(1960) 05 CAL CK 0007

In the Calcutta High Court

Case No : Criminal Revision Case No. 550 of 1959

Nand Kishore Choudhury APPELLANT

Vs

Howrah Municipality RESPONDENT

Date of Decision : 27-05-1960

Acts Referred:

Calcutta Municipal Act, 1923 — Section 175, 385, 386, 492, 503
Calcutta Municipal Rules, 1951 — Rule 12, 12(1), 13, 14, 15

Citation : (1961) 1 ILR (Cal) 748

Hon'ble Judges : Sen, J;Mitter, J

Bench : Division Bench

Advocate : Ajit Kumar Dutt, for the Appellant;Bhola Nath Roy, for the Respondent

Judgement

Sen, J.—This revisional application is directed against the conviction of the Petitioner Nanda Kishore Choudhury u/s 492 of the Calcutta Municipal Act, 1923, as extended to Howrah, taken with Section 175, for failure to renew his trade license for the year 1956-57. The Petitioner carries on business as an occupier of a godown or a depot at No. 1, Charaghat 1st Bye Lane, Howrah. The Petitioner was carrying on business by storing foodgrains at the aforesaid godown for some years, and for 1954-55, and 1955-56, he had been assessed to trade license fee of Rs. 25 per year u/s 175 of the Act, being classed under item 43 of class V. of Schedule VI of the Calcutta Municipal Act as extended to Howrah. The health license fee payable u/s 386 of the Act during these years was Rs. 50 per year. On January 28, 1957, the Petitioner was served with a notice by the License Officer of Howrah Municipality wherein he was informed that for the year 1956-57, his trade license in respect of his business as occupier of the godown at No. 1, Charaghat 1st Bye Lane, Howrah, for the purpose of storing of grains was Its. 50 and he was directed to pay the tax within 7 days. In other words, the License Officer purported to enhance trade license fee from Rs. 25 to Rs. 50 per year with effect from 1956-57. The Petitioner did not pay license fee at the enhanced rate. He sent a cheque for Rs. 75 in payment of his trade license fee at Rs. 25

and health license fee at Rs. 50, i.e., he tendered license fee at the old rate for the year 1996-57. But this cheque was returned by the License Officer. As the Petitioner did not pay the fees at the enhanced scale, ultimately the present prosecution u/s 492 taken with Section 175 of the Calcutta Municipal Act as extended to Howrah was initiated against him, the issue of summons being ordered on July 16, 1957, by the Magistrate concerned.

2. The Petitioner pleaded not guilty to the charge and contended that he was not liable to pay the license fees at the enhanced rate. The learned Magistrate however found that the increased demand had been made on the basis of the fair letting value of the portion of the godown in the occupation of the Petitioner, such fair-letting value being Rs. 110 or, i.e., above Rs. 100. When the fair-letting value of the premises in the occupation of the party concerned is over Rs. 100 per month, he comes under class IV of the table of license fees forming part of Schedule VI of the Act, and in respect of the Petitioner''s trade or business of storing grains in the godown, the proper item is item 25 under class IV and therefore trade license is Rs. 50 per year. The learned Magistrate also held that in enhancing the license fee, Municipality followed the proper procedure laid down in the rules under Schedule VI, by issuing a notice under Rule 12; and that the Petitioner had not filed an appeal within 30 days of the service of notice on him as required under Rules 14 and 15 of the Rules under Schedule VI and therefore the assessment by the municipality had become final, and the Petitioner was not entitled to challenge the same in the criminal proceeding. On the merits also, the learned Magistrate came to the finding that the municipality was right in holding that the fair letting value of the portion of the godown in the occupation of the Petitioner was about Rs. 110 per month, and therefore the classification as made by the Municipality for the purpose of trade license fee was quite correct. The learned Magistrate convicted the Petitioner u/s 492 read with Section 175 of the Calcutta Municipal Act, 1923, as extended to Howrah, and sentenced him to pay a fine of Rs. 150 in default, simple imprisonment for 30 days.

