
(1952) 04 CAL CK 0005
In the Calcutta High Court
Case No : A.F.O.O. No. 23 of 1951

Lalchand and Sons

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 03-04-1952

Acts Referred:

Calcutta Municipal Act, 1923 — Section 127, 141
Evidence Act, 1872 — Section 101, 102, 103, 9

Citation : AIR 1953 Cal 428 : 57 CWN 259 : (1954) 1 ILR (Cal) 247

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

Bench : Division Bench

Advocate : Probhat Kumar Sen Gupta, Sudhir Ranjan Banerjee and Soumendra Nath Mukherjee, for the Appellant; Krishnalal Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Mookerjee, J.—The principal question raised by the assessee in this appeal u/s 142(3), Calcutta Municipal Act is as to how the "estimated present value of the land valued with the building as part of the same premises" is to be made under Clause (b) of Section 127 of the same Act. Premises No. 76, Lower Circular Road covers an area of over 184 cottas and is in the occupation of the owner. There are three different kinds of buildings; one two-storeyed building of which the upper floor is used for residential purposes and the ground floor for the location of a press and godown --belonging to the owner; certain big corrugated iron sheds are also used by the owner for business purposes; and over another portion there is a bustee, the structures having been condemned by the Corporation as being dangerous, but still occupied. As the premises continued to be in the occupation of the owners the determination of the rates must be under Clause (b) of Section 127, Calcutta Municipal Act, and the premises had all along been assessed as such.

2. During the general revaluation which came into effect from the second quarter of 1936-37 the annual value of the property was fixed at Rs. 24645/- on the

basis of Rs. 1600/-per cotta being the land value. At the next general revaluation which came into effect from the second quarter of 1942-43 the land value was fixed at a slightly lower figure, viz., Rs. 23876/-. It does not appear at what rate per cotta or on what basis the land value was fixed. The next general revaluation was from the second quarter of 1948-49 and this is the subject matter of the present appeal.

3. On behalf of the Chief Executive Officer the lands were valued at Rs. 4500/- per cotta and the value of the buildings was fixed at Rs. 346141/-. Objections were raised by the assessee about the land value. After hearing the objections the Special Officer reduced the land value to Rs. 3200/- per cotta; consequently Rs. 46857/- was fixed as the value of the land. The assessee filed an appeal u/s 141, Calcutta Municipal Act before the Court of Small Causes in Calcutta. No objection was raised by the assessee with regard to the annual value fixed for the buildings. The assessee claimed that the land should not be valued at over Rs. 2500/- per cotta, i.e. the annual value so far as the land is concerned is to be Rs. 40392/- as against Rs. 46857/- fixed by the Special Officer. The learned Chief Judge of the Court of Small Causes found that the value of the land as fixed by the Special Officer was a proper one and the appeal was dismissed.

4. In the appeal now before us the principal grounds urged are relating to the method which should be adopted for valuing the land under Clause (b) of Section 127, Calcutta Municipal Act.

5. Before we deal with the principal point urged about the method of valuation and whether the character or nature of the use to which the building is put is to be taken into consideration for determining the annual value or not we shall dispose of two other points which had also been taken before us.

6. The first question is on whom does the onus lie when an appeal is preferred by the assessee. According to the assessee appellant the initial onus is on the Corporation, and it is for the latter to satisfy the Court as to how the annual value had been fixed by the Chief Executive Officer, or by the Special Officer as the case may be. This question was covered by a long line of decisions of this Court. It was, however, contended that a divergent view has been taken in one of the more recent decisions. It is, therefore, necessary to examine the question at some length.

7. The determination of the annual value for the purpose of assessment by the Chief Executive Officer is in the first instance to be made u/s 131, Calcutta Municipal Act. The person affected may file an objection u/s 139, Calcutta Municipal Act. The Executive Officer, or the Special Officer under the amended provisions, will have to dispose of the objection after giving a hearing. That decision is final subject to the provisions contained in Sections 141 and 142 of the Act.

Section 141 allows the assessee to take the matter to the Court of Small Causes; Sub-section (2) provides that an order passed by the Executive Officer u/s 140,

after the determination of the objection raised by the assessee shall, subject to the provisions of Section 141, be final. Subsection (3) of Section 142 permits a further appeal to the High Court. So what is allowed u/s 141 is an opportunity to the assessee to prove before the Court of Small Causes that the decision reached by the Executive Officer was an erroneous one. When the matter comes before the Court of Small Causes the assessee is in the first instance to show that the valuation fixed by the Corporation was not a correct or proper one.

