

# CALCUTTA HIGH COURT

Governor-General in Council

Vs

Corporation of Calcutta

(G Das and Lahiri , JJ.)

30.03.1949

## JUDGMENT

**G Das, J.**

1. The appellant, Dominion of India, representing the East Indian Railways, (formerly Bengal Assam Railway) appeals to this Court under Section 141, Calcutta Municipal Act III [3] of 1923 (hereinafter called the Act) against an order dated 30th June 1947, passed by Mr. R. N. Ray, learned Small Cause Court Judge, Sealdah, District 24 Parganas, whereby he dismissed an appeal against the order of the second Deputy Executive Officer, Corporation of Calcutta, dated 11th April 1946, under Section 140 of the Act in respect of the assessment of Premises No. 52, Gopal Chandra Chatterjee Road.

2. The B. A. Railway (Bengal Assam Railway) was the owner and occupier of premises No. 52, Gopal Chandra Chatterjee Road, measuring 83 Bighag, 9 Kottahs 6 chhataks and 14Sq ft., and was paying Rs. 3004-12-0 per annum on account of municipal rates and taxes to the Corporation of Calcutta, hereinafter called the Corporation.

3. By a memorandum, Ex. 4, the B. A. Railway let out to the Civil Supply Department the aforesaid premises for one year subject to further extensions, as may be agreed upon; the relevant provision runs as follows:

"2. The Civil Supply Department shall be liable to pay to the Bengal Assam Railway Administration a sum of Rs. 60,096-4-0 per annum on account of rent for occupation of the above land. The Civil Supply Departments shall also pay a sum of Rs. 3004-12-0 per annum on account of Municipal tax which the Railway Administration is paying to the Calcutta Corporation. The Civil Supply Department shall be (sic) also pay other taxes or ancillary charges which the Railway Administration may have to pay to any local authorities or any other body in connection with the said plot of land and/or structures thereon."

It is now admitted that thereafter the Civil Supply Department erected certain godowns and other structures at its own cost and for its own use. This is also supported by the uncontradicted evidence adduced by the appellant.

4. In September 1945, the Corporation served the following notice, EX. 3, on the appellant :  
"Corporation of Calcutta ; Assessment Department. Special Notice under Section 138 of Bengal Act III [3] of 1923. The owner of Premise's No. 52, Gopal Chandra Chatterjee Road. Take notice that the above premises have been assessed at an annual value of Rs. 3,71,520 and the said valuation is to remain in force from the commencement of the 3rd quarter of 1945-10 until the expiration of the period of assessment of the ward within which the above premises are situated, viz., the 4th quarter of 1948-1949.

Grounds of increase. Valuation of the new structures on estimated yearly rental value less statutory allowance for repairs.

Municipal Office                      S. M. Hossain

Acting Assessor to

Dated 11th September, 1945.      the Corporation."

5. The following grounds of objections were then raised to the said proposed assessment :

(i) That the entire revaluation is ultra vires, illegal and inoperative :

(ii) that the additional constructions which are sought to be assessed are not liable under the law to be assessed ;

(iii) that the entire principle and basis of assessment are wrong and not warranted by the law ;  
and

(iv) that the taxes demanded on the assessment are patently disproportionate to the services rendered.

6. It would appear from Ex. A (1) that the Executive Engineer of the B. A. Railway admitted that the approximate cost of construction of the godown and structures was Rs. 35,90,000 only (excluding costs of land).

7. The second Deputy Executive Officer by his order dated 11th April 1946, Ex. 2 (a), reduced the valuation to RS. 3,22,920.

8. The details of valuation are as follows :

Corporation of Calcutta ; Assessment Department.

Statement of Details of Valuation.

Intermediate Re-valuation with effect from the 3rd quarter of 45-46. Premises No. 52, Gopal Chandra Chatterjee Road.

