APPELLATE CIVIL.

Before Mukerji and Mitter JJ.

CORPORATION OF CALCUTTA

v.

A. C. PAL.*

1930

Aug. 15, 19.

Assessment—Appeal—Area not fully developed—Consideration of—Depreciation due to age of building—Calcutta Municipal Act (Beng. III of 1923), s. 127, cls. (a), (b); s. 141 (2)—Indian Limitation Act (IX of 1908), s. 5.

The consideration, that an area is not fully developed, is an important consideration in the matter of assessment.

It is relevant on the question of the value of the land as situate in a particular locality, being material for the purpose of determining whether the amenities of life and ordinary conveniences are available.

It is also relevant on the question of assessment of a building when the assessment is to be made on the basis of its letting value under section 127, clause (*a*).

It has no place, however, where the valuation of a building has to be determined under section 127, clause (*b*) on the footing of its being a "building not "erected for letting purposes and not ordinarily let." The depreciation contemplated in the clause is the depreciation due to the age of the building and the consequent wear and tear and like causes.

APPEAL FROM ORIGINAL ORDER by the defendant.

The facts of the case, out of which this appeal arose, appear fully in the judgment under report herein.

Krishnalal Banerji for the appellant.

Gourmohan Datta (for *Santimay Majumdar*) for the respondent.

Cur. adv. vult.

MUKERJI AND MITTER JJ. This is an appeal by the Corporation of Calcutta under section 142, subsection (*3*), of the Calcutta Municipal Act, 1923, from a decision of the Court of Small Causes, 24-Parganas, assessing premises No. 172, Block N. Mudiali Road, on an appeal under section 141 of the Act.

*Appeal from Original Order, No. 341 of 1929, against the order of Dhirendranath Basu, Subordinate Judge of Alipore, dated March 8, 1929.

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The premises consist of a plot of land 13 *cottâs* in area, on a part of which is a building. The assessor had valued the land at Rs. 3,250 (*i.e.*, Rs. 250 a *cottâ*), and the building at Rs. 15,555, from which he gave a deduction of 5 per cent. on account of depreciation, thus arriving at a figure of Rs. 14,777. The total thus arrived at was Rs. 18,027, and 5 per cent. thereof, *i.e.*, Rs. 901, was the annual value assessed by him. The Deputy Executive Officer reduced the annual value to Rs. 795. The Small Cause Court, on an appeal by the owner, has further reduced it to Rs. 687.

One of the grounds urged in this appeal is that the Small Cause Court should not have entertained the appeal, as it was not preferred within the 30 days allowed by section 141, sub-section (2), of the Act. The Deputy Executive Officer made the order on the 2nd May, 1928. The appeal was preferred on the 26th September, 1928. The assessee's explanation was that he came to know of the order for the first time on the 2nd September, 1928. There can be no doubt that the Deputy Executive Officer disposed of the assessee's objection on the very day that it was heard, that is to say the 2nd May, 1928. At the same time, however, there are grounds for holding that the assessee did not at the time appreciate that a final order was passed. He has said in his evidence that he made efforts through the Ward Committee and the Bill Collector to ascertain what had happened, and had also written once or twice to the Chief Executive Officer asking to be informed about the result of his objection. This evidence must be believed. The Corporation has not endeavoured to repudiate that such a letter or letters were written. Whether some other person would not have resorted to some other means of getting the information, or whether a more proper course for the assessee was to have applied for a copy of the order passed are matters which need not cloud the issue. The assessee, in making the enquiries that he did, was acting under an honest belief that orders had not been passed on his objection

on the 2nd May, 1928. We do not find any want of *bona fides* on his part, however mistaken he may have been. In these circumstances, we must hold, in agreement with the court below, that "sufficient cause" for extension of the period of limitation within the meaning of section 5 of the Limitation Act has been made out.

