

Martin Burn Ltd.

Vs

The Corporation of Calcutta

Civil Appeals Nos.247 and 248 of 1963

(A. K. Sarkar, V. Ramaswami – I, Raghuvar Dayal JJ)

19.08.1965

JUDGMENT

SARKAR. J. –

These two appeals arise out of proceeding for ascertainment of the annual value of premises No. 12, Mission Row, Calcutta, occupied by the appellant. The annual value was ascertained with a view to assess the municipal rates payable in respect of the premises. The appeals raise a common question of law making it unnecessary to deal with them separately, that question being whether the order of remand made by the High Court as Calcutta to the Court of small Causes, Calcutta for ascertaining the annual value was justified.

The annual value was ascertained under the Calcutta Municipal Act, 1923. This act was repealed and replaced by the Calcutta Municipal Act, 1951 as from May 1, 1952, but as the valuation had originally been made by the respondent corporation under the repealed act it is that Act by which question that arises will have to be determined.

We may at this stage profitably refer to some of the sections in Ch. X. of the Act for giving an idea of its scheme regarding the ascertainment of the annual value. Section 124 provides that a consolidated rate not exceeding twenty three per cent on the annual valuation determined under Ch. X. of the act may be imposed by the Corporation upon all lands and buildings in Calcutta. Clause [a] and [b] of s. 127 lay down two mutually exclusive methods for ascertaining the annual value. The method prescribed in cl. [a] is applicable where a building had been erected for letting purposes or was ordinarily let and under it the valuation has to be based on the rent which the land or building might reasonably fetch. Clause [b], on the other hand, covers all other cases and provides for the valuation being based on the cost of construction of the building and the value of the land. Section 131 [1] provides that the valuation made under the preceding Municipal acts shall remain in force for the assessment of the consoli

Now in the present case the Corporation had assessed the annual value of the premises at a certain figure by applying the method prescribed in cl. [b] of s. 127. The appellant lodged various objections to it under s. 139. We are concerned only with two of these objections which were [1] the valuation had been made on a wrong basis as it should have been made by the method prescribed in cl. [a] of s. 127 and [2], the valuation was in any event unfair and excessive. The Deputy Commissioner of the Corporation being the officer under the new act which had then come into force who had replaced the Executive officer under the old Act, rejected all these objections except that he reduced the valuation slightly presumably on the ground of excessiveness. The appellant then appealed against the Commissioner's decision to the court of Small Causes, Calcutta under s.

141. The only point that the appellant raised in that court was that the valuation was illegal as it had been made under cl. [b] of s. 127 while it should

The Corporation then appealed to the High Court at Calcutta under s. 142 [3] of the Act against the judgment of the court of Small Causes and raised the same two points it had taken in that court. Both these points were rejected by the High Court also and the order of the Court of Small Causes was maintained. These points no more survive because the Corporation has not taken any proceeding to challenge the judgment of the High Court. We are not, therefore, called upon to examine the merits of the decision of the courts below on the applicability of cl. [a] of s. 127 to the present case or as regards the court fees payable by the appellant.

In view of its decision that the valuation should have been made by the method laid down in cl. [b] s. 127 the High Court held that the learned Judge of the Small Cause Court, Calcutta, therefore, rightly cancelled the assessment. Having done this, it observed that the order of the court of Small Cause directing a revaluation by the Corporation was however infructuous. It is not in dispute that the Corporation could only make a revaluation under s. 131 [2] [b], as indeed the court of Small Causes directed it to do, and that the time limit for doing so prescribed by that section had expired. To prevent the Corporation being deprived of its rates the High Court made an order remanding the case to the Court of Small Causes and directing it to make the valuation itself thereby intending to avoid the difficulty arising out of the application of s. 131 [2] [b]. It also gave certain consequential directions for the filing of a valuation before that court by the corporation and of objections thereto by the appellant

It is not contended that the High Court had any statutory power to make the order of remand but it is said that the High Court had an inherent power to do so. Whether the High Court had the inherent power in a case like this may well be doubted. Learned counsel for the appellant contended that in any case the order of remand was unjustifiable as it converted the appellants's appeal to the Court of Small Causes into a proceeding wholly alien to what it originally was meant for. It was said that the inherent power of remand could be exercised only for deciding the disputes that arose in the case as it stood; it could not be exercised for the decision of a matter which the proceeding in the courts below did not raise, namely, the making of a new valuation on a wholly different basis. These contentions, in our view, deserve serious consideration.