33000 x 12 ... .. 396000

10%	... ..	39600
		-----
		356400
Land about		
10 B @ 1/-		
p.k.p. m.	... ..	2400
		-----
		358800
10%	... ..	35880
		-----
		322920
		-----

9. In the memorandum of appeal filed by the appellant, the grounds are thus stated : "Buildings standing on this premises were not erected for letting nor are ordinarily let. The respondent body did not consider what they ought to have considered. The appellant claims that the assessment of the annual value as made by the respondent body under Section 127 (a), Calcutta Municipal Act, 1923, is illegal and should be cancelled."

10. The case was taken up on 7th May 1947, and evidence was closed on that date. The case then stood over for arguments, on 26th May 1947. On 13th June 1947 the Corporation filed a petition praying for allowing it to adduce evidence on the question of valuation under Section 127 (b) of the Act. This prayer was refused. The case was taken up on 27th June 1947 and one witness was examined for the appellant and the memorandum of terms was marked as EX. 4, on behalf of the appellant. The Corporation filed a petition that it has been prejudiced by the refusal of the Court to allow evidence of valuation under Section 127 (b). Arguments were then heard.

11. The learned Small Cause Court Judge dismissed the appeal by his order dated 30th June 1947.

12. In this judgment, the learned Judge pointed out that the quantum of assessment was not challenged, that the appellant did not plead that it could not be taxed in respect of the structures, because it was neither the owner nor the occupier thereof, that the only contention raised was that the principle of assessment was wrong, the assessment should have been made under Section 127 (b) and not under Section 127 (a) of the Act.

13. As already stated this appeal is by the Dominion of India. Mr. Sen appearing for the appellant has argued that the basis of the assessment is wrong that the assessment should have been made not under Section 127 (a), but under Section 127 (b) of the Act and that as such the assessment made should be set aside.

14. Mr. Banerjee for the respondent, on the other hand, has contended that Section 127 (b) of the Act only applies where the land and the building belong to the same person. Mr. Banerji has further submitted that if the land is held on a lease, any superstructure built by the lessee must be taken to be a part of the land for the purpose of assessment of rates and the land and the

superstructures should both be deemed to be held for letting purposes.

15. To deal with the contentions raised, it would be profitable to refer to some portions of chap. X of the Act which is headed as "The consolidated rate."

16. Broadly speaking, the chapter first deals with the imposition of the consolidated rate and then deals with apportionment thereof between owners and occupiers.

17. Section 124 is the charging section and runs as follows:

124. A consolidated rate not exceeding twenty three per cent on the annual valuation determined under this chapter may be imposed by the Corporation upon all lands and buildings in Calcutta for the purposes of this Act.

18. Section 127 provides for the ascertainment of the annual value.

127. For the purpose of assessing land and buildings to the consolidated rate,

(a) 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 percent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent; and

(b) the annual value of any building not erected for letting purposes and not ordinarily let shall be deemed to be five per cent, on the sum obtained by adding the estimated present cost of erecting the building, less a reasonable amount to be deducted on account of depreciation (if any) to the estimated present value of the land valued with the building as part of the same premises."

19. In the Court below this case proceeded on the footing that it was a case of general revision of assessment at the end of six years prescribed by Section 131 (1) of the Act.

20. The present case is, however, different. Here there was a revised assessment of the premises in 1942-1943, to remain in force for 6 years i. e., till 1948-1949. At that time, the owner and occupier was the same, being the B. A. Railway. There was then no structure on the land. The land was bare land and the assessment must have been made under Section 127 (a). When the structures were raised about the year 1946, the Corporation assessed the same presumably under Section 131 (2) (d). This would appear from the notice Ex. 3 issued under Section 138 of the Act.

21. If this is the correct position, the Corporation can only value the new building. The details of valuation, already referred to, show that the entire premises was revalued, the bare land 10 bighas at a hypothetical rent of Re. 1 per katta per month less deduction of 10 p. c. and the remaining portion being the building portion and appurtenant land, at a hypothetical rent less deduction of 10 p. c. both under Section 127 (a).

22. Such a course is, in our opinion, not permissible under the Act. The revised assessment of the entire premises before the expiry of the statutory period of 6 years is therefore illegal.