3. The Petitioner filed an appeal before the learned Sessions Judge, Howrah; but the appeal was dismissed. The Petitioner has thereafter filed this revisional application.

4. Mr. Ajit Kumar Dutt appearing for the Petitioner has urged that the notice Ext. H. dated January 28, 1957, received by the Petitioner, was not a notice under Rule 12 of Schedule VI of the Act, and that the Municipality had enhanced the license fee in contravention with the provisions of the Calcutta Municipal Act, 1923 and of the rules contained in Schedule VI and therefore the demand for the enhanced fee was illegal, and Petitioner had committed no offence by not paying such enhanced license fee. On the merits also Mr. Dutt has urged that the prosecution had not established that the fair letting value of the portion of the godown in the occupation of the Petitioner for storing them was Rs. 110 per month or over Rs. 100 per month.

5. As regards the first point, Mr. Dutt has referred to the terms of Rule 12, Sub-

rule (1) viz..

If the Chairman considers:

(a) that any person who has not taken out a license in the next proceeding year ought to take out a license, or

(b) that any person who has taken out a license for such year but has not done so for the current year ought to take out a licence under a higher class, or to take out more them one licenses. he may serve such person with a notice directing him to take out a license or license for the next preceding year or the current year, as the case may be under such class or classes as may to the Chairman seem proper.

6. According to Mr. Dutt the notice Ext. H is not a notice within the terms of Rule 12, and moreover, it was not issued by the Chairman but by the license Officer, and there was nothing to show that the License Officer had delegated authority to issue such notice. As regards the first contention it may be pointed out that the Act does not prescribe any particular form for the notice under Rule 12, and the notice Ext. H. which was actually issued showing that the amount of license fee u/s 175 for the year 1950-57 was Rs. 50. must be considered as a notice within the terms of Rule 12. It is relevant to point out in this connection, that the Petitioner could not have been token by surprise on receiving the notice Ext. H dated January 28, 1957, because it appears from the correspondence that for some time the License Officer had been inquiring about the rent paid by the Petitioner, obviously with a view to re-assess the license fee payable by the Petitioner u/s 175 of the Act. Ext. G which is letter written by the Petitioner to the license Officer of the Howrah Municipality dated March 1, 1950. shows that even in respect of the license fee for 1955-56, the License Officer must have been seeking to assess the license fee on the basis that the rent of the godown was Rs. 110 per month, and in the letter Ext. G the Petitioner was protesting that the information of the License Officer that the rent was Its. 140 per month was false. As regards the year 1955-56, the license fee was paid and accepted at the old rate under class v. on the footing that the rent was below Rs. 100 per month. Ext. 6 shows as early as November 26, 1956, the License Officer was asking the landlord of the godown, Sreekissen Shankarlal, to submit a return of the tenants under him and the rents received from them. But the landlord Sreekissen Shankarlal did not send any prompt response and a reminder had to be issued by the license Officer; and the reply Ext. 7 shows that the landlord only gave the name of the tenants, viz.. Nanda Kishore Chowdhury (the Petitioner), but did not specify the rent that he was paying. Ext. D is a letter dated January 11, 1957, from the Petitioner to the license Officer, in reply to a letter from the license Officer dated January 8, 1957. This letter refers to the reassessment of the license fees and it is stated that the Petitioner was unable to produce the rent receipts at the office of the License Officer. Along with this letter, the cheque for Rs. 75 for the license fees u/s 175 and 385 of the Calcutta Municipal Act, 1923, as extended to Howrah was enclosed, as stated before. This cheque was refused

by the License Officer. Ext. 5 a letter dated January 28, 1957. from the license Officer to the Petitioner, is the reply to the letter Ext. D. Therein the license Officer was informing the Petitioner that he need not send his rent receipts, because the license Officer had received a letter from Sreekissen Shankarlal and it had been ascertained that the Petitioner was paying a rent of Rs. 110 per month and therefore the Petitioner had been assessed ft Rs. 50 u/s 175 and Rs. 100 u/s 386 of the Calcutta Municipal Act. 1923. as extended to Howrah. On the same date the notice Ext. H was issued on the Petitioner by the License Officer. In the background of the correspondence, there can be no doubt at all that the notice Ext. H was the notice required under Rule 12 of Schedule VI of the Act.