We think that there are other more fundamental objection to the order of remand. The order was made so that a legal liability for rates assessed on the valuation made under it might fasten on the appellant. Indeed the High Court expressly stated that it was making the order so that the Corporation might not be deprived of its rates. The liability for rates is however a statutory liability under the act; it is not a liability to be imposed by order of court. So much is clear and not in dispute. In order that the statutory liability might arise, the valuation had to be made as provided in the statute. Now the Act nowhere states that rates may be fixed on the basis of a valuation made by a court; it does not at all contemplate a valuation made by a court on its own. Such a valuation would be futile and would create no statutory liability. Therefore, the High Court's order, sending the case back to the Small Causes Court, Calcutta, with directions to that court to ascertain the annual value, if it was intended t

Though the Act does not empower a Court to make a valuation itself, it does seem to contemplate in s. 147 and 164 a valuation made by the Corporation being revised and a previous valuation altered, by a court in an appeal. If, therefore, it could be said that the valuation which the court of Small Causes was to make under the order of the High Court would be a revised Valuation, that valuation

would have been within the statute and the order of the High Court would then have been an effective order. We do not, however, think that that valuation can be said to be a revised or altered valuation; it directed that court to make a fresh valuation itself. Secondly, it seems to us, irrespective of how the High Court described the valuation to be made under its order, that that valuation cannot by any stretch of imagination be called a revised valuation or a previous valuation altered. What has happened here is that the previous valuation has been canceled. That valuation no longer exists. The court of small causes

It is necessary now to refer to *Royal Asiatic Society of Bengal v. Corporation of Calcutta*. In that case, as in the case in hand, the rate payer had appealed to the Court of Small causes contending a wrong method, namely, cl. [a] of s. 127. The contention was rejected by the lower court but upheld by the High Court. The High Court then remanded the case to the court of small causes for a determination of the annual value in terms of cl. [b] of s. 127. The High Court took the view that in such an appeal the court of Small causes had the right to make a revised valuation as contemplated in s. 147. Basing itself on that sections and s. 164 it put its reasoning in this way at p. 544: the scheme of the Act is that where an assessee is aggrieved by a valuation made by the corporation and prefers an objection till the objection is finally adjudicated upon, the consolidated rate has got to be paid on the existing valuation and that after the objection is finally disposed of in appeal, the final valuation fixed will

In considering the scheme of the Act, the *Royal Asiatic Society's* case further overlooked the fact that the act required every valuation to be made by the corporation under ss. 131 and 136 to 138 and that it gave the rate payer a change of attacking that valuation under s. 139 before coming to a court for ventilating his grievance. These provisions would be ignored if the court of small causes were to make the valuation itself. They indicate that the scheme of the act was not as stated in that case. There it was also observed that the view taken received support from the observations of S. R. Das J. in the unreported judgment in *North British and Mercantile Insurance Co Ltd. v. Corporation of Calcutta* mentioned in that case. We think however that those observations tend quite the other way for they were inter alia that, If, however, the small causes court only sets aside the valuation made by the Corporation but does not itself fix the valuation, then s. 147 does not apply..... The matter must in such

