APPELLATE CIVIL.

Before C. C. Ghose and Mallik JJ.

CORPORATION OF CALCUTTA

v.

NABINCHANDRA DHAR.*

1931

Jan. 27, 28.

Municipality—Increase of valuation of any premises by the executive officer—Written objections thereto not delivered—Jurisdiction of Small Cause Court to hear appeals against such increased valuation—Remedy of a rate-payer, when not given opportunity of being heard regarding his objections against such increased assessments—Mandamus—*Calcutta Municipal Act (Beng. III of 1923), ss. 138, 139, 140, 141, 142, 504—Specific Relief Act (I of 1877), s. 45.*

Where an owner or occupier of any premises, after receiving notice of any increase of valuation of the same, does not lodge any objection thereto under section 139 of the Calcutta Municipal Act of 1923, he cannot prefer any appeal to the Small Cause Court, under section 141 of the said Act, against such increased valuation.

If any rate-payer is aggrieved that he was not afforded an opportunity of being heard in support of any objection he might have against such increased assessment his obvious course is to apply to the Judge of the High Court exercising the Ordinary Original Jurisdiction for an order in the nature of *mandamus*.

APPEAL FROM ORIGINAL ORDER by the defendants.

The material facts are set out in the judgment.

L. P. E. Pugh and *Krishnalal Banerji* for the appellants.

Saratchandra Mukherji and *Indubhushan Mukherji* for the respondent.

C. C. GHOSE AND MALLIK JJ. This appeal must be allowed and for the following reasons. The appeal relates to a question arising on the construction of sections 140, 141 and 142 of the Calcutta Municipal Act (Beng. III of 1923). The respondent, Nabinchandra Dhar, is the owner of certain premises in Calcutta, being No. 264E, Bowbazar Street. These premises were assessed originally at an annual value of Rs. 324; but, during the general revision of assessment in the ward in which these premises are

*Appeal from Original Order, No. 561 of 1929, against the order of C. O. Remfry, Chief Judge of the Court of Small Causes, Calcutta, dated Aug. 22, 1929.

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situate, a revised assessment came into force from the 4th quarter of 1928-29. Under the revised assessment, the annual value of the premises in question was increased from Rs. 324 to Rs. 540. The case for the Corporation of Calcutta is that, although notice of this revised assessment had been served on the owner, no objection to the same had been filed under section 139 within the period prescribed in section 139 (2) and that, in the events which have happened, the revised valuation of the premises had become final and binding under the law, and, as there was no determination of any "objection" against the said revised assessment under section 140, the owner of the premises could not avail himself of the provisions of section 141, and, further, that the judgment of the Chief Judge of the Small Cause Court dealing with the matter on the merits was illegal and without jurisdiction. The case for the respondent is that the notice was not served, that there was no compliance with the provisions of section 138 or section 504, and inasmuch as the respondent had not been given any opportunity of urging his contention against the increased assessment, the decision of the Corporation that the increased assessment had become final and binding under the law was not a determination within the meaning of section 140 of the Act, and that, that being so, he was entitled to avail himself of the provisions of section 141 of the Act and come to the Small Cause Court for redress.

These being the respective contentions of the parties, it is necessary to set out very briefly what exactly had happened. It appears that the respondent does not himself reside at premises No. 264E, Bowbazar Street; he resides at premises No. 51, Beniapukur Lane. The evidence is that attempts were made to serve him with notice under section 138 by means of registered post, but the respondent would not take delivery of the registered cover; it was returned by the post office with an endorsement that delivery had not been taken. It appears that the Corporation, thereafter, availed

themselves of the provisions of section 504 of the Act and caused a yellow notice to be posted on the premises in question. It is common ground that there was no objection lodged under section 139 of the Act and consequently section 140 did not come into play.

