CALCUTTA HIGH COURT

Corporation of Calcutta

Vs.

Anil Prokash Basu

A.F.O.O. No. 40 of 1955

(P.N. Mookerjee and Sarkar, JJ.)

18.06.1957

JUDGMENT

P.N. Mookerjee , J.

1. This appeal raises an interesting question of law regarding the principle of assessment of building under the Calcutta Municipal Act, 1923. The point seems to be one of first impression.

2. Premises No. 74/E, Ashutosh Mookerjee Road, which is a five-storied building, let out to tenants, was assessed by the Corporation of Calcutta under Section 127 (a) of the Calcutta Municipal Act, 1923, at an annul value of Rs. 3,888/- at the re-valuation proceedings of 1950-51 with effect from the third quarter of the said year. The owner of the said premises objected to the assessment and it was thereupon reduced to Rs. 3,489/- on 18-12-1951. The owner then appealed to the Court of Small Causes, Sealdah, under Section 141 of the Calcutta Municipal Act, 1923 and the said appeal was allowed and the annual value of the premises was reduced to Rs. 601. The present appeal has been filed by the Corporation of Calcutta against the said decision.

3. The building in question is wholly let out to tenants and the actual rent fetched Rs. 61-14-0 per month. There is, however, an advertisement hoarding on the roof of the building and on it is displayed a neon sign-board of Capstan Cigarette. The Calcutta Street Advertising Company which displays this sign-board pays for the hoarding a sum of Rs. 125/- per month to the owner. The Calcutta Corporation treated this income of the owner as rent within the meaning of Section 127(a) of the Calcutta Municipal Act, 1923 and took it into account in determining the annual letting value of the building. It was further stated by the Corporation that there was a painting on one of the walls of the building, for which the owner received a sum of Rs. 50/- per month and this also was taken into account in fixing the annual value of the disputed building in spite of the owner's objection that this painting did not exist at the time of the assessment. The learned Small Cause Court Judge, however, found that there was no such wall painting "in 1950 at the time of the assessment" it having been "wiped off' before that period and that finding has not been challenged before us. As regards the income from the advertisement hoarding on the roof, the learned Judge held that the said income was not and could not be treated as, rent and, accordingly, he fixed the annual value of the building on the basis of the monthly rental of Rs.

61-4-0, the figure arrived at being Rs. 601/-.

4. The question which arises for decision in this appeal is whether the income, derived from the advertisement hoarding, was, or could be treated as, rent within the meaning of Section 127 (a) of the Calcutta Municipal Act, 1923 and could be taken into account in determining the annual value of the building. That is the only point which has been argued before us by the appellant Corporation and no other point needs consideration in this appeal.

5. A similar question arose recently in this Court in the case of *Royal Asiatic Society of Bengal v. Corporation of Calcutta*[1], in which the premises had been assessed on the basis of the ground rent as also on the royalty, payable for an advertisement hoarding and it was argued on behalf of the assessee that the advertisement hoarding not being a building, in ascertaining the annual value of the premises, the royalty received by the assessee from the advertisement should not have been taken into consideration. But the point was left undecided as the appellant succeeded on the other point, as to whether the premises had been rightly assessed under Section 127 (a) of the Calcutta Municipal Act of 1923.

6. Section 127(a) of the Calcutta Municipal Act, 1923 is in these terms :

> "For the purpose of assessing land and building 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 a state to command such gross rent."

7. The building in question is ordinarily let to tenants. The Calcutta Street Advertising Company which displays the neon signboard on the roof of the building is not, however, a tenant. It is not the case of the Calcutta Corporation that the said company has obtained any other right from the owner excepting the right of displaying the neon signboard on the roof of the building. The receipt, granted by the owner to the said company, or the sum of Rs. 125/-paid on 1-4-1951, which is the only receipt on record, does not describe the sum as rent but describes it correctly as "consideration for April, 1951, re : advertising hoarding on the roof." We do not think that, in the circumstances, it would be correct to say that the roof has been let out to the aforesaid company within the meaning of Section 127(a) of the Act, quoted above.

8. It has been pointed out on behalf of the Corporation that the dictionary meaning of the word 'let', mentioned in Section 127(a), is to grant use of for rent or hire" as quoted by Nasim Ali, J., in the case of *Corporation of Calcutta v. Shaw Wallace and Co*[2]*.,* and it has been sought to be argued on the authority of that decision that the roof of the building in the present case should be deemed to have been 'let' to the Calcutta Street Advertising Company within the meaning of the above section inasmuch as the use of the roof was

[1]58 Cal W. N. 537
[2]46 Cal WN 978

granted to that company in consideration of a sum of Rs. 125/- per month for the purpose of display of advertisements and that the said summust be taken to be rent or hire. We do not think

that this contention is well-founded. Apart from the fact that the case cited has no being on the present question, it is really against the appellant's contention. The question which arose for decision in the case, reported in 46 Cal WN 978, was whether a house, belonging to a partnership firm, which was occupied by one of the partners without payment of any rent or without any service being rendered to the partnership firm in lieu of rent, could be said to have been let to the said partner and the decision was that the building had not been let and should be assessed under clause (b) of Section 127, which provided the method of assessment of buildings, not ordinarily let and Nasim Ali, J.,while stating that the dictionary meaning of the word 'let' was "to grant use of for rent or hire", held in express terms that the word 'let' in the section means "granting the use of the land for rent".

