1929.

J. C. GALSTAUN v. PRAMATHANATH RAY.

appellant his costs of the proceedings before the Subordinate Judge and in this Court.

GHOSE J. I agree.

RANKIN C. J.

RANKIN C. J. AND GHOSE J. The appellant is entitled to a refund of the court-fee paid on the memorandum of the appeal to this Court less Rs. 10 stamp which would have been paid on the revision application.

O.U.A. *Proceedings set aside.*

APPELLATE CIVIL.

Before Page and Patterson JJ.

1929.

July 30.

NARAYANCHANDRA DAS

v.

CHAIRMAN, MUNICIPAL COMMISSIONERS OF THE PANIHATI MUNICIPALITY.*

Rating—Annual value—Assessment of holdings not usually let out—Bengal Municipal Act (Beng. III of 1884), ss. 85, 101.

In a suit for a declaration that an assessment of annual value under the Bengal Municipal Act (Beng. III of 1884) on the basis of a percentage on the valuation of the property is *ultra vires*,

Held, on appeal, that the effect of sections 85(*b*) and 101 of the Act is that in every case where a rate is to be imposed on the annual value of the holding such value is deemed to be the gross annual rent at which the holding may reasonably be expected to let.

Held, also, that the proviso (*i*) to section 101 did not empower the municipality to assess on an alternative basis.

West Derby Union v. *Metropolitan Life Assurance Society* (1) and *Nundo Lal Bose* v. *The Corporation for the Town of Calcutta* (2) applied.

APPEAL FROM APPELLATE DECREE by the plaintiff.

This was an appeal from an appellate decree dismissing the plaintiff's suit against the Chairman of the commissioners of Panihati Municipality for a declaration that the assessment of his garden house in

*Appeal from Appellate Decree, No. 2169 of 1927, against the decree of L. B. Chatterjee, 1st Additional District Judge, 24-Parganas, dated May, 18, 1927, confirming the decree of Nalini Mohan Banerjee, Subordinate Judge, 24-Parganas, dated June 19, 1926.

(1) [1897] A. C. 647. (2) (1885) I. L. R. 11 Calc. 275.

the Bhawanipur ward of the said municipality was illegal and *ultra vires*.

The municipality were realising the personal tax before 1922. From April 1922, a tax upon latrines attached to holdings was for the first time imposed on the basis of a valuation made by a valuation officer, specially deputed by the Government for the purpose. He estimated the capital value of the holding at Rs. 50,000, and calculating interest at 7½ per cent. on that sum assessed the annual value at Rs. 3,750.

The municipality for the purpose of the tax in question took this annual value as the basis of assessment. Thereupon this suit was filed. The Subordinate Judge of 24-Parganas dismissed the suit. On that the plaintiff appealed, but the appeal was also dismissed by the Additional District Judge. Thereupon this appeal was filed in the High Court.

Dr. Bijankumar Mukherji, for the appellant. The words "annual value" in section 101 can only mean the annual letting value. The municipality could have assessed what a hypothetical tenant would have paid as rent for a holding like this. Referred to *Nundo Lal Bose* v. *The Corporation for the Town of Calcutta* (1), *West Derby Union* v. *Metropolitan Life Assurance Society* (2).

Dr. Saratchandra Basak (with him *Mr. Gōpendranath Das*), for the respondents. The municipality could, under section 101 of the Bengal Municipal Act (Beng. III of 1884), base the assessment either on the annual rental value or on a percentage basis on the capital value of the property. Here the annual value has been taken at 7½ per cent. on the capital value of the property. *The Queen* v. *The School Board for London* (3), *Liverpool Corporation* v. *Chorley Union Assessment Committee and Withnell Overseers* (4), *Liverpool Corporation* v. *Llanfyllin Assessment Committee* (5).

Cur. adv. vult.

(1) (1885) I. L. R. 11 Calc. 275.
(2) [1897] A. C. 647.
(3) (1885) 55 L. J. M. C. 33, on appeal 17 Q. B. D. 738.
(4) [1912] 1 K. B. 270, [1913] A. C. 197.
(5) [1899] 2 Q. B. 14.

1929.

NARAYAN-CHANDRA DAS v. CHAIRMAN, MUNICIPAL COMMISSIONERS OF THE PANIHATI MUNICIPALITY.

PAGE J.

