131, 140, 140(1), 141
Calcutta Municipal Act, 1951 — Section 172, 182, 2
Civil Procedure Code, 1908 (CPC) — Section 99

Citation : (1959) 1 ILR (Cal) 462

Hon'ble Judges : Renupada Mukherjee, J;Banerjee, J

Bench : Division Bench

Advocate : Surendra Nath Basu and Kashi Nath Mitter, for the Appellant; Biswanath Nashkar, for the Respondent

Final Decision : Dismissed

Judgement

Renupada Mukherjee, J.—The Appellant is the Assessee and the appeal is directed against an order passed by the Judge, Sixth Bench, Court of Small Causes, Calcutta, in a Municipal Appeal case filed by the Assessee.

2. The facts giving rise to the present appeal may thus be stated in brief. Premises No. 28, Karbala Tank Lane, were the subject-matter of the last general revaluation which took effect from the third quarter of 1950-51. This assessment was made in accordance with the provisions of the Calcutta Municipal Act, 1923, which was repealed and substituted by the Calcutta Municipal Act, 1951, which came into operation on May 1, 1952. The premises consist of 2 cottas 14 chitaks of land and a structure standing thereon.

3. The assessing department of the Calcutta Corporation valued the land at Rs. 4,800 per cotta and the structure at Rs. 19,717. An objection having been preferred by the Assessee, the Special Officer who heard the objection reduced the value of the land to Rs. 3,500 per cotta and the valuation of the structure to

Rs. 15,184.

4. Not being satisfied with the decision of the Special Officer the Assessee filed a Municipal Appeal case in the Court of Small Causes, Calcutta, and the learned Judge who heard the appeal allowed it and remitted the assessment case for fresh decision on the ground that the notices u/s 140 of the Calcutta Municipal Act, 1923, had been signed not by the Executive Officer of the Calcutta Corporation, but by an Assistant Assessor. The learned Judge followed the case of Gayadinram v. A.D. Khan (1951) 55 C.W.N. 667. This decision which was given by a Judge sitting singly appears to have been dissented from in a subsequent case heard by a Division Bench of this Court which held that Section 140(1) of the Calcutta Municipal Act of 1923 does not provide that such a notice shall be issued under the signature of a particular officer, the only requirement of law being that the notice shall be given to the objector of the time and place at which his objection to valuation will be investigated. This last mentioned case has been reported. [Sudhangshu Kumar Basu v. Corporation of Calcutta (1954) 58 C.W.N. 1023]. And I happened to be a party to this decision. This decision was, however, given after the disposal of the Municipal Appeal case mentioned above, and the judgment given in the latter case though erroneous when considered in the light of the Division Bench decision, must be held to be binding between the parties in the present proceeding, because no further appeal was taken to this Court from that decision.

5. The objection of the Assessee was this time heard by the Deputy Commissioner of the Calcutta Corporation and he fixed the annual value at Rs. 759, i.e., at the same figure at which it had been previously fixed by the Special Officer. Thereafter the Assessee filed a Municipal Appeal case in the Court of Small Causes, Calcutta and the learned Judge who heard the appeal dismissed it. So the Assessee has preferred the present appeal.

6. Mr. Basu appearing on behalf of the Assessee Appellant submitted three points for our consideration which we shall consider one after another.

7. The first contention of Mr. Basil was that the new Calcutta Municipal Act of 1951 had already taken effect when the learned Judge of the Court of Small Causes remitted the assessment case for disposal according to law, and so assessment should have been made in pursuance of the provisions of the new Act of 1951, and not those of the old Act of 1923, as has been admittedly done by the Corporation. In support of this argument, Mr. Basu drew our attention to Sections 2 and 172 of the new Act of 1951 which make a specific saving in respect of assessments already made under the repealed Act of 1923. Mr. Basu contended that in view of the provisions of these two sections, assessment matters, which were commenced during the period when the old Act of 1923 was in operation but were not finalised before the repeal of that Act, must be governed by the provisions of the new Act. In our opinion this contention is without any substance. To hold that an Assessment proceeding commenced under the old Act of 1923, but not completed before the repeal of that Act would

be governed by the new Act of 1951 would be tantamount to giving a retrospective effect to the new Act which, in the absence of any such express provision or clear implication in the statute, is not permissible to give [vide the case United Commercial Press Ltd. Vs. Satyanarain Chamaria,]. There being no express provisions or clear implication in the Calcutta Municipal Act of 1951 that it would have retrospective operation, proceedings commenced under the repealed Act of 1923 should be carried out under the provisions of that Act by virtue of the operation of Section 8 of the Bengal General Clauses Act. The view that the Calcutta Municipal Act of 1951 has no retrospective operation has also been taken in a case Ramani Ranjan Bose Vs. Corporation of Calcutta, .

