(1950) 08 CAL CK 0004

In the Calcutta High Court

Case No : A.F.O.O. No. 120 of 1949

Samarendra Nath Bose APPELLANT

Vs

Corporation of Calcutta RESPONDENT

Date of Decision : 28-08-1950

Acts Referred:
Calcutta Municipal Act, 1923 — Section 138

Citation : AIR 1953 Cal 327 : 55 CWN 145 : (1951) 2 ILR (Cal) 404

Hon'ble Judges : K.C. Das Gupta, J;G.N. Das, J

Bench : Division Bench

Advocate : S.C. Mitter, Jyotish Chandra Pal, Krishna Prosad Basu and Prosanto Kumar Ghose, for the Appellant; Krishna Lal Banerji, for the Respondent

Final Decision : Allowed

Judgement

Das Gupta, J.—At the general revaluation which was to take effect from the fourth quarter of 1939-1940 premises No. 2, Heysham Road were assessed at a value of Rs. 11,080/-. It appears that the monthly income was taken at Rs. 1140/- in spite of the fact that admittedly the rent was Rs. 1300/- per month. In 1945 the Corporation authorities increased, the valuation from Rs. 11,080/- to Rs. 12,636/- and in the notice u/s 138, Calcutta Municipal Act under which when a valuation is increased the notice shall contain a statement of the grounds of such increase it was stated that the increase was estimated on account of rise of rent since the last valuation. There was an objection by the assessee and the Deputy Executive Officer thereupon reduced the valuation to Rs. 11,907/-. He appears to have calculated the monthly income at Rs. 1225/-. There is an appeal by the assessee u/s 41, Calcutta Municipal Act on the ground in fact that there has been no rise in the rent of the premises since the increase in valuation was unjust and arbitrary. The learned Small Cause Court Judge dismissed the appeal.

2. It has been contended before us in this appeal against the decision of the learned Small Cause Court Judge by Mr. Mitter on behalf of the appellant that as the rent admittedly remained unchanged at Rs. 1300/- per month no case had

been made out for increase of the valuation. Mr. Banerji on behalf of the Corporation of Calcutta has contended that the registered lease of 1944 shows that the rent was fixed at Rs. 1300/- per month and a deduction of Rs. 75/- on account of some part of the furniture and fittings out of the list given in Schedule 2 of the lease cannot be considered to be unreasonable. It is to be noticed however that while the evidence that Rs. 1300/- has all along been the rent is not in any way challenged the evidence also shows that there has been no change in the furniture and the fittings. If there had been a change in the furniture and fittings or in the rent payable therefore it might have reasonably been argued that the rent proper for the premises, though apparently unchanged, has undergone a change. It seems to me clear that when the Corporation wants to increase the valuation on the ground that the rent had been increased the burden is clearly on the Corporation to show that there has been such an increase and also the extent of the increase. The position is that the rent payable by the tenant is Rs. 1300/-per month and was so before. The only way by which the Corporation can succeed in showing that there has been an increase of the rent proper for the premises is by showing that either the furniture or other things for which deduction was made at the time of the previous assessment is less than before or at least that the rent payable for such furniture or other things is less than before. That has not been shown. Indeed no attempt has been made to show that there has been a decrease in the furniture or any decrease in the rent payable thereof. It was contended by Mr. Banerji that there is nothing to show that the deduction of Rs. 160/-that was made at the time of the previous valuation was on account of furniture. In any case the deduction having been made by the Corporation it was clearly within the special knowledge of an officer of the Corporation to show as to what the deduction was for and the burden of proving that was therefore on the Corporation. I cannot understand how the corporation can be allowed to withhold that evidence and still argue that as it is not known what that deduction was for that deduction may very well be disallowed now.

3. Even supposing that the reasons for that deduction are not before the Court the position is that nothing has been shown to justify a conclusion that the reasons for that deduction from the gross rent are not equally operative at the time the new assessment is made.

4. In my judgment the contention of the learned Counsel for the appellant that the Corporation has failed to show that there has been an increase of rent should prevail. My conclusion is that the learned Small Cause Court Judge ought to have allowed the appeal of the assessee and reduced the valuation to the figure at which it stood at the previous valuation viz. Rs. 11,080/-.

5. I would therefore allow the appeal and order that the appeal by the assessee to the Small Cause Court Judge be allowed and direct that the valuation of the premises No. 2, Heysham Road be reduced to Rs. 11,080/-.

6. The appellant will get his costs here and below. Hearing fee in this Court is

assessed at three gold mohurs.

G.N. Das, J.

7. I agree.