PAGE J. This is a suit for a declaration that the assessment of a rate under section 85 (*b*) of the Bengal Municipal Act (Beng. III of 1884) on the annual value of the plaintiff—appellant's holding by the commissioners of the Panihati Municipality was *ultra vires* and illegal.

The decision turns upon the true construction of section 101 of the Act, which runs as follows: "The "gross annual rent at which any holding may be "reasonably expected to let shall be deemed to be the "annual value thereof, and such value shall accord-"ingly be determined by the commissioners, and "entered in the valuation list;

"Provided that (except in the Darjeeling Munici-"pality) if there be on a holding any building or build-"ings, the actual cost of erection of which can be "ascertained or estimated the annual value of such "holding shall in no case be deemed to exceed an "amount which would be equal to seven and a half "per centum on such cost, in addition to a reasonable "ground rent for the land comprised in the holding."

It appears that the holding in suit is *debutter* property held by the plaintiff as *shebait*. The area of the holding is about 13 *bighas*, of which half consists of a fruit orchard; upon 3 *bighas* there are 12 *Shiva mandirs*, and upon the remainder of the holding stand the three-storied dwelling house and offices forming the residence of the plaintiff. The property is situate on the east bank of the Hooghly about eleven miles up the river from Calcutta with a *pucca ghat* leading to the river.

In 1921 for the purposes of a latrine tax imposed under section 86 of the Act the annual value of the holding was assessed under section 96 at Rs. 3,750, and in 1924, when the rate in question was imposed under section 85 (*b*), it is conceded that no separate or further valuation of the holding was made, and that the assessment was based upon the annual value that had been ascertained for the purpose of the latrine tax in 1921.

Now, the holding in suit is of a similar nature to that of numerous other properties on the banks of the Hooghly that are used as the residence or pleasure houses of prosperous citizens of Calcutta. The plaintiff's son in the course of his evidence at the trial stated that houses of this type in the neighbourhood of the plaintiff's holding rarely were let, and usually were occupied by the owners who had built or acquired them. But there was evidence that specific holdings of a similar nature in the vicinity had been let, and that such properties from time to time changed hands, and passed from one owner to another.

Nevertheless it appears that in 1921 when the valuation list was prepared no attempt was made by the officer appointed to value the holdings to ascertain the annual rent at which the plaintiff's holding might reasonably be expected to let, or to obtain information as to the cost of the construction of the buildings that had been erected on the holding. All that the valuation officer purported to do was to estimate " by guess " what he conceived to be the cost of erecting the buildings that he found on the holding, and to settle the valuation upon the estimate thus made. The commissioners appear to have accepted the basis of the valuation officer's estimate, and the assessment was fixed at 3 per cent. on an annual value of Rs. 3,750.

If the assessment as made was *ultra vires* and illegal it cannot be sustained, and the plaintiff is entitled to the relief that he seeks. *Chairman, Municipal Board, Chapra* v. *Basudeo Narain Singh* (1).

On behalf of the respondents it is contended that the assessment can be supported upon the footing that section 101 and the first proviso thereto contain alternative modes of assessment, and that it is open to the municipality to assess a holding either upon the annual value ascertained as set out in section 101, or upon a percentage basis under the proviso.

(1) (1910) I. L. R. 37 Calc. 374.

1929.

NARAYAN-CHANDRA DAS v. CHAIRMAN, MUNICIPAL COMMISSIONERS OF THE PANIHATI MUNICIPALITY.

PAGE J.

In my opinion the construction which the respondents urge upon the court cannot be accepted. The general rule for construing provisos was explained by the House of Lords in *The Guardians of the Poor of West Derby Union* v. *Metropolitan Life Assurance Society* (1), in which case Lord Herschell observed "I decline to read into any enactment words which are "not to be found there, and which would alter its "operative effect because of provisions to be found in "any proviso. Of course a proviso may be used to "guide you in the selection of one or other of two "possible constructions of the words to be found in "the enactment, and shew, when there is doubt about "its scope, when it may reasonably admit of doubt as "to its having this scope or that, which is the proper "view to take of it; but to find in it an enacting "provision which enables something to be done which "is not to be found in the enactment itself on any "reasonable construction of it, simply because other-"wise the proviso would be meaningless and senseless, "would, as I have said, be in the highest degree "dangerous," and Lord Davey added "it seems to "me that the whole argument of the appellants "really comes to the old and apparently ineradicable "fallacy of importing into an enactment, which is "expressed in clear and apparently unambiguous "language, something which is not contained in it "by what is called implication from the language of "a proviso which may or may not have a meaning of "its own."