8. Mr. Basu submitted in the above connection that after the assessment matter was remitted to the Calcutta Corporation by the learned Judge of the Court of Small Causes, who had heard the previous Municipal Appeal case, the Corporation of Calcutta, as a matter of fact, issued a notice u/s 182 of the new Act of 1951 informing the Assessee of the time and place at which his objection was to be investigated. Mr. Basu, therefore, contended that it was not open to the Corporation to turn round and say that the provisions of the old Act applied to this case. Mr. Naskar, on the other hand, submitted on behalf of the Respondent Corporation that the notice was wrongly labelled as a notice u/s 182 of the new Act of 1951, and in reality, it was a notice under the old Act of 1923 for hearing of the Assessee''s objection. It appears to us that the mere fact that the notice bore a heading that it was given u/s 182 of the new Act of 1951 does not bind the Corporation to the position that the old Act of 1923 would not apply and the new Act of 1951 would apply. The Assessee was fully aware that the proceedings for assessment had been initiated when the old Act of 1923 was in operation, so no prejudice was caused to him by the above notice. Notice was given to him merely for the purpose of informing him of the time and place at which his objection was to be heard. It is not the case of the Assessee that the notice was not served upon him. In fact, he appeared before the Deputy Commissioner, and the objection was heard in his presence. Even if, therefore, the notice bore a wrong heading, Section 99 of the CPC would come to the assistance of the Respondent and protect the proceedings, if they were otherwise valid and regular. There is no other invalidity or irregularity in the proceeding, and we hold that the assessment was rightly made by the Respondent Corporation under the provisions of the Calcutta Municipal Act of 1923. The first contention made on behalf of the Appellant by Mr. Basu therefore fails.

9. Mr. Basu contended in the second place that the effect of the order of remand passed in the previous Municipal Appeal case was to invalidate and set aside the entire proceeding of assessment started by the Corporation and so even assuming that the old Act would apply the Corporation should have taken up this matter from the very beginning, and as this was not done the assessment should be set aside. In support of this contention Mr. Basu relied on some observations made by Lahiri, J. in a case which he heard as a third Judge on account of a difference of opinion between two learned Judges of this Court. The case is The

Corporation of Calcutta v. Sm. Padma Debi (1956) 61 C.W.N. 129. The observations which occur at p. 14S of the report are quoted below:

Assessment is one continuous process beginning with Section 131 and ending with the determination of the objection u/s 140. Thereafter the Assessee is given a right of appeal to the Court of Small Causes u/s 141, but so far as the rating authorities are concerned the process of assessment terminates with determination of the Assessee''s objection u/s 140.

10. It was contended by Mr. Basu on the strength of the foregoing observations of Lahiri, J. that the order of the Special officer having been set aside in the previous Municipal Appeal case and the whole assessment being one continuous process, the Corporation should again have made a start from Section 131 of the old Calcutta Municipal Act of 1923. In our opinion, there is no substance in this objection, because what was challenged in the earlier Municipal appeal case was the validity of the notice u/s 140 of the old Act of 1923 and not the validity of the earlier proceedings, and the learned Judge directed that the Corporation should "proceed with the assessment case in accordance with law" certainly the entire proceedings relating to the Assessment were not set aside. Thereafter the Corporation issued a fresh notice on the Appellant, and the Deputy Commissioner disposed of his objection, and the Appellant filed the present Municipal Appeal case in the court below against his order. In our opinion, the judgment given in the previous Municipal Appeal case did not require the Corporation to take up the assessment matter from the very beginning. The second contention urged on behalf of the Assessee, therefore fails.

11. The third and last contention urged on behalf of the Appellant was that in any event, the quantum, of valuation made by the Corporation is excessive and it should have been reduced by the court below. Mr. Basu submitted that the valuation of land at the time of the prior general revaluation was admittedly Rs. 2,000 per cotta, and as this valuation has been increased during the present assessment, the onus lay on the Respondent Corporation to prove that the increase is justified. We may mention here that the valuation of the structure as made by the Corporation was not - challenged on behalf of the Appellant. In support of the above contention of Mr. Basu, he relied on a division Bench decision. Lal Chand and Sons v. Corporation of Calcutta (1952) 57 C.W.N. 259. Mr. Naskar, on the other hand, contended on behalf of the Respondent that in all cases of assessment whether there has been any increase or not in valuation since the last general revaluation, the onus lies on the Assessee to show that the valuation made by the Corporation is wrong or excessive. In support of this contention Mr. Naskar relied on another Division Bench decision of this Court [Corporation of Calcutta Vs. On the death of Sm. Rajlakshmi Debi her heirs Nani Gopal Mukhopadhyay and Another, .].

12. Lal Chand''s case referred to above has been sought to be distinguished by the learned Judges in the last mentioned case. Whether there is any ground for such distinction, or whether there is any real conflict of judicial opinion between

the two cases, need not be decided here in view of the fact that there is ample evidence In the present case on the side of the Corporation to show that the increase in the land valuation is justified. Witness Anil Krishna Paul, an assessing inspector of the Corporation, proved that the land of some neighbouring premises was valued at Rs. 3,700 and Rs. 3,800 per cotta, and the Assessee did not raise any objection. The Assessee also admitted that there has been an abnormal increase in land value due, according to the opinion of the Assessee, to abnormal conditions, but the increase is there. The court below has evidently accepted the valuation of land made by the Corporation by accepting the evidence referred to above. That being the case, the court below having decided the question of valuation upon actual evidence, apart from the abstract rule of onus, we do not think that there is any ground for reducing the quantum of valuation. The third contention made on behalf of the Appellant, therefore, fails.

13. All the grounds taken in this appeal on behalf of the Appellant having failed, this appeal is dismissed with costs, hearing fee being assessed at three gold mohurs.

14. No order is necessary on the application filed by the Appellant on February 10, 1958.

Banerjee, J.

15. I agree.