CALCUTTA HIGH COURT

Bengal Nagpur Railway Co. Ltd

Vs

Corporation of Calcutta

(Lodge, J.)

20.03.1942

JUDGMENT

Lodge, J.

1. This appeal is by the Bengal Nagpur Railway Company, and it is directed against an order of the Small Cause Court Judge at Sealdah, dated 22nd February 1940 made in an appeal filed before him by the appellant company, under Section 141, Calcutta Municipal Act. The case relates to the assessment of premises No. 10 (B), Garden Reach Road which is owned by the appellant. It is a vacant piece of land, measuring 12 bighas 16 cottas and 31 sq. ft., and the appellant's story is that some members of railway officers' club occasionally use it for golf practice. The Calcutta Corporation have on their last revaluation assessed the land, on the basis of annual letting value of lands in the vicinity, at the rate of Rs. 1750 per bigha. The case of the assessee is that calculated on the basis of beneficial user the annual value could not exceed Rs. 1000. They, therefore, claimed reduction of a sum of Per. 21,485 in assessment, and of Rs. 4297 in tax per year. The appeal was resisted by the Corporation of Calcutta who maintained that the premises was rightly valued in accordance with the provisions of Section 127 (a), Calcutta Municipal Act. The Small Cause Court Judge has, by his judgment dated 22nd February 1940, negatived the contention of the assessee, and dismissed the appeal. It is against this decision that the present appeal has been taken.

2. Mr. Bose who appeared in support of the appeal has contended before us, that the basis upon which the premises in question has been assessed by the respondent Corporation is altogether wrong. His argument is that for purposes of rating, a property must be valued as it exists, when the rate is made, with all the then existing conditions (rebus sic stantibus). The rating authority must find out the annual value on the basis of the existing user to which the land is put, and it would be illegal to impose rates on the basis of rents that it would fetch if it were used in a different manner. It is argued by Mr. Bose that this principle has uniformly been applied in England in determining annual value for purposes of rating and in construing Section 127(a), Calcutta Municipal Act, which is in substantial agreement with the provisions of the English Acts, the same principle ought to be followed. The argument amounts to this that as the land assessed is practically a piece of vacant land which is not used by the assessee except for occasional golf practices, the annual value of such lands must be the rent which a tenant would be willing to pay, if he were to use the land in exactly the same way as it is being used at present

without any change whatsoever. Judged by this standard the annual value would be almost nothing; at any rate it would not exceed Rs. 1000 a month, which a tenant taking an imperfect golf course like this might be expected to pay.

3. To decide this point, it is necessary in the first place to turn to the relevant provisions of the Calcutta Municipal Act. Section 124 of the Act empowers the Corporation of Calcutta to impose consolidated rates on land and building on the basis of annual valuation determined under Chap. 10 of the Act. Sections 127 and 128 lay down the way in which the annual value is to be determined. We may leave out for our present purposes Section 128 altogether, which deals with cases where the land and building to be assessed belong to the Board of Trustees for the improvement of Calcutta. In case of land or building erected for letting purposes Section 127(a) lays down that the annual value shall be deemed to be the gross annual rent at which the land or building might, at the time of assessment, be reasonably expected to let from year to year, less a ten per cent, deduction in case of building, which is deemed necessary to meet the costs of repair and other expenses. Section 127(b) provides a somewhat different method for determining the annual valuation of a building, which is not created for letting purposes and is used ordinarily by the owner for purposes of residence. By this method the price of land is added to the cost of construction of the building and deducting a certain amount as depreciation allowance, 5 per cent, of the balance is taken to be the annual value of the building.

4. Under the English law the liability to pay rates is dependent on beneficial occupation. The owner of land or building who does not use it in any way is not rateable because he is not in occupation, although he may have legal possession in the sense that he can exclude other persons from it : vide Ryde on Rating, Edn. 17, p. 16. What constitutes "occupation" for purposes of rating depends on various considerations and no exhaustive or accurate definition has yet been formulated. Briefly speaking "occupation" includes possession and something more. Bare possession without the taking of profit or advantage is not sufficient to constitute rateable occupation. There must be use and enjoyment which is capable of being beneficial : vide St. Luke's Hospital (1760) 2 Burr. 1053. The law as laid down in the Calcutta Municipal Act differs in this respect from English law that a owner under the Municipal Act, even if he does not occupy or enjoy a land or building, will be bound to pay rates. The owner is rateable ever lf he keeps the land vacant and unoccupied though he gets certain vacancy remissions as are provided in Section 131 of the Act. How far this distinction has any bearing on the question for consideration in the present case we will see presently.