7. As regards the other contention of Mr. Dutt however, that there was nothing to show that the License Officer had delegated authority from the Chairman of the Howrah Municipality to act under and issue the notice mentioned in Rule 12, Mr. Bholanath Roy appearing for the Municipality has conceded that no-such evidence was adduced in this case. It cannot he expected that the Chairman of the Municipality would himself issue all! the thousands of notices which may be required to be issued under Rule 12 of Schedule VI and other sections and rules under the Act. Section 503 of the Act provides that all notices, bills, summonses and other documents required by the Calcuttta Municipal Act, 1923, as in force in Howrah or by any rule or by law made thereunder shall be issued by Municipal Officers or servants or by other persons authorised by the Chairman in that behalf. Section 12 provides for such authorisation on delegation of power. Presumably the License Officer has been authorised by the Chairman to issue the notice under Rule 12 of Schedule VI; but in the absence of express evidence to that effect, it cannot be held that the notice Ext. H was a valid notice in terms of Rule 12.

8. Regarding the procedure to be followed in the matter of levy of license for the first time or levy of license fee under a higher class, Mr. Dutt has argued that the Chairman must first consider the matter and issue the notice under Rule 12; and then under Rule 13, the party must be given an opportunity to represent his case before the Chairman; and that against the Chairman''s order under Rule 13, the party not satisfied with the order of the Chairman has right of appeal to a bench of three Commissioners of the Howrah Municipality; and only after the disposal of the appeal by the bench the order for the levy of license fee for the first time or license fee under a higher class would become final. It must be held however that Rule 13 has nothing to do with the party being given a chance to represent his case to the Chairman. Rule 13 refers to the case where a person has been summoned for not taking out a license. A person may be summoned for not taking out a license only by a Magistrate and not by the Chairman. This rule therefore refers to the stage where a prosecution u/s 492 taken with Section 175 of the Act has already been started. In that proceedings, if the service of notice under Rule 12. Sub-rule (1) is not proved, it shall be incumbent on the Chairman to prove that the person so summoned is liable to take out a license or that he is liable to take out a license under a higher class. In the present case, in the

absence of evidence that the License Officer is entitled to issue the notice on behalf of the Chairman under Rule 12, it has to be held that the notice issued was not a valid notice, and therefore the position is the same as if no notice was issued at all; and therefore in the proceeding u/s 492 taken with Section 175 of the Act before the Magistrate, it was the duty of the Chairman to prove that the Petitioner was liable to take out the license under a higher class. As regards the appeal to the bench of Municipal Commissioners, it is for the party concerned to file such an appear within 30 days of the passing of the order regarding levy of the license fee for the first time or license fee at a higher rate or of the service of the notice under Rule 12. As to the order for the levy of the license fee, it must refer to the order of the Chairman or the authorised officer, passed under Rule 12, in consequence of which the notice is issued. There is a Demand Register prepared for each year; Ext. 2 is the extract from the Demand Register for 1956-57 showing that the Petitioner Nanda Kishore Choudhury had been assessed on the basis of the rent of his premises at Rs. 110 per month, to pay the license fee of Rs. 50 u/s 175 of the Act. The Demand Register is open to inspection by interested parties at the Municipal Office, and therefore the interested parties may become aware of the order passed in respect of the levy of the license fees. In the alternative the interested party can always file the appeal within 30 days from the date of the service of the notice under Rule 12 on him. In the present case, the Petitioner failed to file such an appeal within 30 days of the receipt of the notice Ext. H, and for this reason the learned Magistrate held that the order for the levy of license fee at the higher rate had become final. But in view of the finding made above that the case must be treated as if no notice had been served at all under Rule 12, it was for the prosecution to justify the levy of the license fee under the higher class.