8. In -- Corporation of Calcutta Vs. Sheikh Keamuddin, , this point was specifically raised and an attempt was made to place the onus during the hearing of the appeal before the Court of Small Causes on the Corporation of Calcutta. This was negatived. This question was again more fully considered in -- Corporation of Calcutta Vs. Jalajbasini Debi, .

9. On behalf of the appellant reliance, however, was placed on -- Samarendra Nath Bose Vs. Corporation of Calcutta, (C). It was urged that in this case the Court had placed the onus upon the Corporation and not on the assessee. It is, therefore, necessary to refer to the facts which gave rise to the decision aforesaid. In the first place it is to be noticed that this was an assessment under Clause (a) of Section 127, Calcutta Municipal Act. The property in question was admittedly let out on the basis of a written lease fixing the monthly, rent at Rs. 1300/-. At the general revaluation which took effect from the fourth quarter of 1939-40 the Corporation allowed a remission of Rs. 160/- per month out of the stipulated rent before the annual value for determining the rates was fixed.

The case on behalf of the assessee was that such deduction had been made because of a share of the rent paid by the tenant was for the use of the furniture which had been supplied by the owner for the tenant. The next general revaluation was in 1945. The same written lease was still in force with the same stipulated rent of Rs. 1300/- per month was being paid by the tenant. The Corporation, however, allowed a deduction of Rs. 75/- per month on account of the hire charges for the use of the furniture etc. On behalf of the assessee evidence was led before the Court of Small Causes that there had been no change in the quantity or quality of the furniture which was being allowed to be used by the tenant from 1939-40 to 1945.

What this Court held was that as the Corporation had allowed a deduction at the rate of Rs. 160/- per month for the purpose of the previous revaluation, it was up to the Corporation to show that there had been more change in the quantity or quality of the furniture made available, to justify reduction of the amount from Rs. 160/- to Rs. 75/- per month. In the first place, the rates were being determined under Clause (a) of Section 127, Calcutta Municipal Act. The Court has to determine the rent which can be reasonably expected to be paid by a tenant who would take it in the existing condition. On the admitted fact that the Corporation had allowed a larger deduction for the hire of the furniture at the previous general revaluation, it was for the Corporation to. show how much lower deduction was now justifiable.

The penultimate paragraph in the judgment of this Court makes it abundantly clear as to the stage when and the purpose for which the Corporation is required to prove what the increased rental is to be. If there is to be a fresh assessment on the ground of an increased rate of rent, it is for the Corporation to show that there has been an increase; that is what the Corporation failed to prove in the case above mentioned.

10. If reference is made to the observations in *Corporation of Calcutta Vs. Jalajbasini Debi*, , towards the concluding portion of the judgment of Rankin C.J. it will be noticed that although the Letters Patent Appeal Bench agreed with Giahm J. that the onus was on the assessee appellant in the Court of Small Causes to prove that the annual value fixed by the Chief Executive Officer was an erroneous one still when the Corporation proceeded to make a new assessment on an increased valuation and sufficient materials were not placed before the Court of Small Causes about locality, the site, market value of plots similarly situated and other particulars it was up to that Court to put a figure on the value of the property in question.

11. The real position, therefore, is that when an appeal is preferred by the assessee u/s 141, Calcutta Municipal Act before the Court of Small Causes it is up to the assessee to show that the annual value fixed by the Corporation was not a proper one. But if the annual value had been raised by the Corporation on the ground that there had been since the last general revaluation a rise in the rental value of the premises or of land value, the Corporation is to lead evidence to show that there had really been such an increase from what was ruling at the time of the previous general revaluation. The Court is not to proceed merely upon the abstract rule of onus. But once it is shown that there had been an increase in value from what it was previously, it is up to the Court again to decide on the materials placed before it as to whether the value as fixed by the Chief Executive Officer is a proper one or not. We shall have to keep this in view when we are to decide on the facts of the present case whether on the materials placed before the Court of Small Causes it was justified or not in fixing the land value at Rs. 3500/-.

12. Another short point which was raised was whether evidence about the market rate of land and of the rental value of neighbouring lands or houses are admissible for determining the value of land and buildings to be fixed u/s 127, Calcutta Municipal Act.