23. Mr. Banerjee does not dispute that the structures erected are new buildings as defined in

Section 3 (46) but his only answer is that the true import of Section 131 (2) (d) is that when a new building is erected during the currency of the period prescribed by Section 131 (1), the Executive Officer may value the entire premises i. e. the building and the surrounding lands anew. This argument overlooks two facts, viz., (1) that the valuation is to be made of "such building" i. e. "the new building" and (2), that the valuation is of a temporary duration i.e.. for the unexpired portion of the period referred to in Section 131 (1); it is, therefore, not a case of a fresh assessment under Section 131 (1). Mr. Banerjee's contention cannot therefore be accepted.

24. But assuming that it was permissible for the Corporation to revalue the entire premises, viz., the land and buildings included in premises No. 52, Gopal Chandra Chatterjee Road, the question is how should the assessment be made.

25. The Corporation has valued the premises by sub-dividing the same into two parts, viz. the building and land appurtenant thereto (i. e. the portion of land necessary for the convenient enjoyment of the building) and the portion of bare land not so appurtenant. Both have been valued as held for letting purposes i. e. under Section 127 (a).

26. The assessment, even assuming that Section 127 (a) was applicable, should have been made as one unit. The unit of assessment in this case is admittedly the entire premises No. 52, Gopal Chandra Chatterjee Road. There was no application for Sub-division of the unit, nor were any proceedings taken for that purpose. This is another ground for holding that the assessment is bad.

27. There is a further and more serious objection to the mode of assessment followed by the Corporation. The land is a leasehold one and its annual value has to be determined under Section 127 (a) but the building was not intended to be let nor was used for letting purposes and would not come within Section 127 (a) but might come under Section 127 (b) but such a mode of assessing one unit of assessment, viz. partly under Section 127 (a) and partly under Section 127 (b), is not permissible, Corporation of Calcutta v. Motichand . It is true that this case related to the assessment of a hybrid building, occupied in equal moieties by the owner and his lessees. The principle was extended in the Corporation of Calcutta, v. Province of Bengal . Mitter J. observed there that it would not be legitimate for the Corporation to determine separately the annual value of the lands under the building and of the compound, the building under Section 127 (b) and the compound under Section 127(a).

28. A choice has therefore to be made between Section 127 (a) and Section 127 (b).

29. Mr. Banerjee has contended that in a case like the present, the building being attached to the land, should be regarded as a part of the land, and the user of the land should by a fiction of law determine the user of the building, although in fact this may not be so. It has there-fore been argued that even though the building might have been erected by the lessee at his own cost and used by the lessee himself, the law will imply that for purposes of assessment, the building belongs to the owner of the land and as the land was let out, the building must also be deemed to have been let out.

30. In our opinion, such implications should not be made.

31. The fiction of English law that buildings erected on land become, by the mere accident of

their attachment to the soil, the property of the owner, compendiously embodied in the maxim *quicquid inadificatur solo solo cedit*, is not in consonance with the usages and customs of this country, *Thakoor Chunder Pramanick v. Ramdhun Bhattacharjee*<sup>1</sup>*Narayandas Khetry v. Jatindranath* .

32. The further assumption that because the land is used for letting purposes, the building though used by the lessee himself should be regarded as held for letting purposes, is equally unwarranted. Section 127 does not speak of hypothetical user but of actual or intended user.

33. The view contended for is opposed to the scheme of the land, (sic Act).

34. In the preliminary stage of assessment the Corporation has to find out the annual value of buildings dependent on the actual or intended user. It is not concerned with the ownership of the building.

35. As regards bare land, the actual user is not considered, a hypothetical letting value is taken. In India, bare ownership of land sustains the liability to be rated. In this respect, it differs from the law in England where rateability depends on beneficial occupation (*Ryde on Eating*, 8th Edn. pp. 17-18).

36. In such a case no difficulty arises. The annual value is determined by the hypothetical rent which a hypothetical tenant who is free to use the land would pay in respect of the land. *Bengal Nagpur Railway v. Corporation of Calcutta*<sup>2</sup>

37. In regard to buildings, Section 127 makes the annual value dependent on user, actual or intended. It is more logical to hold that where a building with land has to be rated, the user of the building ought to determine the basis on which the building and the land which forms with it one unit of assessment, should be valued.