If it was intended by the *Royal Asiatic Society's* case to hold that it was the appellate court's power after canceling a valuation to revise it if it liked, that again would be a view to which we are unable to subscribe. Such a view indeed appears to have been taken by the High Court in the case in hand for it made the order of remand only because the Corporation could not make a valuation any more, the time limit prescribed for it under s. 131 [2] [b] having expired. If the Corporation could not make a valuation presumably the High Court would not have made the order of Remand. Now s. 131 [2] [b], provides that when a valuation is canceled on the ground of irregularity, a fresh valuation may be made by the Executive officer. It would be an unnatural construction of the act to say that the operation of this provision would depend on the discretion of the appellate court to proceed or not to proceed to make a valuation itself after canceling the valuation previously made by the corporation. We think that in v

While on s. 131 [2] [b] we observe that it was not contended that a court had no power to cancel a valuation; all that was said was that after cancellation the court must or may proceed to make a fresh valuation. This we have held to be an untenable view. A point was however made that s. 131 [2] [b] applied only to a cancellation on the ground of irregularity, that is, a procedural defect such as, absence of notice, omission to give a hearing etc. There is however no reason to restrict the ordinary

meaning of the word irregularity and confine it to procedural defects only. None has been advanced. Such a contention was rejected, and we think rightly, in *Corporation of Calcutta v, Chandoo Lal Bhai Chand Modi*. That word clearly covers any case where a thing has not been done in the manner laid down by the statute, irrespective of what that manner might be. In principle there would be nothing to justify a special provision like s. 132 [2] [b] being made to cover a case of procedural irregularity only.

We can now deal with the reasoning on which the High Court in the present case justified its order of remand. It realised that by making the order it was depriving the appellant of one of its chances to object to the valuation, namely, the change under s. 139, but it felt that by upholding that right of the appellant it would be depriving the Corporation of its rates wholly as the time limit prescribed by s. 131 [2] [b] had expired. It thought that it was faced with two evils and that it would be choosing the lesser of the two if it allowed the Corporation a chance to collect its rates. With great respect, we find this line of reasoning altogether unsupportable. A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A status must of course be given effect to whether a court likes the result or not. When the High Court found that s. 131 [2] [b] had been attracted to the case, it had no power

It remains to deal with one other argument advanced for the corporation. It was said that the entire proceeding in connection with the ascertainment of the valuation was one and continuous and its only object was to ascertain the valuation and, therefore, the court annulling a valuation made on a wrong basis, must have power to make a new valuation itself on the correct basis. We are not impressed by this contention. The conclusion does not follow from the premise. The proceeding for making the valuation, whether it is continuous or not, must be in terms of the statute. If the statute does not give the court the power to make the valuation, it cannot be said to possess that power so that the supposed object may be achieved. Further, the object is not to make a valuation anyhow but to make it only in terms of the Act.

We think we have now considered all the different aspects of the matter that were placed before us by learned counsel on either side. Our conclusion for the reasons earlier stated is that, looked from all points of view, the order of remand is not justifiable in law; it was not within the inherent power of the High Court to remand the case for the doing of a thing which the Act did not countenance. The remand was futile. It offended the act as it deprived the appellant of one of its statutory rights. The order has to be set aside.

Before concluding we may state that the Corporation had made two valuations of the premises, one called a general valuation for the entire six yearly period mentioned in s. 131 [1] and the other an intermediate valuation made later but within that period to have effect for the remainder of the period, on account of certain additional construction in the premises put up since the earlier assessment. Objections had been taken by the appellant to both these valuations under s. 139 by independent proceedings and separate appeals filed under s. 141 from the order made in each of the proceedings. As earlier stated, the appeals raised the same point. They were, therefore, dealt with in one judgment by both the courts below. Hence the two appeals before us.

In the result we allow these appeals, set aside the judgment of the High Court in so far as the orders for remand are concerned and restore the judgment of the court of Small Causes. The Corporation will pay the cost of these appeals.