13. In the -- "*Corporation of Calcutta Vs. Province of Bengal, (the Writers' Buildings case)*" the annual value was required to be fixed under Clause (b) of Section 127, Calcutta Municipal Act. Evidence was led about the valuation of neighbouring premises, both from returns submitted by parties as also from certain accepted assessments. They were held to be relevant facts and admissible u/s 9, Evidence Act. In our view, reliance was rightly placed upon -- "*Norwich Assessment Committee v. Pointer*" (1922) 2 KB 471 and -- "*Ladies Hosiery and Underwear Ltd. v. West Middlesex Assessment Committee*" (1932) 2

In the former case, the evidence of rateable value of other similar premises situated within the same union was held to be in point of law admissible. It has, however, to be borne in mind that merely because such pieces of evidence are admissible, the evidentiary value of such pieces of evidence must depend on the circumstances of each "particular case. To what extent they resemble one another and also whether the value of one may be any criterion for determining the value of another must be decided on the facts of each case. Such evidence, therefore, is admissible, but to what extent it can be used will be considered at the proper place.

14. We now take up the principal question as to the interpretation of Clause (b) of Section 127, Calcutta Municipal Act. It is now well settled that the method for determining the annual value for fixing the rates as prevalent in England is fundamentally different from that which is to be found in Section 127 of the Act. Confusion had been attempted to be raised in the past by trying to import the notions of English rules into the framework of the Calcutta Municipal Act. The fundamental proposition which is laid down in English cases is that the assessment of rates is dependent upon beneficial occupation, -- neither upon ownership nor upon notional occupation. In various cases in England, therefore, the Courts had repeatedly been called upon to decide whether a person is really the occupier of the premises or not, and whether such occupation is sufficient to attract the provisions of the local laws imposing rates. We are not, however, called upon to import that test as three distinct methods are introduced in Sections 127 and 128 of the Calcutta Act.

15. Lands which are lying vacant or buildings which have been erected for letting purposes or are ordinarily let attract Clause (a) of Section 127. The annual value in such cases is 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."

The annual value to be ascertained for determining the rates payable is irrespective of the fact whether such land or such building is actually used or occupied or not. We are not, however, concerned at this stage with the other provisions in the Act under which the assessee may subsequently claim for remission of a portion of the rates under certain conditions during such period as the lands or buildings may remain unoccupied. At the time of the fixation of the annual value and the determination of the rates payable the question whether the assessee will be entitled in future to claim vacancy remission is not at all relevant.

16. A different method is laid down for determining the annual value of buildings not erected for letting purposes and which are not ordinarily let. In other words, they are buildings in the occupation of the owners themselves or are meant to be used by them. The method to be followed is as laid down in Clause (b) of Section

127. This is not on the rental basis as in Clause (a) of that section. Two items are to be added up for arriving at the total annual value, viz., the present cost for erecting the building less depreciation and the "estimated present value of the land valued with the building as part of the same premises."

17. There is no difficulty so far as the determination of the present costs for erecting the building is concerned, and there is no objection in the present case to the value of the building as fixed by the corporation authorities. Difficulties may, however, arise for determining the present value of the "land valued with the building." It is really the interpretation of this last clause on which would depend the method of valuing the premises as a whole.

18. The third method for fixing the valuation for the purpose of rates is in respect of properties belonging to the Calcutta Improvement Trust. This is to be determined neither on the rental value as in Clause (a) of Section 127, Calcutta Municipal Act, nor on the present value of the building or of the land as in Clause (b) of the same section, but on the basis of the cost of acquisition.

19. Various attempts had been made in the past for offering a satisfactory interpretation of the last portion of Clause (b) of Section 127. I shall not refer at this stage to the decisions which cover assessment under Clause (a) of Section 127, but the observations made in some of these cases will have to be considered later.

20. In -- Corporation of Calcutta Vs. Jardine Skinner and Co., , a case where assessment had been made under Clause (b) of Section 127, an attempt was made to import the rental test or the structures method, as it has been called by some, into this clause. It was argued that it was not possible to determine the present value of the "land valued with the buildings as part of the same premises" except by fixing the total annual rent which may be payable for the entire premises, including the land and building and deducting therefrom the present value of the building less depreciation. It was pointed out that the total value of the premises as a whole can be determined with some reasonable precision only if one takes the rental value thereof. This was, however, rejected by a Division Bench of this Court and in our view rightly.

21. This view was followed in Corporation of Calcutta Vs. Province of Bengal, .

22. Clause (b) of Section 127, Calcutta Municipal Act deals with residential buildings not meant to be let out. Under this provision the yearly rent which a hypothetical tenant would pay for the premises is not definitely made the basis for determining the annual value. There is no indication in Clause (b) that the owner in occupation is to be considered as a tenant as is considered in England for the purpose of ascertaining what the rental value is to be. No doubt in England the methods employed vary according to the nature of the property concerned, but whatever may be the difference with regard to the details in each particular case, the annual rental value of the land or of the premises has to be determined in some form, or other.

