(1901) 09 CAL CK 0001

In the Calcutta High Court

Case No : Appeal No. 7593 of 1900

The Corporation of Calcutta APPELLANT

Vs

I.J. Cohen RESPONDENT

Date of Decision : 03-09-1901

Acts Referred:

Citation : (1901) 09 CAL CK 0001

Judgement

Sale, J.—This rule raises the question whether the order of the learned Chief Judge of the Small Cause Court, dated the 19th of March 1901, setting aside certain assessments of property made by the Municipal Commissioners under the authority of Act II of 1888, and declaring that certain previous assessments made under the same authority were in force at the commencement of Act III of 1899 and should remain in force for the various periods mentioned in the order, is open to review by this Court and if so, whether and to what extent the said order should be affirmed or set aside. The case of the Corporation of Calcutta v. Bhupati Roy Chowdhury 3 C. W. N. 70: s. c. I. L. R. 26 Cal. 74 (1898) decides that so far as the Small Cause Court had jurisdiction to make the order complained of, it is not open to this Court to interfere either under sec. 622 of the CPC or under sec. 15 of the Charter. The facts relative to this question are shortly as follows : In the year 1894 the Municipal Commissioners acting under the provisions of Act II of 1888 proceeded to make valuations of properties situated within certain wards including the properties of the Appellant in the Small Cause Court, Mr. Cohen, which were situated in Ward 10. On these valuations, assessments of rates were made for the period of six years expiring on various dates on or before the 31st March 1900. On the 1st of April 1900, the new Municipal Act III of 1899 came into force.

2. Shortly before the expiry of Act II of 1888 the Commissioners proceeded to make a new valuation of the properties in question, for the purpose of the assessments intended to be in force for the next period of six years commencing from the end of the period then about to expire. These valuations were made at various dates between the year 1899 and the month of March 1900, the

procedure adopted being that provided by Act II of 1888 which was then in force. All the valuations were completed prior to the 1st of April 1900, and in the case of seventeen properties, objections to the valuations and assessments made thereon were filed by the owners in pursuance of the provisions of sec. 135 of Act II of 1888. In eleven of these instances the objections were disposed of by the Vice-Chairman prior to the 1st of April 1900. In six cases the objections were heard and disposed of after the new Act came into force. In all these seventeen cases appeals were filed to the Small Cause Court at various dates after the 1st of April 1900, and apparently under the provisions of the new Act. These appeals were disposed of by the judgment of the learned Chief Judge which was delivered on the 19th March 1901. The learned Judge has found that the valuations and assessments made by the Commissioners in 1899 and 1900, in respect of which objections were filed by the owners under the provisions of sec. 135 of Act II of 1888 which objections had not been finally disposed of by the Small Cause Court as the constituted Court of appeal when Act III of 1899 came into force, were not in force at the commencement of that Act within the meaning of sec. 152 of the Act and he accordingly has set aside these valuations and assessments. The learned Judge has further declared that the valuations in force at the commencement of Act III of 1899 were the previous valuations of 1893 and 1894 which were the valuations made and intended by the Commissioners to be in force for the period of six years ending on or before the 31st March 1900, and the learned Judge has accordingly directed these old valuations to remain in force for the further periods mentioned in column 2 of schedule VII of the new Act. This conclusion is based upon the view that the valuation objected to could not be said to be in force within the meaning of sec. 152 of Act III of 1899 until they had become final and binding and that they could not be said to be final and binding so long as the appeals affecting them remained undisposed of.

3. The learned Advocate-General, on behalf of the Corporation, contends that the valuations objected to were in force at the commencement of Act III of 1899 within the meaning of column 2, sec. 2 of the Act which renders the procedure of the new Act applicable to objections filed under the old Act "so far as the valuations are in force at the commencement of the Act," and he points out that unless the valuations objected to were in force at the commencement of the Act within the meaning of this section the procedure of the new Act would not be applicable to the hearing of the appeals, and there would be no power or jurisdiction in the Small Cause Court to entertain them. The argument on behalf of the Corporation, therefore, is that if the valuations objected to must for the purposes of the Act be taken to be in force at the commencement of the new Act, within the meaning of sec. 2, column 2 of the Act, it follows that they were in force at the commencement of the Act within the meaning of sec. 152, subject only to the power to alter or set aside such valuations in accordance with the procedure provided in secs. 160, 161, and 162 of the same Act.

