

CALCUTTA HIGH COURT

Corporation of the Town

Vs

Ashutosh De

(Mukerji, J.)

17.05.1927

JUDGMENT

Mukerji, J.

1. This is an appeal preferred by the Corporation of Calcutta under Section 142, Sub-section (3) of the Calcutta Municipal Act.

2. The facts of the case are not disputed. The respondent is the owner of Premises No, 3, Gour De Lane, which is a plot of land with a tile-roofed structure consisting of 14 rooms. He has let it out to one Giribala at a rent of Rs. 32 per month. Giribala has sub-let some of the rooms to different persons, keeping one room vacant and the rest for herself. At the time of assessment in 1924, which was a six-yearly assessment under Section 131, Sub-section (1) of the Calcutta Municipal Act, the officers of the Corporation held a local enquiry and calculated the rent on the basis of that paid by the sub-tenants and what Giribala ought to pay for the rooms that she was occupying as well as for the room that she kept vacant. This came up to Rs. 51-4-0 a month. Making certain deductions the annual value was fixed at Rs. 447 as against Rs. 261 which was the annual value assessed in 1918. On an objection preferred by the respondent the Deputy Executive Officer reduced it to Rs. 393. The respondent then appealed to the Court of Small Causes under Section 141 of the Calcutta Municipal Act. The learned Chief Judge has held that the premises used to fetch a rent of Rs. 28 a month on the 1st November 1918, and that was the "standard rent" under Section 2, Sub-section (f), Clause (i) of the Calcutta Rent Act, 1920, and that under Section 26 of that Act the assessment of the premises could not be made above the said standard rent. Calculating on that basis he fixed the annual value at Rs. 272-9-4. It is conceded on behalf of the respondent that there is an error in the calculation and the amount calculated in this way should be Rs. 295-10-5.

3. The appellants' first contention is that the learned Judge has not adopted the right principle that should be adopted in making the assessment. Now, the words of Section 127, Clause (a) of the Calcutta Municipal Act are these:

The annual value...shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year less, etc.

4. The words "reasonably be expected to let" also occur in the Parochial Assessments Act (6 and 7 Will. IV, Cap. 96) and in the City of Madras Municipal Act 1 of 1884, Upon the interpretation of these words in the Parochial Assessments Act in the cases of *The Queen v. London and North-Western Ry. Co.* [1874] 9 Q.B. 134 and *The Queen v. The School Board for London* [1886] 17 Q.B.D. 738 and other cases it has been held that the standard value upon which the rates have to be calculated -is the value of the property to the owner which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant; and when you want to find what a hypothetical tenant will give, you must not take a man who does not want the premises for the use for which they are built, but wants to use them for some other purpose, unless you can first show that they cannot be let for the purpose for which they are built. These principles were adopted in interpreting the expression as used in Section 123 of the City of Madras Municipal Act in *Secretary of State v. Madras Municipality* [1886] 10 Mad. 38. The learned Judge in the present case had no occasion to adopt these principles in the view that he took of the matter, but if they are to be applied it may be conceded that the officers of the Corporation proceeded on right lines and the assessment made by the Deputy Executive Officer is fair and reasonable.

5. The next contention of the appellants is to the effect that the learned Judge is entirely in error in taking into account the provisions of the Calcutta Rent Act, 1920, and in holding that Section 26 of that Act stands in the way of enhancing the assessment above the standard rent. The authority relied upon in this connexion is the House of Lords case of *Assessment Committee of the Metropolitan Borough of Poplar v. Roberts* [1922] 2 A.C. 93. In that case Lord Buckmaster, Lord Atkinson, Lord Sumner and Lord Parmoor (Lord Carson dissenting) held that in arriving at the valuation for the purposes of the Valuation (Metropolis) Act, 1869, of an hereditament to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies, the maximum gross value-to be assigned to that hereditament is not limited to the standard' rent of the hereditament together with the additions-thereto permitted by the latter Act. It was further held by Lord Buckmaster, Lord Atkinson and Lord Parmoor (Lord Sumner expressing no opinion on the point) that the Act of 1920 is not to be taken into account in determining the valuation for rating purposes of the hereditaments to which it applies. In substance what was held in this case was, as Lord Buckmaster put it, that the rent which the tenant might reasonably be expected to pay is the rent which apart from all conditions affecting or limiting its-receipt in the hands of the landlord would be regarded as a reasonable rent for the tenant who occupied under the conditions which the Statute of 1869 imposes.