As stated already, it is the beneficial occupation of the premises which determines the letting value in England. The State Legislature had definitely adopted a distinctly different method in Clause (b) of Section 127 of the Calcutta Municipal Act. In Calcutta bare ownership would sustain a liability to rates, whereas in England the owner of a house cannot be compelled to pay rates if such an owner allows the property to lie barren and unoccupied. We have no doubt that the opinion expressed in the two cases mentioned above is the only view possible so far as Clause (b) of Section 127, Calcutta Municipal Act is concerned.

23. What is being attempted in the present case by the assessee is that he wants the present value of the "land valued with the building as part of the same premises" to be ascertained with reference to the nature of the use to which the property is put by the owner. He wants to rely on the extent of the income which he derives or the benefit which accrues in his favour from the business or from the other uses of the property. This is "prima facie" untenable. The nature of the user of the property is relevant only for the purpose of determining whether Clause (a) or Clause (b) of Section 127, Calcutta Municipal Act will be attracted. If the property is used by the owner, Clause (b) is applicable. If it is or is meant to be let out Clause (a) will be attracted. There ends the relevancy or importance of the nature of the user of the property in question.

24. The annual value thereof under Clause (b) is then to be ascertained without any further reference to the nature of the user of the property. What this clause requires is that the present value of the land is to be determined not as a bare piece of land. It is to be taken in its present disposition. It is the nature of the building or of any other structure which may be thereon which may either increase or decrease the value of a bare plot of land of a similar nature. How this is to be determined is a matter for the expert valuer to do. When such materials are placed before the Court it is ultimately the latter which decides as to what the proper value of the building in such context is to be. Mr. Parks who has been examined as an expert by the assessee in the present case has given his opinion in a book published by him, "The Principles and Practice of Valuations" at pages 296-297. While dealing with Clause (b) of Section 127, Calcutta Municipal Act he remarks :

"The point to remember in this case is that the land value is the value of the land encumbered with a building and not clear site value. It may be that the value will be higher if the land is well and fully developed by a building which is in turn well let; whilst on the other hand, if the land is encumbered by buildings which do not fully develop the land and can never do so without completely demolishing and rebuilding, then the land may have a slightly lower value than clear site value."

25. It will be noticed that according to this expert the difference between the clear site value and the value of the land valued with the building is not a very material difference. What that slight difference will be must depend on the circumstances of each case.

26. We may now refer to two other decisions on which great reliance was placed on behalf of the appellant. It is contended that in these Bench decisions it had been clearly laid down that the test of beneficial user is to be introduced under both Clauses (a) and (b) of Section 127, Calcutta Municipal Act.

27. In -- Corporation of the Town of Calcutta Vs. Ashutosh De, (H), the Court was called upon to consider a case admittedly under Clause (a) of Section 127, Calcutta Municipal Act. Mukerji J. (at page 865 of the report) after referring to the phrase "reasonably be expected to let" appearing in Clause (a) of Section 127, Calcutta Municipal Act compares the same with the same phrase appearing in the Parochial Assessments Act (6 and 7 Will, IV, Cap. 96). He proceeds to refer to the interpretation put on this clause by the English Courts, and refers to -- "The Queen v. London and North-Western Railway Company" (1874) 9 QB 134 and -- "The Queen v. The School Board for London" (1886) 17 QBD 738.

In these cases it had been held that the standard value upon which the rates have to be calculated is the value of the property to the owner which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant, Roy J. at page 868 of the report also refers to the provisions in Clause (a) of Section 127, Calcutta Municipal Act, and indicates that the rent from which the annual value is to be determined is the rent payable by a hypothetical tenant and a hypothetical rent. The ground of a man's liability is that he is in beneficial occupation.

This reference to beneficial occupation is clearly on the footing that the premises were one governed by Clause (a) of Section 127, Calcutta Municipal Act. The Court was not called upon to consider and did not apply its mind at any stage in the two judgments to the implications contained in or the requirements under Clause (b) of Section 127. The observations made by the learned Judges are clearly referable to the English decisions wherein the method for determining the annual value is analogous to, if not practically the same as in Clause (a) of Section 127. This case, therefore, is of no assistance to the appellant. It may be noted in passing that the point on which the learned Judges differed was one relating to the effect of Section 126, Calcutta Rent Act of 1920, and the judgment of the Letters Patent Bench deals with this point only and specifically leaves open the observations of the Court with regard to the point previously mentioned.