4. It appears to me there is great force in the contention, and if it were open to

this Court to review the order of the Small Cause Court setting aside the valuations objected to, I should hesitate to adopt the construction which the learned Judge has put upon sec. 152 of the Act.

5. I am of opinion, however, that this order of the learned Judge so far as it sets aside the valuations objected to is not open to review by this Court and that the case of Corporation of Calcutta v. Bhupati Roy Chowdhury 3 C. W. N. 70; s. c. I. L. R. 26 Cal. 74 (1898) already cited is an authority for this view.

6. It was contended that in this case the objections filed to the valuations under sec. 135 of Act II of 1888 affected the amount only and that no objection was taken to the entire valuation under that section nor could the present objections which have prevailed in the Small Cause Court have been so taken, inasmuch as the ground for it did not arise until after the new Act came into force, and that consequently the jurisdiction of the Small Cause Court is limited to dealing with the objections as to amount only.

7. But the view of this Court in the case cited was, that the Small Cause Court had jurisdiction to deal with the entire valuation and to set aside the entire valuation, if necessary, the only condition being that the procedure as to the filing of objections to the valuation laid down by sec. 135 of Act II of 1888 has been correctly followed. This procedure was followed in the cases now under appeal.

8. Sec. 135 of the old Act provided that a notice in writing should be filed stating the grounds of objections. But the provision so far as it affected the form of the notice was in my opinion directory only.

9. The appeals having been filed after the new Act came into force the procedure applicable, and the jurisdiction of the Small Cause Court to deal with them, is governed by sec. 162 of the new Act which provides that no appeal shall be admitted unless an objection has first been taken under sec. 161. This section corresponds in terms with sec. 135 of the old Act and by sec. 2, cl. 2 of the new Act the procedure followed under sec. 135 of the old Act must be taken as having been followed under sec. 160 of the new Act and in this way the Small Cause Court by the new Act is vested with the jurisdiction to deal with the valuations made under the old Act. This jurisdiction is made to depend upon the fact of objection having been taken under the old Act--not upon the form or grounds of such objection.

10. I think, therefore, the Small Cause Court had jurisdiction in these appeals to deal with the validity or otherwise of the entire valuation. The order setting aside the valuations objected to must therefore stand.

11. The remaining question is as to the order affecting the assessments made under the previous valuations of 1893 to 1894. The objections filed to the valuations of 1899-1900 in no way affected the previous valuations. The jurisdiction of the Small Cause Court was, under these objections, to determine

the validity of the new valuations. But the order of the Small Cause Court not merely sets aside the new valuations objected to, but proceeds to declare that the assessments under the previous valuations are still in operation and must remain in force for further periods of years.

12. In my opinion there is nothing in the Act giving the Small Cause Court the power to continue in operation the assessments in existence previous to the new valuations. Doubtless the reason of the learned Judge for setting aside the valuations objected to is that in his opinion the previous assessments were in force when the new Act came into operation. But though the opinion forms the ground for the order as to the valuation objected to and as such is entitled to due weight and consideration, the Small Cause Court had no power or jurisdiction to make any order binding on the Corporation, declaring the previous assessments to be in force and continuing their operation for a further term of years.

13. This is a question which in my opinion cannot be determined in the present proceedings. The order of the learned Chief Judge having set aside the valuations objected to, it will be open to the Corporation either to adopt the view that the effect of Act III of 1899 is to continue the operation of the previous assessments or to proceed to a new valuation. The order, therefore, so far as it directs the previous assessments to remain in force for the periods in the said order mentioned must be set aside.

14. The rule then is discharged as to the first part of the order and is made absolute as to the second. Each party must bear his own costs of the rule.

