
(1930) 06 CAL CK 0014
In the Calcutta High Court

J.C. Mukerjea

APPELLANT

Vs

Karnani Industrial Bank Limited

RESPONDENT

Date of Decision : 20-06-1930

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : AIR 1930 Cal 770

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is an appeal from the decision of my learned brother Lord-Williams, J., who has made absolute a Rule issued u/s 45, Specific Relief Act. The Rule is in the nature of a mandamus to hear and determine" certain matters according to law, and is directed against Mr. J.C. Mukerjea who holds the office of the Chief Executive" Officer of the Calcutta Corporation.

2. It appears that the applicant bank are the proprietors of certain premises-in Park Street. Those premises included at one time certain shops and certain buildings called Palais-de-Danse Park Hotel, and other hereditaments. The premises were assessed at a certain figure under the machinery provided by Clause (1), Section 131, Calcutta Municipal Act of 1923. That clause provides for a sexennial assessment of all the properties in Calcutta. On 5th January 1928, owing to the demolition of certain parts of the property, the valuation was reduced from Rs. 30,618 to the figure of 23,531, and on 23rd June 1928 the applicants took objection to this valuation on the ground that the reduction was insufficient and inadequate. Further demolition appears to have taken place thereafter, and, on 2nd July 1928, the valuation was further reduced from Rs. 23,531 to Rs. 17,140. To this the applicants lodged an objection on 13th July complaining again of the inadequacy of the reduction and maintaining that it should have been reduced to the figure 7,694.

3. Now the question which has arisen with reference to this matter is as to the statutory obligation of the Chief Executive Officer in the matter of hearing and

deciding upon the applicants' objection. The Chief Executive Officer "appears to have dealt with this case in accordance with the long-standing practice both under the Calcutta Municipal Act of 1923 and under the preceding Act of 1899 and the view which he takes, and which he presents to us, is that when, owing to demolition the sexennial assessment has to be reduced, by virtue of Clause (e), Sub-section (2), Section 131, the owner or occupier, while he is given the right to claim a revaluation in such a case, is not by the statute given any right of appeal upon the question of the correctness of the revaluation, at all events in a case such as the present where the valuation has been reduced and not increased. The question so raised has to be determined upon a consideration of the language employed in the various sections of Chap. 10 of the Act of 1923. The sections to which I am about to refer appear to be a revised edition of sections substantially the same which appeared in the Act of 1899 as Section 152 and the following sections, and the difficulty which we have to resolve in the present case is just as great in the Act of 1899 as it is in the Act of 1923. We have to take the language of the Statute of 1923 by itself and to construe it if we can.

4. By Sub-section (1), Section 131, provision is, made for a general assessment or valuation, ward by ward, of the whole of the properties within the jurisdiction of the Corporation and it is provided that that valuation is to have effect for the purpose of assessment for the following six years. By Sub-section (2) however provision is made for certain cases in which it is considered unjust or impracticable for the valuation to remain uninterfered with for so long a period as six years. The first case which is dealt with is the case of bustees. Bustees which have huts upon them may be valued annually at the discretion of the Executive Officer and a right is given to the owner to claim that they shall be valued annually if he so desires. The language is "and shall be so valued on the application of the owner." So the right to have them revalued is plainly given as the right of the subject. There is only one other case in Sub-section (2) where similar right is given to the subject and that is by Clause (e). There provision is made whereby demolition of the property, or for similar reasons, it is thought reasonable that the valuation originally made for six years should not be allowed to have effect for the whole of the period; and there again

the Executive Officer shall, as soon as practicable on application being made to him in writing by the owner or occupier of such building, cause it to be revalued.

5. The other cases dealt with by Sub-section (2) are cases where it is just and reasonable that the valuation should be increased or that property not valued should be brought into assessment. There is the case of unvalued lands and buildings, Clause (b); there is the case of alterations and improvements, Clause (c); there is the case of new buildings, Clause (d); and similar provisions in Clause (f) for alterations and improvements after revaluation. In these cases the language of the statute is that the Executive-Officer may have a new valuation of the premises. Leaving out of account Sections 133 to 135, which deal really with assessment rather than valuation, we may come to Section 137. That section is

in the following terms:

(1) When the valuation u/s 131 of the lands and buildings in any ward has been completed, the Executive Officer shall cause the respective valuations to be entered in a list and give public notice of the place where such list may be inspected. (2) Such notice shall be by advertisement in local newspapers and also by placards posted up in conspicuous places throughout such ward, (3) The Executive Officer shall also cause a placard to be posted up in each bustee showing separately for each building situated in the bustee the valuation assigned to it in the valuation list.