38. If the land is covered by buildings, erect-ed by the owner of the land or a lessee of the land, the entire land and the building has to be assessed as one unit of assessment, the annual value being determined by the user of the building, viz., the building is held if for letting purposes under Section 127 (a) but if for personal use under Section 127 (b).

39. If the land and building both belong to the owner of the land, such assessment cannot be complained of. If the land and the building belong to two different persons, e. g., owner and lessee of the land, the owner of the land is rated in respect of both land and building. This does not entail any hardship on the owner of the land because he gets relief in respect of the assessment of the building as against the owner of the building under Section 150.

40. We hold, therefore, that the scheme of Section 127 is that if the land be bare land, it is to be valued under Section 127 (a); if there be a building upon it, the case would be governed by Section 127 (a) if the building was erected for letting purposes or was ordinarily let or by Section 127 (b) if the building was not erected for letting purposes or was not ordinarily let.

41. The case of the Corporation of Calcutta v. Province of Bengal , was referred to by both parties. The case related to the assessment. of the Writers Buildings which was mainly occupied

by the Province of Bengal with the exception of a few rooms which had been let out to a Co-operative Bank and two Co-operative Societies. The Chief Judge, Presidency Small Cause Court, had valued the premises partly under Section 127 (a) and partly under Section 127 (b). This basis was not accepted by this Court and it was held that the assessment should be made under Section 127 (b). On so holding, Mitter J. observed as follows :

"It the subject be bare land or building erected for letting purposes or ordinarily let. The annual value is to be what a hypothetical tenant would pay as rent from year to year, less a certain deduction. This is cl. (a) of Section 127. Clause (b) deals with what may, for brevity's sake, be called residential buildings, buildings erected for the use of and actually used by the owner" (p. 167).

42. Mr. Banerji has relied on the last sentence and has argued that cl. (b) only applies to a case where the owner of the land is also the owner of the building.

43. The observation has to be read in the light of the facts of the case and does not support the contention of Mr. Banerji.

44. On the other hand, the view taken by us is supported by the following observations of Mukherjee J. in the Governor General of India in Council v. Corporation of Calcutta :

"Section 127 lays down the procedure for ascertaining the annual value of lands and buildings. The principle adopted by this section is that if the property is vacant land it is valued on the basis of annual rental at which it could be expected to be let., less certain deduction. If any building stands upon the land and the building has been erected for letting purposes or is ordinarily let, the annual value has to be ascertained on the rental basis as provided for in cl. (a) of the Section. Otherwise the annual value is determined under cl. (b) on the basis of the cost of construction of the building and the value of the land. In either case the building is taken along with the land and the two are assessed together as one unit. This is the scheme adopted by the Calcutta Municipal Act. There is no rule here of valuing a building separately from the land upon which it stands and for the purposes of assessment, the building is taken as a part of the land."

45. The result of the above discussion leads us to hold that the assessment made by the Corporation under Section 127 (a) was illegal and must be set aside.

46. Mr. Banerji has finally submitted that the case may be remitted to the Court below for finding out whether the assessment made would be justified, on the basis that the case came within Section 127 (b). He has referred us to the two petitions filed by the Corporation for allowing it to lead evidence on the point. We have already referred to these petitions and to the orders passed thereon. In our opinion the Court below rightly rejected the petitions. As the basis of the assessment has been held by us to be erroneous, the assessment cannot stand. The Corporation has to proceed according to law and reassess the premises. This contention cannot be given effect to and must be overruled.

47. The appeal therefore succeeds, the assessment made by the Second Deputy Executive Officer and the order of the Judge of the Court of Small Causes Sealdah are vacated.

48. The appellant is entitled to costs in this Court and the Court below. Hearing fee in this Court

is assessed at 10 gold mohars.

**Lahiri, J.**

I agree.

Cases Referred.

16 W. R. 228 at p. 229, F. B  
251 C. W. N. 336 : (A. I. R. (34) 1947 P. C. 60)