6. Section 4 of the Valuation (Metropolis) Act, 1869, it may be mentioned here, defined "gross

value" as the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament if the tenant undertook to pay all usual tenant's rates and taxes and the landlord undertook to bear the cost of the repairs and insurance, and "rateable value" as the gross value after deducting the probable annual cost of repairs and insurance.

7. Now, the meaning of the words of Section 127 of the Calcutta Municipal Act-

The gross annual rent at which the land of building might at the time of the assessment reasonably be expected to let from year to year-

to my mind is not exactly what is conveyed by the expression "annual rent which a tenant might reasonably be expected, taking one year with another, to pay," which occurs in the Statute of 1869. "Letting" connotes a contract which must mean a contract enforceable at law and in that way the restrictive prohibitions of the Calcutta Rent Act, 1920, come in for consideration while "paying" is an act which may be done voluntarily by the tenant without the aid of or unfettered by any provision of law. The words "at the time of the assessment" clearly indicate that the condition of; things in 1924: has to be taken into account. The Calcutta Rent Act, 1920, was in force then.

8. But assuming that the two expressions to which I have referred mean the same thing there is Section 26 of the Calcutta Rent Act, 1920, that has to be reckoned with. The like of it is not to be found in the Increase of Rent and Mortgage Interest (Restrictions) Act. 1920, Section 26 says:

During the continuance of tills Act the Corporation of Calcutta or any other local authority shall not raise its assessment of any premises above the standard rent on the ground of increase of value.

9. It has been contended on behalf of the appellants that the assessment of 1924 was not an assessment on the ground of the increase of value such as is contemplated by Section 26, I confess I do not understand this argument. The assessment no doubt is made on the basis of actual occupation, but the assessment is raised only because the value has increased. In my opinion the words "on the ground of the increase of value" in Section 26 save only such assessments as are made on alterations and improvements and the like. It may be said that Section 7 of the Act contemplates an increase of assessment since the so day of November 1918, and, therefore, militates against this view of Section 26. It is well-known that the Courts have often met with difficulties in interpreting the provisions of this Act, and as observed in the case of *Rawlinson v. Algar* [1921] 90 L.J.K.B. 497, the English Act, on the lines of which this Act closely follows, is not always easy of interpretation. It may be that Section 7 contemplates a case of raising of the assessment above the standard rent in cases where alterations have been effected or improvements have been made. However, that may be, the provisions of Section 26 are, in my

opinion, plain, and without doing violence to its language it is not possible to hold that the Corporation is at liberty to increase the assessment above the standard rent. Rs. 28 is the standard rent of the premises within the meaning of Section 2, Sub-section (f), Clause (i) of the Act, the other clauses having no application to the case. I do not see any indication that the words "standard rent" in Section 26 were not meant to refer to Clause (i) where the other clauses are not applicable, I am, therefore, of opinion that the view taken by the learned Judge is right.

10. It has been argued on behalf of the appellants that the contention based on Section 26 was not put forward on behalf of the respondent at any earlier stage of the proceedings. This is quite true, but I do not think the appellants have in any way been prejudiced, the question involved being one of law only.

11. I desire to say one word more and that is with regard to the recording of the evidence in these cases, The law having provided for an appeal from the decision of the learned Judge, it is desirable that the evidence should in these cases be recorded in full.

12. The result is that in my opinion the order of the learned Judge should be varied by raising the annual value to Rs. 295-10-5 pies and subject to this modification this appeal should be dismissed.

Roy, J.

13. This appeal is from the decision of the learned Chief Judge of the Court of Small Causes, Calcutta. The plaintiff Ashutosh De owns the premises No. 3, Gour De Dane in Calcutta. It is a structure with a tiled-roof which has about 15 rooms, The plaintiff has let it out to one Giribala at a rate of Rs. 32 per month inclusive of taxes. Formerly the plaintiff used to get Rs. 28 as rent. The period for which assessment was made under the old Calcutta Municipal Act having expired at the close of 1924, a fresh assessment was made by an officer of the Corporation. It appears that Giribala lives in some of the rooms and lets the rest out on hire to sub-tenants. The officer of the Corporation held a local enquiry and questioned, the subtenants and made his assessment on the basis of occupation by Giribala and the sub-tenants. The rent calculated per mensem was Rs. 51-4-0 per month, after making certain deductions the assessment came to be Rs. 447 per annum as against Rs. 261, the assessment in 1918. The plaintiff lodged an objection and the Deputy Executive Officer reduced the assessment to Rs. 393.