The learned Judge in the Small Cause Court has observed that notice under section 138 which was sent by registered post was one which was not properly served. In the second place, the learned Judge states that not until efforts were made to find out who the occupier of the premises was and not until the occupier was served with the notice under section 138, could the Corporation avail themselves of the provisions of section 504 and post a notice in yellow on the premises. In the view of the learned Judge, there was no compliance with the provisions of section 138 read with section 504 of the Act. That being the position in the estimation of the learned Judge, he then proceeded to enquire as to what his powers were for interfering with the increased assessment, which, according to the Corporation, had become final and was binding on the rate-payer concerned under the law. The learned Judge was aware that he could not interfere by way of *mandamus*. He, thereupon, proceeded to treat the appeal which was filed before him as being an appeal in compliance with the provisions of section 141 and proceeded to dispose of the matter on the merits. The result of the decision of the Small Cause Court Judge was that the assessment was reduced to a certain figure.

The whole point, therefore, resolves itself into this, whether, under the circumstances of this case, there not having been the determination of an "objection" lodged under the provisions of section 139, there could arise any appeal to the Small Cause Court. Mr. Pugh has contended that, on the facts, it could not be doubted that the "yellow notice" was properly served and that no objection having been lodged under section 139, there was no determination of an "objection" within the meaning of section 140 and that, therefore,

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section 141 did not come into play. We are inclined to agree with Mr. Pugh; we are satisfied that there was no determination of an objection by the Chief Executive Officer under the provisions of section 140 and, therefore, it must follow, as a natural and logical corollary, that there could not, under those circumstances, arise any question of an appeal to the Small Cause Court Judge. Further, in our opinion, it is abundantly clear that, not until there was determination of an objection within the meaning of section 140, could the Small Cause Court Judge clothe himself with any powers whatsoever to do in effect what he was not entitled to do having regard to the course of events in this case. If the rate-payer had a grievance that he had not been afforded an opportunity of being heard in support of any objection he might have against the increased assessment, his obvious course was to apply to the Judge exercising the Ordinary Original Jurisdiction of this Court and apply for an order in the nature of a *mandamus* such as was applied for in the case of *J. C. Mukerjee* v. *Karnani Industrial Bank, Limited* (1). The Corporation, if such an order was obtainable, would have shown cause and there would have been a proper determination by a proper forum of the question that would legitimately arise, whether or not there was service of notice under section 138, whether or not there was notice under section 504, whether or not an objection was tenable under section 139, whether or not there had been a determination of such objection within the meaning of section 140. In such a proceeding, the rate-payer would have obtained proper and ample redress. But he could not, simply because the Corporation intimated that no objection had been received and that, under the circumstances the increased assessment had become final, rush to the Small Cause Court and start a proceeding ostensibly under colour of section 141 of the Act, but virtually for the purpose of extending the jurisdiction of the Small Cause Court in a matter

(1) (1930) I. L. R. 58 Calc. 521.

in which it had no jurisdiction. We are of opinion that Mr. Pugh's contentions are sound and must be given effect to. If the learned Small Cause Court Judge had no jurisdiction in the matter to deal with the merits, in the circumstances which have happened, then the order itself is *ultra vires* and must be set aside.

A small point was raised that there is no appeal against the order of the Small Cause Court Judge made on the 25th July, 1929, and that this Court is not entitled to interfere with that order. To start with, the order in question did not amount to a final adjudication of the matter. All that it amounted to was an expression of opinion on the part of the Small Cause Court Judge that he had jurisdiction in the matter and that he could, notwithstanding the fact that he could not issue any order by way of *mandamus*, interfere by some other means. It was not a preliminary decree. It was not even an order. It was a proceeding which had to be read along with the final order on the 22nd August, 1929. Mr. Pugh's client, as they have appealed against the order of the 22nd August, 1929, could question and canvass the entire proceedings, by which expression is meant the orders of the Small Cause Court Judge, dated the 25th July and the 22nd August, 1929. It is said, further, that the procedure indicated in the earlier portion of this judgment, namely, that the dissatisfied rate-payer has got to apply to the Judge on the Original Side for relief, is one which is costly. With those considerations we are not concerned. The law has indicated a procedure and whether it is a costly and expensive procedure or one which is attended with inconvenience or not are matters for the legislature and not for us.

Under these circumstances, the appropriate order is that the entire proceedings should be set aside and the orders complained against should be discharged and this appeal must be allowed with costs. We assess the hearing fee at five gold mohurs.

A. K. D. *Appeal allowed.*