9. It is true that the roof is also part of a building and, in common parlance, the roof of a building where the owner has permitted another person to set up an advertisement hoarding in consideration of some payment may be said to have been "let" to that person. In legal phraseology, however, the term let' ordinarily implies a tenancy and it is in that sense that the term has been used in Section 127(a) and it does not include every kind of grant for use of a building but only that particular kind of grant which creates the relationship of landlord and tenant between the grantor and the grantee in respect of the building. In law, there is a well-marked distinction between the grant by the owner of land or building of the occasional or even continuous use of it for some particular purpose without the creation of any interest therein and the grant by exclusive possession of it by demise which creates an interest in the same. In the former case, law regards the authority, granted by the owner, to use the land or building for a particular purpose as license and, in the latter case, the grant of exclusive user of the land or building is called a lease : vide in this connection *H. E. Wijesuriya v. Att. Gen. for Ceylon*[3], It is not alleged, as already pointed out, that the Calcutta Street Advertising Company has any other right in respect of the building in question excepting the right to put up an advertisement hoarding on the roof and to display neon signboard thereon or that the right of exclusive possession of the roof or of any portion of it has been granted to the company. The roof continues to be in the possession of the owner of the building or of the tenants thereof, subject only to this that they must not interfere with the right, granted to the company, to put up the advertisement hoarding. The company, therefore, is a mere licensee and not a tenant.

10. That the Calcutta Municipal Act of 1923 intended that only that kind of letting which amounted to ademise or lease in law should be considered in Section 127(a) is further clear from the use of the word 'rent' in the section. Rent has not been defined in the Act and so the ordinary meaning of the word should be taken and the ordinary meaning is the amount which a tenant pays to his landlord for the right of use of the premises, demised to him. In Stroud's Judicial Dictionary (Vol. III) rent is defined as a sum certain, in gross, which a tenant pays his landlord for the right of occupying the demised premises. The section says that the annual value shall be deemed tobe the gross annual rent at which the land or building might reasonably be expected to be let from year to year. This shows that it is only the rent which may reasonably be expected from year to year by a demise of the

[3]1950 AC 493

building that will be the measure of its ratable value and the rent, as explained above, would not include the profit that may otherwise be earned from the building, apart from rent.

11. In the case of *Dwijendra Krishna v. K. Shaw*[4], the question arose whether a grant by the

owner of a building of a right to display advertisement in a hoarding in the space of the outer wall between two gates, coupled with a right to rest the hoarding on the parapet and to fix pillars on the roof for the purpose of securing the hoarding, amounted to a lease or tenancy under the West Bengal Premises Rent Control Act of 1950, enabling the grantee to apply to the Rent Controller for standardisation of rent under the said Act. It was held by Das Gupta and Bachawat, JJ., that the grant was a mere license and did not amount to a demise or a lease in respect of the premises, giving the right to the grantee to apply for standardisation of rent under the Rent Control Act. Reference was made in this decision to the case of *Frank Warr and Co. v. London County Council*[5], in which the lessees of a theatre had granted to the plaintiffs the exclusive right to supply refreshments in the theatre and, for that purpose, to have the necessary use of the refreshment rooms, bars and wine-cellars of the theatre and also the exclusive right to advertise and let spaces for advertisements in certain parts of the theatre. It was held by the Court of Appeal that the contract did not confer on the plaintiffs any interest in the premises and Romer, L. J., referring to certain parts of the agreement, observed:

> "To my mind it is clear that they created nothing more than a license properly so-called. The agreement for use of the cellars does not necessarily involve that the possession of them is given to the plaintiffs and, therefore, does not amount to the grant of an interest in the cellars. Similarly, I think the agreement for the use of parts of the premises for advertisements does not import a grant of the walls or any part of the premises."

12. Reference was also made in the above case 56 Cal W. N. 671 : AIR 1953 Calcutta 147 to *Wilson v. Tavenor*[6], and *King v. David Allen and Sons Billposting Ltd*[7]., which amply support the view that a person in the position of the Calcutta Street Advertising Company, as disclosed by the records before us, would be a licensee and not a tenant.