14. The plaintiff was dissatisfied with this order and he appealed to the Small Cause Court under Section 141 of the Calcutta Municipal Act of 1923. At the trial the argument seems to have been advanced that the Corporation cannot raise the assessment under Section 26 of the Calcutta Rent Act. 1920, which prevents any increase beyond the standard rent of the premises. The learned Judge accepted this plea and he held that Rs. 28 being the rent payable in November 1918 it

should be taken as the standard rent and that, therefore, the assessment should be made on this basis and he gave his decision accordingly.

15. From this decision the Corporation of Calcutta has come up in appeal here and the learned vakil on its behalf contends that the question of standard rent has no application in the case, that the Calcutta Rent Act, 1920, is expiring at once and cannot control an assessment which is going to last for several years, and that the restriction imposed by the Act is only against the landlord and has nothing to do with the assessment which is to be made on the basis of occupation. It is argued that the real question has been lost sight of, viz., that it is not the rent; payable to the landlord which determines the mode of assessment but the rent paid by the actual occupiers of the house.

16. Reference was made to the principles of rating which obtain in England, and the following cases were cited, viz., Secretary of State v. Madras Municipality [1886] 10 Mad. 38 and Poplar Assessment Committee v. Roberts [1922] 2 A.C. 93, and the observations of Lord Esher in the case of Queen v. School Board for London [1886] 17 Q.B.D. 738. The learned vakil appearing for the respondent has argued that the respondent is entitled to fall back on the Calcutta Rent Act which was in force when the assessment was made, and though in this case no standard rent was fixed, the law itself shows what the standard rent should be. It is urged that the standard rent in this case was Rs. 28 plus 10 per cent, allowed by the Act, and this should form the basis of assessment. In answer to the argument that the basis of assessment should be the measure of the beneficial occupation it is argued that a tenant might realize large sums from sub-tenants by sub-letting, but it would be very hard on the landlord if the Municipal assessment was fixed on what was being realized by the lessee.

17. The contention that the real question has escaped notice appears to be well founded. The Corporation claimed that the assessment should be on the rent paid or payable by the tenants in occupation. The respondent in his plaint claimed that the valuation should be on the basis of the rent he was, getting a# landlord, viz., Rs. 32. The learned Judge held that the rent which the owner receives is the criterion, and, that further, the figure should be what the owner used to get in November 1918. Section 127 of the Calcutta Municipal Act, 1923, lays down the method of assessment. It says:

For the purpose of assessing land and buildings to the consolidated rate the annual value of land and the annual value of any building ordinarily let shall be deemed to be the gross-annual rent at which the land or building, might, at the time of assessment, reasonably be expected to let from year to year less 10 per cent, for the cost of repairs and other expenses. Annual value is the term in use in the English Rating. Act and has always been held to mean the annual letting value. The actual rent paid may be considered, but it need not be the annual value contemplated by the Act.

It contemplates a hypothetical tenant and a hypothetical rent. In any case you take up you find it act passim that the ground of a man's liability is that he is in beneficial occupation. The case of Poplar Assessment Committee v. Roberts [1922] 2 A.C 93, for one, may be referred to. Lord Buckmaster said:

From the earliest time it is the inhabitant, who has to be taxed. It is in respect of his occupation that the rate is levied.

18. Lord Sumner said:

Rating is a process between an occupier and rating authority to the determination of which the landlord and the lessee are strangers.

19. The object of the whole system of rating law in England, which we have followed in India, is to assess occupiers of rateable property equally in proportion to the value of their occupation. The value is stated by statute in the form of a hypothetical annual rent payable by the occupier for the right to use and enjoy the property occupied. It is the beneficial occupier who has to be considered and the value of his occupation.

20. The landlord in this case happens to be a middleman. His lessee lives in a part of the structure and lets out the other rooms and realizes rent from the tenants occupying these rooms. It is not said that the rents realized from the occupiers are extravagant or that they are rents which would not ordinarily be paid for these rooms by this class of tenants. I do not think, therefore, that it was unreasonable on the part of the Municipality to hold that the basis of assessment should be the actual rental paid by the tenants in occupation. The actual rental came to Rs. 51-4-0 per month. Handsome deductions were given with the result that the assessment stood finally at the figure of Rs. 393. This is a little more than the actual rent realized by the landlord. The Calcutta Municipal Act itself takes note of the possibility of the annual value being more than the actual rental. Section 150 of the Act gives relief to the landlord in such a case and provides a method by which he can realize the extra sum from the tenant, The actual rent paid by the lessee is not the criterion for making the assessment. The assessment should be on the value of the beneficial occupation. It may be said then that the assessment made by the Corporation in this case is not unfair. It seems reasonable and should, therefore, be maintained.