6. Now, so far as that section is concerned, it has been suggested in the judgment of the learned Judge that, when an intermediate valuation is made under Clause (e), Sub-section (2), Section 131, the provisions of Section 137(1) take effect, that is to say, a separate valuation list has to be made out and the notices required to be given by sub-Sections (1) and (2), Section 137, have to be issued. That no doubt is a possible solution of the difficulty which arises upon Section 139, but I cannot see my way to accept it. It appears to me reasonably clear that the provisions in Sub-section (1), Section 137, are intended to apply when the general valuation for a ward has been completed. In that case, a list has to be made out of all the different valuations of the different properties. Then the statute says that public notice by advertisement in local newspapers and by placards is to be given. Of what? Of the place where such list may be inspected. It cannot, I think, be as from day to day particular action has to be taken under Clause (e), Section 131, reducing the valuation of particular premises by reason of substantial demolition, that after the premises have been revalued it is the duty of the Corporation to issue fresh notice in newspapers and placards merely of the place where the list may be inspected. The notice contemplated by Section 137 is not drafted by the Act but it is clear enough what it is to contain. It is a notice to say that the rate-payers are informed that the valuation list has been posted at such and such a place and that, if they go to the office of Mr. X at such and such address, they are at liberty to see it. It cannot be intended that every few days throughout the whole of the year public notices of that sort are to be published in the newspapers and on placards, and it seems to me, reasonably clear that the notice referred to in Sub-section (1), Section 137 is a notice which is to be consequent upon the completion of a general valuation of the whole of the ward.

7. We then come to the provisions of Section 138. They are to this effect:

The Executive Officer shall, in all cases in which any land, bustee or building is for the first time valued; or in which the valuation of any land, bustee or building previously valued, is increased u/s 131, give special notice thereof to the owner or occupier of the same; and when the valuation is so increased, the said notice shall contain a statement of the grounds of such increase.

8. Now, I do not know what view has hitherto been taken by the Corporation but

it appears to me to be reasonably plain that Section 138 will apply to an increase of valuation made under any of the headings of Sub-section (2), Section 131. It not merely says that, where upon a general assessment a property is valued at a higher figure than before this notice is to be given, but it would apply to a case under Sub-clause (a) where an annual valuation has to be increased, it would apply to a case under Sub-clause (b), it would apply to a case under Sub-clause (c) and it would apply to a case under Sub-clause (d). I may say that, in the case of a bustee, the Act of 1899 made this absolutely clear; but I think that Section 138 of the present Act applies to all cases of an increase in valuation and not merely to a case where general assessment of valuation has put a higher figure than previously. Bearing that in mind, we come now to the following section upon which this question ultimately turns. Clause 1 is very wide, and broad:

Any person who is dissatisfied with a valuation made under this chapter may deliver at the Municipal Office a written notice stating the grounds of his objection to such valuation.

9. We observe that there is no way of construing that clause as meaning "any person who is dissatisfied with a valuation, made under Sub-section (1), Section 131." The language is "under this chapter." Having regard to the subsequent sections including Section 146, it may be a matter of doubt whether the draftsman fully appreciated what he was saying in this clause, but it certainly has reference to the immediately preceding sections. I leave out of account for the present any subsequent section. That right having been given to any person who is dissatisfied with a valuation made under this chapter, can it be contended that the valuation which the Executive Officer is required to make either under Clause (a) or Clause (e), Sub-section (2), Section 231 is not within the scope of the clause? In my opinion any such contention must be wrong and we must take it therefore that the general language of this subsection does apply to this case of valuation. It is said however that when we come to Sub-section (2), Section 139, we find that the somewhat generous language in Sub-section (1) is very materially cut down. Sub-section (2) is this:

Such notice shall be delivered within 15 days after the publication of the notice referred to in Section 137 or after receipt of the notice referred to in Section 133, if such notice is received after the publication of the notice referred to in Section 137.