28. -- Bengal Nagpur Railway Co. Ltd. Vs. Corporation of Calcutta, , and -- Royal Calcutta Turf Club Vs. Corporation of Calcutta, were both cases under Clause (a) of Section 127, Calcutta Municipal Act, and no assistance can be obtained from the decisions in these two cases.

29. -- Governor-General in Council Vs. Corporation of Calcutta, (M), was also a case where assessment had been made under Clause (a) of Section 127, and the Court found that the assessment could not be sustained because of the circumstances of that case.

30. In this view, we hold that the method of assessment to be followed under Clause (b) of Section 127, Calcutta Municipal Act does not justify the importation of rental value of relevant evidence relating to the nature of the user of the building by the owner. The Court has to proceed to determine the estimated present value of the land valued with the building as part of the same premises and add it to the present value of the structures less depreciation.

31. Let us now see whether in the present case the assessment made satisfies the conditions above mentioned. The notice which had been issued on the assessee was on the basis that there has been an increase in the land value in the locality. As held by us some evidence would be necessary to justify an increased assessment on that basis. Evidence was led for the purpose of showing that there has been since the last general revaluation a general rise of land value near about the locality.

32. Premises No. 72, Lower Circular Road was sold for Rs. 12000/- in 1946. In 1948 the same property was sold for Rs. 25000/-. Premises No. 61, Lower Circular Road which fetched Rs. 15000/- in 1944 was sold in March, 1948, for Rs. 55000/-. Premises No. 82, Lower Circular Road was valued at Rs. 5,500/- per cotta during the present general revaluation as against Rs. 5000/- at the previous stage. For this part of the case it is not necessary to discuss the nature of the properties; that there has been a general increase in the land value in the locality is substantially proved by these instances. On behalf of the assessee no attempt was made to prove to the contrary. It must, therefore, be held that there was an increase in the land value since the last general revaluation. But, the question is to what extent is that increase to reflect on the annual value to be fixed for the premises in question.

33. As we have already held, for fixing the present value of the land, the value of bare Land is not to be the sole criterion which is to be the basis for the calculation. Modifications are to be introduced dependent upon the character of the buildings and the nature of the structures. The Assessor to the Corporation states that he had valued the land with the buildings, but when he was asked to give the details, he pointed out how he had valued the large plot, dividing the same into two different belts & how the price for each one of those belts had been fixed. The average price after taking the value of each belt comes up to Rs. 5400/-. He then continues to state that after allowing deduction for the largeness of area, the price was fixed, at Rs. 5400/- per cotta. The cross-examination was directed to the valuation as fixed by the assessor of the different belts, but on this point it is not for the Corporation to justify how the rates were fixed with reference to the belts or for the land taken as a whole.

34. The expert examined on behalf of the assessee. Mr. Parks, has now, however, given any indication as to the basis of the rate per cotta, as proposed by him. He has also divided the lands into different belts. During the examination-in-chief, no reference was made to any particular contiguous plot on the basis of which the rates have been suggested by him. Further, it is to be pointed out that

although he suggests Rs. 1787/- or Rs. 1800/- is round sum as the value per cotta on the average, the assessee himself in his memorandum filed before the Court of Small Causes as also before this Court agrees to a maximum rate of Rs. 2500/- per cotta. It must be held that the assessee has not been able to discharge the onus which lies upon him to show that the rate fixed by the Executive Officer was not "a proper one.

35. Criticism was directed to that part of the evidence of the assessor to the Corporation where he referred to a deduction owing to the largeness only for fixing the value at Rs. 4500/- per cotta. This criticism is to some extent justified as the assessor did not indicate in his deposition as to whether he had, in reducing the amount from Rs. 5400/- to Rs. 4500/- per cotta, remembered that the land was to be valued not at bare land but as land with the buildings. Mr. Banerjee on behalf of the Corporation points out that just above this statement the assessor had stated that he had valued the land with the building.

This point, however need not be laboured much as after giving a hearing on the objection raised by the assessee, the Special Officer reduced the rate per cotta from Rs. 4500/- to Rs. 3200/- per cotta. Mr. Parks himself stated that owing to the disposition of the building the difference between the market rate vacant plot and the present value of the land valued with the building was only a slight one. As a substantial reduction was allowed by the Special Officer, we do not feel justified in reducing the rate fixed by him.

36. All the grounds urged in this appeal fail, and this appeal is dismissed with costs.

Lahiri, J.

37. I agree.