5. In England when it is shown that a person is rateable, the question on what sum he is to be rated depends on the definition of "net annual value" and "rateable value" as given in Section 22, Rating and Valuation Act of 1925; or in case of land3 in the City and County of London, on tine definition of 'rateable value' in Section (4), "Valuation (Metropolis) Act of 1869. There is detailed procedure laid down in the English Acts, by which the 'rateable value' is arrived at by making specified deductions from "gross value." Shortly speaking, the fundamental basis of rating in English law in respect Of all classes of property is the yearly rent which a hypothetical tenant would reasonably pay for the e hereditament. The property to be valued must be assumed to be let, and the gross annual rent is the rent which a tenant, might be reasonably expected to pay for a hereditament, if the landlord under took to bear the expenses necessary to maintain the hereditament in a state to command the rent. The tenant is assumed to take the hereditament from year to year, though he is supposed to have a reasonable expectation of continuing in occupation

: vide Ryde on Rating, Edn. 17, p. 244.

6. It cannot be disputed that barring certain matters of detail, the principle embodied in Section 127(a), Calcutta Municipal Act, is substantially the same. In case of land which is not covered by any building and in case of building created for letting purposes the annual value is the rent, which would be worth to a hypothetical tenant who takes it from year to year. Now, it is a well-established principle of English law that for purposes of rating, a property must be valued as it stands ; in other words only the present circumstances must be looked at, and neither the past conditions nor the future possibilities are to be taken into account.

7. "The rateable quality of land is not to be determined by what it once was, or what it may hereafter become...it must be determined by what it was at the time when the rate was made : "*Metropolitan Board of Wards v. West Ham*[1] As Lord Maugham has expressed it in a recent case : "The hypothetical rent which the tenant could give was estimated with reference to the hereditament in its actual physical condition (rebus sic stantibus) and a continuation of the existing state of things was prima facie to be pre. Summed : "*Townley Mill Co. v. Oldham Assesment Committee*[2]

8. Mr. Bose argues that if this principle is applied to the present case, the premises in question ought to be valued on the basis of rent which would be paid by a hypothetical tenant who must be presumed to keep the land vacant, or at the most use it as an imperfect golf course as it is being used at present, and in either view the yearly rent would be considerably below what has been estimated by the Corporation. The Corporation, it is said, cannot value it on the basis of a different kind of user. We agree with Mr. Bose that the principle of valuing "rebus sic stantibus" could with perfect propriety be applied to oases coming under Section 127(a), Calcutta Municipal Act. In fact the words "at the time of assessment" occurring in the section clearly indicate that in determining the value regard must be had to the conditions existing at the time when J the assessment is made. A flower garden cannot be valued at the rate at which it may be let as a brickfield. A dwelling house must be valued as such and not at a higher value which it would fetch if converted into a shop. The value that is to be ascertained is the value of the property to the owner, and consequently by determining the use to which, the land would be put, the owner can determine to some extent the amount at which it shall he rated. But when the land is kept vacant, and the owner does not put it to any use at all, there is neither reason nor authority in support of the view that the value in such oases must be determined on the basis of the rent expected from a hypothetical tenant, who would take the land but would not use it in any way. Such a case could not possibly arise in English law, as a owner who does not use or occupy his land is not rateable under the English law at all. All the decided cases in England go to show that when the house or structures are built or equipped in a certain manner, and intended to be used for any particular purpose, an employment of them for which they are suited or readily capable of being suited in their then actual condition, is to be presumed. But if they cannot be let for the purpose for which they were built, then, it would be quite within the competence of the rating authority to find out whether they could be let for any other or subsidiary purpose: vide the observations in Secy. of State v. Municipal Commissioner of the City of Madras ('87) 10 Mad. 38 at page 43.

9. Under the Calcutta Municipal Act, as we have already pointed out, an owner who keeps his land vacant would, be bound to pay rates. In determining the value of such land, we cannot

possibly hold that the standard would be the amount of rent payable by a tenant who would keep it fallow and unoccupied. As the owner was not using it in any particular way, there is no presumption in favour of the continuance of any kind of user. The standard in such cases must be the rent which could be expected from a tenant, who would take the land as it is, and put it to such use, as is possible for a yearly tenant to do. To hold otherwise would be to make nugatory the provision of the Calcutta Municipal Act, which makes the owner of a vacant and unoccupied premises liable for rates.

10. In the case before us, the premises No. 10 (B) Garden Reach Road must be deemed to be a vacant land. Witness 1 for the appellant says that it was a mere apology for a golf course. It is true that there are 4 holes in it, and the officers occasionally use it for golf practices, but the Railway Company expressly asked the Corporation to ignore such occasional user and treat it as vacant land, so that they might have the vacancy remissions (vide the evidence of witness 2 for the respondent at p. 18 of the Paper-book). This being the position, the question as to what rent it could have fetched if it was let out as a golf course does not in our opinion arise in this case. We can certainly conceive of cases, where a plot of land is laid out or is particularly suited to be used as a tennis court or a golf course, and in such cases, it might be quite proper to value it on that basis. But that question does not arise in the present case. Mr. Bose has not disputed before us that if the premises was let out as vacant land to a yearly tenant, it could fetch the yearly rent, as is determined by the Calcutta Corporation. We hold therefore that the assessment is quite proper and the appeal should be dismissed with costs. Hearing-fee 10 gold mohurs.

Cases Referred.

1(1871) 6 Q.B. 193 at p. 198
2(1937) 1937 A.C. 419 at p. 437