9. In this connection the learned Magistrate pointed out that though the accused had claimed that he used to pay Rs. 95 per month on account of the portion of the godown occupied by him, he had failed to prove any rent receipt; and though he has stated that he was a tenant in respect of the godown under Ram. Brij Singh, which information he also gave to the license officer vide letter Ext. A dated February 27, 1957, he did not produce Ram Brij Singh as a witness in the case. The learned Magistrate also referred to the evidence of the License Inspector P.W. 1, that the portion of the godown in the occupation of the Petitioner was 1271 square feet and to the evidence of P.W. 5 Sarah Chandra Pal who occupied a godown opposite to the Petitioner''s godown, that he was paying Rs. 60 for 475 square feet. The learned Magistrate accordingly, held that Rs. 110 per month as assessed by the License Officer could be taken as the fair-letting value of the portion of the godown in the occupation of the Petitioner. The Municipality also relied on the information which had been supplied by Shyamsundar Samanta, describing himself as acting on behalf of Sreekissen Shankarlal who was lessee of the entire godown and under whom1 the Petitioner was a sub-lessee. The information is contained in the letter addressed to the License Officer, Ext. 9. But Shyam Sundar Samanta who deposed as P.W. 7,

though he admitted the letter Ext. 9, stated in cross-examination that he wrote the letter sitting in the room of the License Inspector and he wrote it at his request; that he was not an employee of Sreekissen Shankarlal at the time when he wrote the letter and that he had no personal knowledge of the rent of Rs. 110 as mentioned in the letter. These statements in cross-examination take away the value of the information contained in Ext. 9. On the other hand, P.W. 4, Nandalal Gandhi, a partner of Sreekissen Shankarlal, deposed that part of the godown had been let out to the Petitioner Nanda Kishore, through Ram Brij Singh who was the Choudhury or Transport Contractor of Sreekissen Shankarlal, and that he got Rs. 95 from Brij Mohan or Ram Brij as rent for the portion of the godown in the occupation of the Petitioner Nanda Kishore Choudhury. Whether Brij Mohan actually collected anything more than Rs. 95 per month from the Petitioner is of course not clear from the evidence; as already stated Brij Mohan or Ram Brij did not come as a witness, and neither did the Petitioner produce any rent receipt. But still the burden being on the Municipality to prove definitely what is the actual rent paid for the godown by the Petitioner or what is the fair letting value thereof, it cannot be said that in the circumstances it had been established that the actual rent or fair letting value was Rs. 110 per month. The comparison with a smaller but entire godown for which a proportionately higher rate of rent was being paid by P.W. 5 is not a safe basis for the determination of the fair letting value of the portion of the godown in the occupation of the Petitioner.

10. In the circumstances, I must hold that the Municipality did not succeed in establishing that the actual rent or fair letting value of the portion of the godown in the occupation of the Petitioner was Rs. 110 or in excess of Rs. 100 per month, although I must repel the suggestion of Mr. Dutt that the enhancement of license fee to Rs. 50 per month on the assumed rent of Rs. 110 per month was a mala fide act on the part of the License Inspector or the Incense Officer. On the other hand, there is reason to think that the Petitioner was avoiding placing the materials in his possession in order to avoid license fee at a higher rate. But still in view of the fact that the notice under Rule 12 has to be considered an invalid notice, in the absence of evidence to show that the License Officer was empowered to issue such notice on behalf of the Chairman, and in view of the fact that the evidence on the record was not sufficient for proving that the actual rent paid by the Petitioner or the fair letting value of the area in the occupation of the Petitioner exceeded Rs. 100, it could not be said that the Municipality had succeeded in establishing the claim for the higher levy. That being so, the conviction of the Petitioner u/s 492 taken with Section 175 of the Calcutta Municipal Act, 1923, as extended to Howrah must be sec aside and the Rule made absolute.

Mitter, J.

11. I agree.