RAMASWAMI. J. - These two appeals are brought, by special leave, against the judgment of the High Court at Calcutta dated August 3, 1959 in appeals from Original orders in F. M. A. 124 and F. M. A. 125 of 1956. The appeals arise out of two valuations made by the Corporation of Calcutta in respect of premises No 12, Mission Row, Calcutta under the provision of the Calcutta Municipal Act, 1923 [Bengal Act III of 1923]. At the general revaluation, the disputed premises were assessed to an annual value of Rs. 1,45,354/- to come into effect from the second quarter 1949-50 i.e. from July 1, 1949. The assessment was made under the provision of s. 127 [b] of the Calcutta Municipal Act, 1923. The assessee objected to the valuation, both in regard to the quantum and the method of valuation and the Deputy Commissioner No. 1 of the respondent Corporation, though affirming the method of valuation, reduced the amount of assessment to Rs. 1,28,230/-. Against this order the assessee preferred an appeal to the Presidency small

The question presented for determination in this case is whether the High Court was right in sending back the case to the Presidency small causes court and directing it to ascertain the annual value under s. 127 of the Calcutta Municipal act for the periods in question.

It is necessary at this to set out the relevant provisions of the Calcutta Municipal Act, 1923. Section 131 deals with the assessment of the annual valuation and the duration of the assessment, It Reads:

"131. [1]..... the Executive officer may make a fresh valuation of the lands and buildings in each such ward under this Act, and the annual value of such lands and buildings in each such ward shall, after assessment, has been made by the Executive Officer, have effect for a period of six years and may be revised thereafter by the Executive Officer at the termination of successive periods of six years.

[2] Notwithstanding anything contained in sub section [1] of the following conditions shall apply in the several cases hereinafter specified, namely-

[a].....

[b] any land or building the valuation of which has been cancelled on the ground of irregularity, or which for any other reason has no annual value assigned to it under this act, may be valued by the Executive Officer, at any time during the currency of the period prescribed in respect of such land or building by sub section [1] and such valuation shall remain in force, and the consolidated rate shall be levied section 139 provides as follows:

"139. [1] Any person who is dissatisfied with a valuation made under this chapter may deliver at the municipal office a written notice stating the grounds of his objection to such valuation.

[2] Such notice shall be delivered within fifteen days after the publication of the notice referred to in s. 137, or after receipt of the notice referred to in section 138, if such notice is received after the publication of the notice referred to in section 137 :

Provided that the Executive officer may, if he thinks fit, extend the said period of fifteen days to a period not exceeding one month."

Section 140 states:

"140. [1] All such objections shall be entered, in a register to be maintained for the purpose; and, on receipt of any objection, notice shall be given to the objector of a time and place at which his objections will be investigated.

[2] At the said time and place the Executive Officer or a Deputy Executive Officer shall hear the objection, in the presence of the objector or his agent if he appears, or may, for reasonable cause, adjourn the investigation.

[3] When the objection has been determined, the order passed shall be recorded in the said register, together with the date of such order.

Section 141 reads:

"141. [1] Any person dissatisfied with the order passed on his objection may appeal to the court of Small Causes having jurisdiction in the place where the land or building, to the valuation of which the objection was made, is situated.

[2] Such appeal shall be presented to such court of Small Causes within thirty days from the date of the order passed under section 140, and shall be accompanied by an extract from the register of objections containing the order object to.

[3] The provisions of Parts II and III of the Indian Limitation Act, 1908, relating to appeals, shall apply to every appeal preferred under this section.

[4] No appeal shall be admitted under this section unless an objection has first been determined under section 140."

Section 142 States:

"142. [1] Every valuation made by the Executive Officer under section 131 shall, subject to the provisions of section 139, 140 and 141, be final.

[2] Every order passed by the Executive Officer or Deputy Executive Officer under section 140 shall, subject to the provisions of section 141, be final.

[3] An appeal from a decision made by the Court of Small Causes under section 141 shall lie to the High Court.

Section 147 provides for the period for which the revised valuation is to continue in force. It is to the following effect:

"147. When the valuation of any land or building is revised in consequence of an objection made under section 139 or section 146, sub section [2], or an appeal is preferred under section 141, the revised valuation shall take effect from the quarter in which the first mentioned valuation would have taken effect, and shall continue in force for the period for which the said first mentioned valuation was made, and no longer."