10. The contention is that that cuts down the general language of Sub-section (1) with the result that an appeal is only given against the valuation on the occasion of the general assessment or else against any valuation the result of which has been to bring into assessment lands not previously assessed or to cause an increase of assessment. The drafting of the statute in this respect gives rise to a good deal of hesitation on the part of anyone who has to interpret it but it seems to me to be wrong to regard Sub-section (2) as cutting down in so drastic a manner the deliberate general language of Sub-section (1). It has to be

remembered that the Act in certain cases provides that, upon a valuation being made, notice of one sort or another shall be given for the benefit of the owner or occupier. It provides that such public notice shall be given at the end of a general assessment for the ward. In any case of increase of assessment, or in any case of a building being assessed for the first time, a specific notice is to be given. I omit the case of bustee which may require separate consideration, but in other cases as I read it, there is no provision for a notice to the owner at all. In these circumstances, it seems to me to be nearer to the language and the intention of the Act to say that the effect of Sub-section (2), Section 139, is this: that, in those cases where under the Act the owner is given the benefit of a notice, the time within which the objection is to be taken is limited to a certain period after receipt of the notice and, in cases where there is no provision for a notice, the effect of Sub-section (2) is not to take away his right to object but merely that there is no limit or no effective limit upon his right. I see no absurdity in this construction. After all, if a person does not object, he will in most cases be under the disadvantage at any rate for the meantime, of having to pay upon the basis of the valuation made. There is no such temptation to postpone filing objections to assessment so as to make it incumbent upon the Court to assume that there is a time limit in every case and, although I do not think that it is at all certain that the draftsman of this Act appreciated the meaning of the language he employed, I think that the construction which I have indicated is the most reasonable construction - it being remembered that the duty of the Court is, not to put a construction which seems to the Court to be best in the sense that it will work out with the most justice or with the least inconvenience but to put a construction which seems to the Court to be the best in the sense, that it is nearest to the language of the legislature. It does not seem to me reasonable that it should be supposed that, in spite of Sub-section (1), Section 139, the owner or occupier is to have no right of objection and it does not seem to me to be much more reasonable to say that he is to have a right of objection, but that his objection is to be dealt with, in some cases, formally u/s 140 and in other cases, informally without any of the provisions of Section 140 being complied with. After all, the provisions of Section 140 are very few and very simple. They merely say that a man is to have notice, that he or his agent is to be heard and that the order is to be recorded in the register.

11. It remains only to say that I have construed Section 139 without reference to Section 146. It is quite clear that Section 146 provides machinery as regards objections reran appeal and, as Section 146 is subsequent to Section 139, I do not think that any light upon the meaning of Section 139 is, in these circumstances, to be derived from a consideration of the provisions of Section 146. But let us consider Section 146. It will be remembered that by Section 131, upon improvements and alterations in a building and in certain other cases, the Chief Executive Officer is given a right to have a new valuation for the purpose of increasing the assessment. Section 146 gives power to the Executive-Officer to amend the assessment book; and when we come to consider his powers we find

that the powers given to him are powers which he may exercise suo motu. Looking at Clause (c), Section 146, we find that his power to increase the assessment suo motu is very limited indeed. That is confined to cases where in his opinion at the last general valuation the premises have been substantially under-valued by reason of misrepresentation or fraud; so that he has got no general right to raise people's assessment within the six years. His only right is in the particular cases of misrepresentation or fraud. That shows that the provisions of Sub-section (2), Section 131 are not to be confounded with the general right of the Executive Officer u/s 146. I have no doubt at all that the learned Judge is right in saying that both Clauses (a) and (e), Sub-section (2), Section 131 give a right to the subject to call for a new valuation with a view of reduction in the assessment and the mere fact that by Clause (b), Section 146, the Executive Officer has the power to reduce the amount of any valuation in the assessment book - a power from the exercise of which there is no appeal - in no way shows that there is no appeal from a valuation which u/s 131 the owner or occupier has a right to require. After all, if an owner or occupier has no right to require a revaluation, the Executive Officer in a proper case may still reduce his assessment and naturally enough no right of appeal from that is given in a case in which the statute has not given a right to revaluation. Hence for the present purpose, the construction of Section 139 is not to be controlled or governed in any way by a contemplation of the concluding words of Clause (h), Section 146.

12. For these reasons, it seems to me that the learned Judge decided the main points in this case correctly.

13. A question has arisen whether or not the necessity for hearing and dealing with the objection of the present applicants has been removed by the new general assessment having come into force as from 1st October 1929. But it appears that the necessity for hearing the objection has not been removed under the circumstances; and, on this account, it appears to me that the appeal must be dismissed with costs.

C.C. Ghose, J.

14. I agree.