21. There remains the question advanced at the last moment, which appealed to the learned Judge, viz., that the Calcutta Rent Act (which has now expired) stood in the way of any increase in the assessment. Section 26 of the Calcutta Rent Act, 1920, which was in force when the assessment was made laid down that during the continuance of the Act the Corporation of Calcutta shall not raise its assessment of any premises above the standard rent on the ground of the increase of value. The idea in framing the section, I believe, was that, since the landlord could

not get more than the standard rent, he should not be liable for any increased assessment on the ground that the land had gone up in value. It is a mistake, if I may say so with great respect, to suppose that the Calcutta Rent Act stopped all increase in assessments. On the other hand it took due note of the fact that the periodical assessments increased the rates, and Section 7 of the Calcutta Rent Act was, therefore, enacted to enable the landlord to raise the standard rent to the extent of the increase in the assessment in cases where, the landlord paid the rents and taxes. The Calcutta Rent Act was a measure against the landlord, and it is not clear how he can fall back on the standard rent, i.e., rent payable on 1st November 1918, when he himself is realizing a higher rent. Section 26 of the Act prevents an increase of assessment on the ground of an increase in value. The assessment in question here has nothing to do with the rise in land value of the premises in question. The assessment proceeded on the basis of the value of the occupation; in fact on the actual rents paid by the occupiers. In my opinion therefore the reference in this case to Section 26 of the Calcutta Rent Act was misconceived.

22. The appeal therefore in my opinion should be allowed and the decree of the learned Judge set aside and assessment made by the Corporation restored.

ORDER

23. In this appeal we have agreed to differ on a point of law which may be stated in these words for the purposes, of the proviso to Section 98 of the Civil Procedure Code:

24. Whether the Corporation of Calcutta in assessing certain premises under Section 131, Sub-section (1) of the Calcutta Municipal Act in 1924 when the Calcutta Rent Act, 1920, was in force, were competent to increase the assessment above the rent at which the premises were let on the 1st November 1918 and which under Section 2, Sub-section (f), Clause (i) of the Calcutta Rent Act, 1920, was the standard rent of those premises.

25. The papers will be laid before the Hon'ble the Chief Justice.

Rankin, C.J.

26. (His' Lordship after stating the facts continued). On one point the two learned Judges were in agreement. That point is not before us and it is no part of our intention to express any opinion whatsoever upon it. On another point they were in disagreement and accordingly they took action under the proviso to Sub-section (2) of Section 98 Civil P.C., and stated the point of law upon which they differed for the opinion of this Court. That point of law so stated is as follows:

Whether the Corporation of Calcutta, in assessing certain premises under Section 131, Sub-section (1) of the Calcutta Municipal Act in 1924 when the Calcutta Rent Act, 1920, was in force, were competent to increase the assessment above the rent at which the premises were let

on the 1st November 1918 and which under Section 2 Sub-section (f), Clause (i) of the Calcutta Rent Act, 1920, was the standard rent of those premises.

28. Now the terms of Section 26 of the Calcutta Rent Act are these:

During the continuance of this Act, the Corporation of Calcutta, or any other local authority, shall not raise its assessment of any premises above the standard rent on the ground of the increase of value.

29. In order to apply that section in any particular case or to decide upon its applicability it is necessary to bear in mind the terms of Section 127 of the Calcutta Municipal Act of 1923. The clause of Section 127 which applies to this case is Clause (a) and the section provides:

For the purpose of assessing land and buildings to the consolidated rate the annual value of land and the annual value of any building erected for letting purposes or ordinarily let shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year, less, in the case of a building, an allowance of ten per cent. for the cost of repairs and for all other expenses necessary to maintain the building in state to command such gross rent.