Section 164 makes provisions for the payment of the consolidated rate and how far the payment is affected by objections to valuation. It states as follows:

"164. [1] When an objection to valuation has been made under section 139, the consolidated rate shall, pending the final determination of the objection, be paid on the previous valuation.

[2] If, when the objection has been finally determined, the privation valuation is altered, the-

[a] any sum paid in excess shall be refunded or allowed to be set off against any present or future demand of the Corporation under this act, and

[b] any deficiency shall be deemed to be an arrear of the consolidated rate and shall be payable and recoverable as such:

It is manifest from these statutory provision that the consequences of the revision of valuation and of cancellation of valuation are different. Under s. 147 the revised valuation is to date back from the commencement of the period of valuation and is to continue in force for the entire period of 6 years for which the revaluation is to remain in force, but when a valuation is cancelled on the ground of an irregularity, the Executive Officer may, at any time during the currency of the period of valuation, again value the premises under s. 131 [2] [b] and such valuation shall be in force and the consolidated rate shall be levied according to in only for the unexpired portion of such period.

On behalf of the appellant company the Additional Solicitor General put forward the argument that the present case fell with in the purview of s. 131 [2] [a] and as the period of revaluation commencing from July 1, 1949 was already complete the authorities of the Calcutta corporation have no power to make a fresh revaluation under s. 131 [2] [b] of the Act. The contrary view was presented on behalf of the respondent Corporation by Mr. Viswanatha Sastri and it was contended that the present case falls within the purview of s. 147 of the Calcutta Municipal Act, 1923 and the revised valuation will relate back, under that section, to the commencement of the period of valuation and will take effect for the entire period of 6 years during which the valuation remained in force. In may opinion, the argument put forward on behalf of the respondents must be accepted as correct. In the present case the valuation has not been finally set aside either by the Presidency Small Causes Court or by the High Court in appeal Th

It was then contended on be half of the appellant that the order of remand made by the High Court was illegal because it was beyond the scope of the objection made by the appellant under s. 139 of the Calcutta Municipal act, 1923. It was contended that the appellant has objected only to the basis of the valuation and not to the quantum and, therefore, the order of remand made by the High Court was not in accordance with law. I am unable to accept this argument as correct. The objection made by the appellant under s. 139 was an objection to the valuation made by the respondent and whatever be the ground of the objection, the primary object of the appellant was to get the valuation set aside. Before the Deputy Commissioner the objection of the appellant was both in regard to the quantum and the method of valuation and the appellant actually succeeded in getting the amount of valuation reduced to a certain extent. Against the order of the Deputy Commissioner the appellant filed an appeal to the Presidency Small

I am, however, of the opinion that the directions given by the High Court in the judgment under appeal require some modification. In the operative part of the Judgment the learned Judges have stated:

"Since it is the duty of the Corporation of Calcutta to determine the annual value at the initial stage and since no such determination or ascertainment has as yet been lawfully made by the Corporation of Calcutta, we direct that the Corporation of Calcutta shall, after remand in the first instance, state in writing before the learned Judge of the Calcutta Small Causes Court the valuation ascertained by it under Section 127 [a] of the Act of 1923. On such statement being made, the assessee shall be at liberty to amend its ground of appeals in such manner as it likes. If the amendment introduced brings the case under item 2 of the Notification of July 3, 1937, the assessee shall have the liberty to put in the defect court fee, if any, at all. The learned Judge of the Small Causes court shall allow the parties to adduce such evidence as they may like and then determine the cases on evidence already on record and such further evidence as may be adduced.

I consider that the direction given in this paragraph should be set aside and in its place there should be an order for remanding the case to the Presidency Small Causes Court for ascertainment by itself of the annual value under the provision of s. 127 [a] of the Calcutta Municipal Act, 1923 after giving the parties adequate opportunity to adduce such evidence as they may like. Subject to this modification I would dismiss the appeals with costs.

ORDER

In accordance with the majority judgment, the appeals are allowed. Corporation will pay the costs of these appeals.

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