The other ground urged relates to the merits. As already stated the assessor had valued the lands at Rs. 250 a *cottâ*, and had granted a deduction of 5 per cent. on the ground of depreciation on the estimated cost of the building. The Deputy Executive Officer valued the land at Rs. 200 a *cottâ*, and allowed a further deduction of 3 per cent. for depreciation on the cost of the building. As regards the land, the assessee's own case at first was that its value was Rs. 250 per *cottâ*, but he subsequently amended it by asserting that 6 *cottâs* out of it was tank-filled land which should be valued at half the rate, *i.e.*, Rs. 125 per *cottâ*. The Deputy Executive Officer, in valuing the land at an all round rate of Rs. 200 per *cottâ*, was more generous to the assessee than otherwise: the assessee's own valuation of the land was Rs. 2,850, and the Deputy Executive Officer's valuation has come up to Rs. 2,600. As regards the buildings, the assessee has produced no satisfactory evidence as to the cost of construction and his allegation that old materials were used has not been established. The Munsif held a local inspection but was not impressed that the assessee had any strong case. Before us it has been contended, on his behalf, that the assessor, who has been examined on behalf of the Corporation should be discredited, because he has admitted that he "did not "open up any wall to see whether any second-hand "materials were used." The assessor could not possibly do anything of the kind, unless he was expressly requested by the owner to do so; and it is not suggested that any such request was ever made. The detailed valuation made by the assessor, as regards the cost of construction, must, in the

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circumstances, be accepted as correct, and indeed the learned Munsif himself has not done otherwise. The learned Munsif, however, has allowed an *ad hoc* deduction of 20 per cent., that is to say of 12 per cent. over the 8 per cent. which the assessor and the Deputy Executive Officer had, between them, allowed. By allowing this deduction, he has arrived at the figure, Rs. 687.

This further deduction has been allowed by the Munsif on the ground that "the area is not a fully "developed one." He has relied upon the fact spoken to by the assessee's witness, P. W. 2, who has deposed that with regard to his property situate just opposite the assessee's premises the Corporation allowed him, in an assessment made only a year before, a deduction of 20 per cent. on the ground that the area was not a developed one. The deposition of the witness is not clear as to whether it was for building or for land that this deduction was allowed, and no attempt has been made in his cross-examination to clear up the point. It is singular also that the Corporation, in their evidence, have not touched this matter or attempted in any way to explain or rebut this allegation. Omission in this respect may not, without impropriety, be regarded as an admission on the part of the Corporation, that, in this respect, the assessee's case is true, and may not unjustly be criticised as evidencing a differential treatment accorded to some particular owner for some undisclosed reason. Be that as it may, the question for us to consider is whether such a deduction is permissible under the law.

The consideration that an area is not fully developed is an important consideration in the matter of assessment. It is relevant on the question of the value of the land as situate in a particular locality, being material for the purpose of determining whether the amenities of life and ordinary conveniences are available. It is also relevant on the question of assessment of a building when the assessment is to be made on the basis of its letting

value under section 127, clause (*a*). It has no place where the valuation of a building has to be determined under section 127, clause (*b*), on the footing of its being a "building not erected for "letting purposes and not ordinarily let." That clause no doubt speaks of "depreciation" and "of a "reasonable amount to be deducted on account of "depreciation, if any;" but such depreciation, in our opinion, cannot include a deduction on the ground of the building being situate in an undeveloped or not fully developed area. The depreciation contemplated in the clause is the depreciation due to the age of the building and the consequent wear and tear and like causes. In the present case, as already stated, no question of value of the land arises, and, therefore, the further deduction allowed by the Munsif was entirely unjustified.

We, accordingly, allow the appeal and, setting aside the order complained of, restore the assessment made by the Deputy Executive Officer.

In view of the fact that the assessee, not unreasonably, though perhaps erroneously, supposed that he was being treated differently from his neighbour, his suit was not unjustified. For this reason we order that each party will bear their own costs in the suit and in this appeal.

Appeal allowed.

G. S.