30. Under that section what has to be determined is the annual value and what the section says is that you are to put a figure upon the premises as being their annual value by finding out what would be the gross annual rent at which the building might reasonably be expected to let from year to year; in other words, there is one way and only one way in which under this Act the annual value can be computed. It is to be computed on the basis of what the building can reasonably be expected to let at from year to year. It is quite true that when one is enquiring at what figure it can reasonably be expected that the building should be let out from year to year, it is very good evidence, in most cases probably the best evidence, to show what, in fact, tenants-presumably reasonable people are paying and are willing to pay. If you find the tenant of a house paying a certain rent and that this arrangement is an ordinary business arrangement with which he is content then, at all events it is reasonably clear that the building can be expected reasonably to fetch that amount of rent per year. Now, in this case what has happened is shortly this: Under the previous valuation which obtained until 1924 it was decided that the annual value was Rs. 30 a month. That was the rent which it was then decided might reasonably be expected to be got from tenants. Under the proposed valuation Rs. 51-4-0 was to be the basis of the valuation, and unless violence is to be done to the statute that can only be upon the footing that this building can reasonably be expected to be let at Rs. 51-4-0 per month. It would seem, therefore, difficult to resist the conclusion that this is an increase of assessment on the ground of increase of value as that word is used in Section 127 of the Calcutta Municipal Act. However it be put, the assessing

officer is necessarily in the position of saying that whereas in 1918 it was decided that you could reasonably expect to get no more than Rs. 30 per month, now you can reasonably expect to let it for Rs. 51-4-0. No doubt it would be different if the increase of assessment had been on the ground that the premises had been much altered and improved. No doubt it would be different if the increase of assessment had been due to some different method of calculating the allowances. But nothing of this sort is suggested in this case.

31. What is said on behalf of the Corporation is this : that the old assessment based on a valuation of Rs. 30 was no doubt calculated upon the actual rents obtained from the actual occupiers of the building in 1918, that in 1924 the actual rents obtained from the actual occupiers of the building plus a fair rent from Giribala herself amounted to Rs. 51-4-0 and that this increase of assessment is not because of increase of value at all, but it is because of an increase in the actual receipts known to be obtained not by the owner but by the tenant Giribala from the property. In my judgment for the reasons which Mr. Justice Mukerji has very clearly given that contention must be rejected altogether. Whatever light is thrown upon the amount of rent that can reasonably be expected to be obtained for this property by looking to what tenants or sub-tenants in fact are willing to pay, the only reason which under the statute justifies the assessment of the property at a particular figure is the reason which Clause (a) of Section 127 sets forth:

The annual value of any building erected for letting purposes or ordinarily let shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year.

32. I would refer in particular to the following passage in the judgment of Mr. Justice Mukerji in which I agree. He says:

It has been contended on behalf of the appellants that the assessment of 1924 was not an assessment on the ground of the increase of value such as is contemplated by Section 26. I confess I do not understand this argument. The assessment no doubt is made on the basis of actual occupation, but the assessment is raised only because the value has increased, in my opinion the words 'on the ground of the increase of value' in Section 26 save only such assessments as are made on alterations and improvements and the like.

33. It has been suggested that Section 7 of the Act of 1920 militates against this construction. That is a section which is taken from the English Act of 1920, at all events, in its general idea. It is quite clear that in view of Section 26 the only way in which Section 7 can well come into play is in a case where there has been an increase in the percentage or in the number of annas in the rupee which have to be paid by way of rate upon the figure of the assessment. In such a case as that Section 7 may well have application but there is nothing in Section 7 which would justify

any different construction of Section 26.

34. In these circumstances we have to answer the single question which I have already stated. In my opinion the answer to that question is in the negative-the Corporation of Calcutta are not competent to increase the assessment above the rent at which the premises were let on the 1st of November 1918. By the terms of Section 98 of the Code of Civil Procedure, where the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

35. Accordingly in this case the appeal falls to be determined in accordance with a negative answer to the question which has been put to us. It may be that the result of this is the result which Mr. Justice Mukerji indicated at the end of his judgment, because it was agreed before the Division Bench and it was agreed before us that if one takes the figure of the rental which the Small Cause Court Chief Judge took, then the correct figure of assessment is Rs. 295-10-5. But that question is for the Division Bench.

36. This case will go back to the Division Bench who heard it in order that they might; finally record an order upon the basis of the answer which we give to the question propounded to us.

37. The Corporation of Calcutta will pay to the assessee his costs of this hearing. We assess the hearing fee at ten gold mohurs. The costs before the learned Judges will be dealt with when the case finally goes before them.

Buckland, J.

38. I agree.

Cammiade, J.

40. I agree.

41. (The case then went back to the Division Bench and that Bench fixed Rs. 295-10-5 as the annual value of the premises.)