13. If a person, having the right to display advertisements on a hoarding, set up on a building, is not a tenant, entitled to claim any of the benefits of the Rent Control Act of 1950, as was held in 56 Cal WN 671 : AIR 1953 Calcutta 147 and if his position is no better than that of a licensee, we do not think that it is open to the Corporation of Calcutta to contend that, for purposes of assessment under the Calcutta Municipal Act, the payment, made by him for the exercise of his right as licensee, should be treated as rent within the meaning of Section 127(a) of the said Act. This Court has held that, in ascertaining the gross annual rent at which a building might be expected to let from year to year, where a standard rent has been or may have been fixed in respect of the building under the Rent Control Act, that rent should be taken as the criterion. During the pendency of the Calcutta Rent Act of 1920 it was held by this Court in the case of *Corporation of Calcutta v. Ashutosh*[8], that the Corporation of Calcutta, in assessing any premises under Section 131(1) of the Calcutta

[4]56 Cal. W. N. 671 : AIR 1953 Cal 147 [6](1901) 1 Ch. D. 573 [8]31 Cal WN 864 : AIR 1927 Cal 659
[5](1904) 1 KB 713 [7](1916) 2 AC 54

Municipal Act of 1923, read with Section 127(a) of the said Act, was not entitled to increase the assessment above the rent, at which the premises were let out on 1-11-1918 and which, under the provisions of the Calcutta Rent Act of 1920, was the standard rent of the said premises. And, recently, in the case of *Corporation of Calcutta v. Sm. Padma Debi*[9], Lahiri J., has held that, in determining the annual value of a building under Section 127 (a) of the Act, the Corporation cannot ignore the standard rent, fixed by the Rent Controller under Section 9 of the West Bengal

Premises Rent Control Act of 1950 and that any rent in excess of the standard rent, so fixed, cannot be taken as the rent, at which the building may reasonably be expected to let. With the above view of law we respectfully agree.

14. It is interesting to note that the above principle has been given express recognition in the Calcutta Municipal Act of 1951 which contains a proviso to Section 168(1), corresponding to Sections 127(a) and 127(b) of the Act of 1923, enacting that, where the standard rent of any building has been fixed under Section 9 of the West Bengal Premises Rent Control Act of 1950, the annual value of the building shall not exceed the annual amount of the standard rent, so fixed. This is clear legislative recognition of the correctness of the above point of view and, as the standard rent would not include any income from merely permitting the use of any portion of the building for advertisement purposes, such income being nothing more than "license fee", it cannot be taken into consideration in determining the annual value under the Calcutta Municipal Act. Rent in Section 127(a) of the old Calcutta Municipal Act and Section 168(1) of the new Act means 'rent', as explained above and does not include license fees in the shape of receipts from advertisements etc. Where the legislature intended to give a wider meaning to the word "rent", it did so expressly, as in sub-section 4(i) of Section 168, in which it enacted that, in valuing buildings, used as public places of amusement like cinema house and theatres, the annual rent "shall be deemed to be not exceeding five per cent of the gross annual receipts including receipts from rent and advertisements and sale of admission tickets."

15. Reference was made in the course of arguments to Ryde on Rating, 9th Edition, pages 92-6, but the appellant Corporation gains nothing from that reference. The pages quoted only show that in England, land, used for the exhibition of advertisements, has been made rateable according to the value of such use by the Advertising Stations (Rating) Act of 1889 and that, under the Local Government Act of 1948, the right to use any land for the purpose of exhibiting advertisements has been constituted a separate hereditament for rating purposes and shall be so included in the valuation list. The matter is thus covered by specific legislations on the point. It is true that, prior to 1889, the possibility of using any land for the purpose of advertising was accepted in certain English decisions as a factor that might increase the rent which a tenant might be expected to pay for that land, (vide page 92), but, under the Calcutta Municipal Act, the gross annual rent for the purpose of determining the annual value of land or building has never been assessed on such consideration. On the other hand, as already stated, the decisions under the Calcutta Municipal Act of 1923 clearly lay down that such gross annual rent should not exceed the standard rent, where such rent has been or may be fixed under the Rent Control Act, thus excluding from it income from advertisement hoarding which, as stated above, cannot be treated as rent under the Rent Control Act. There is also no evidence in this case that the

[9]61 Cal WN 129 : AIR 1957 Cal 466

standard rent of the disputed premises would be more than its actual rental of Rs. 61-14-0 per month.

16. In these circumstances, we are unable to accept the appellant's contention that the income from the advertisement hoarding should be treated as rent within the meaning of Section 127 (a) of the Calcutta Municipal Act of 1923 and taken into account in determining the annual value of the disputed building and, in our opinion, this appeal should fail.

17. The appeal is, accordingly, dismissed with costs.

Appeal dismissed.