(1954) 02 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Original Order No. 17 of 1952

Sudhansu Kumar Basu APPELLANT

Vs

Corporation of Calcutta and Another RESPONDENT

Date of Decision : 04-02-1954

Acts Referred:
Calcutta Municipal Act, 1923 — Section 138

Citation : 58 CWN 1023

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

Bench : Division Bench

Advocate : Hemanta Krishna Mitra, for the Appellant; Pasupati Ghosh, for the Respondent

Judgement

Das, J.—This appeal is directed against a decision of Sri Sailendra Nath Sen Gupta, learned Judge, Small Causes Court, Sealdah. The assessee is the appellant. The assessee is the owner of a vacant plot of land about 5 cottas in area. The plot of land was assessed at the immediately previous general assessment at a valuation of Rs. 120. At the last assessment the valuation was increased to Rs. 600 by the Assessor and on an objection being raised, the Special Officer reduced the valuation to Rs. 480. The appellant, thereupon, preferred an appeal to the Court of Small Causes at Sealdah. The learned Small Cause Court Judge declined to interfere. Mr. Mitter who has appeared in support of the appeal has raised the following contentions. In the first place, he contends that the notice u/s 138 of the Calcutta Municipal Act, 1923, was issued by Sri D. N. Sarbadhikary, Acting Assessor, Corporation of Calcutta, and as he was not the proper person to issue the notice, the assessment is ultra vires. This objection was not taken before the Small Cause Court Judge. It was raised for the first time in a petition filed in this Court on the 19th August, 1952. The appellant, however, did not annex to his petition the notice that was served upon him u/s 138 of the Calcutta Municipal Act. It is, therefore, impossible for us to say whether the notice was in fact issued under the signature of the Acting Assessor to the Corporation of Calcutta. This contention cannot, therefore, be accepted.

2. Mr. Mitter next contended that as the notice u/s 140(1) of the Act was also issued by the Acting Assessor who had no authority to issue the notice, the order of the Special Officer disposing of his objections to the assessment was without jurisdiction. In my opinion, there is no substance in this contention. Section 140(1) of the Act requires that after receipt of an objection filed by an assessee "notice shall be given to the objector of a time and place at which his objection will be investigated." The object of the notice is, therefore, to inform the assessee that his objections will be heard on a certain date and at a certain place. In this case the assessee appeared before the Special Officer at the time when his objections came up for hearing. Even conceding that the notice u/s 140(1) of the Act could not be issued under the signature of the Acting Assessor, as the assessee himself appeared at the time when his objections were heard before the proper officer, the irregularity, if any, in the notice cannot in, law vitiate the hearing of his objections or the order passed thereon. I may also point out that section 140(1) of the Act does not provide that the notice shall be issued under the signature of a particular officer. All that the section requires is that the notice shall be given to the objector of a time and place at which his objections will be investigated. In the case of Gayadinram Vs. A.D. Khan and Another, Mr. Justice Bose was of the opinion that a notice given by the Assessor u/s 140 of the Calcutta Municipal Act was bad in law, and that the effect of such a notice was to vitiate the entire proceedings. This decision proceeded mainly on the ground that the assessee had no sufficient opportunity of placing his case before the Special Officer. It was also based on the ground that as the Executive Officer could not delegate his powers to the Assessor u/s 12(3) of the Calcutta Municipal Act, 1923, the Assessor had no power to issue the notice. Section 140 does not impose upon the Executive Officer a duty of issuing the notice. So far as the service of notice goes it does not appear that there was any limitation imposed on the powers of the Executive Officer to delegate his functions to any other Municipal Officer. It must be presumed that the person who issued the notice was competent to do so unless it is shown that there was any such restriction which took away the power of delegation vested in the Executive Officer. The exception in section 12(3) refers to the duty of hearing objections as contemplated by section 140(2)(3). In my opinion, in the absence of any evidence on the point, it cannot, in the present case, be definitely said that the notice by the Assessor u/s 140 (1) of.the Calcutta Municipal Act, 1923, is invalid or has the effect of vitiating the entire proceedings. Gayadinram''s case (1) (supra) is, therefore, clearly distinguishable.

3. The third contention raised by Mr. Mitter relates to the merits of the case. As I have already said at the last assessment the annual value of the premises has been rated at four times the previous value. The evidence of the appellant is that the rate of the letting value of the disputed premises cannot be more than that of the contiguous plot No. 12/IB. Premises No. 12/1B, Ganguly Para Lane, was assessed at the last valuation at the rate of Rs. 5 per cotta. On a reference to the plan which is on record as Ext. O, it seems to us that for the purposes of letting

as a vacant piece of land no distinction could be made between the premises Nos. 13B and 12/B. I am, therefore, of the opinion that the disputed premises should have been assessed at the same rate as premises No. 12/1B, Ganguly Para Lane. Mr. Surendra Nath Das who deposed for the Coproration of Calcutta deposed to say that he inspected the premises. He could not, however, give the length and breadth of the plot. He also stated that he assessed the value after discussion with the Assistant Assessor. He also said that there was no vacant land let out on monthly rent at Ganguly Para Lane. It is, therefore, difficult for us to accept his opinion that Rs. 8 per cotta per month was the fair rental value. In my opinion, the premises in question should be assessed at Rs. 5 per cotta. The annual value of the disputed premises must, therefore, be assessed at Rs. 300. The appeal accordingly succeeds in part. In the circumstances of this case we direct the parties to bear their own costs in this Court and before the Small Cause Court Judge.

Renupada Mukherjee, J.

I agree.