The meaning and effect of section 85 (*b*) and section 101, however, in my opinion, is clear and in accordance with the general principles of rating, and these sections provide that in every case the rate is to be imposed on the annual value of the holding which is deemed to be the gross annual rent at which the holding "may be reasonably expected to let," while the proviso was inserted in aid of the assessee, and to lay down a maximum to prevent excessive assessments being made. In the present case no attempt

(1) [1897] A. C. 647, 655, 657.

was made to ascertain the annual value of the plaintiff's holding as provided by section 101, and in my opinion the commissioners were acting *ultra vires* in accepting the valuation officer's method of valuation " based, as they knew it was, upon a percentage of " the estimated cost of the buildings in entire dis- " regard of the principle which they were bound by " law to adopt as the basis of their assessment "—, see per Garth C. J., in *Nundo Lal Bose* v. *The Corporation for the Town of Calcutta* (1).

I am not unaware that since *Nundo Lal Bose's case* (1) was decided on February 19, 1885, by section 151 (*b*) of the Calcutta Municipal Act (Beng. III of 1899) for the purpose of assessing land and buildings to the consolidated rate, " the annual value of any " building not erected for letting purposes and not " ordinarily let shall be deemed to be " a sum ascertained with reference to a percentage basis on the cost of construction as therein provided, and that since the judgment of Cave and Wills JJ. in *The Queen* v. *The School Board for London* (2) delivered on December 21, 1885, although " a certain rate of " interest on the capital expended in creating the " hereditament is by no means to be taken as neces- " sarily equivalent to the rent which a hypothetical " tenant would give;.....the amount of capital " expended is admissible in evidence as a criterion " by which to estimate that rent in the case of works " like these (i.e., a public reservoir) which are incap- " able of being compared with other hereditaments " which form the subject of letting," per A. L. Smith " L.J. in *Liverpool Corporation* v. *Llanfyllin Assessment Committee* (3). See also per Buckley L.J. in *Liverpool Corporation* v. *Chorley Union Assessment Committee and Withnell Overseers* (4), *Metropolitan Water Board* v. *Chertsey Assessment Committee* (5). No doubt, in exceptional cases where the rent that a hypothetical tenant might reasonably be

(1) (1885) I. L. R. 11 Calc. 275, 281.
(2) (1885) 55 L. J. M. C. 33, on appeal 17 Q. B. D. 738.
(3) [1899] 2 Q. B. 14, 21.
(4) [1912] 1 K. B. 270, 289; [1913] A. C. 197.
(5) [1916] 1 A. C. 337.

1929.

NARAYAN-CHANDRA DAS v. CHAIRMAN, MUNICIPAL COMMISSIONERS OF THE PANIHATI MUNICIPALITY.

PAGE J.

expected to pay for the holding cannot be ascertained by methods which would be efficacious in normal and ordinary cases, for example, where the holding consists of land upon which a railway, a gas work, a catchment area, or a building such as the Bodleian Library at Oxford is situate, rough and ready tests alone may be available for ascertaining the annual rent that a hypothetical tenant of the holding might reasonably be expected to pay, but in every case the annual rental value is the basis of the assessment, and in such exceptional cases, as Mr. Ryde points out in his work on Rating (2nd edition at page 176), a "great part, if not the whole, of the difficulty will "disappear if the rule be thus stated: the measure "of rateable value is defined by statute as the rent "which may reasonably be expected; interest on "cost, or on capital value, cannot be substituted for "the statutory measure, but can be looked at as "*prima facie* evidence in order to answer the question "of fact what rent a tenant may reasonably be "expected to pay."

Now, applying these principles to the facts of the present case I am of opinion that the plaintiff's holding is not to be regarded or treated as though it were of an exceptional or abnormal type, for, as Garth C.J. pointed out, "the principle of rating "upon which the commissioners are directed to pro-"ceed is the same (as that) which is adopted in "England; and similar difficulties arise there in the "case of gentlemen's parks and mansions which are "laid out for residential purposes, and not for sale "or letting. But such properties are, nevertheless, "constantly rated upon the basis of their annual let-"ting value." *Nundo Lal Bose* v. *The Corporation for the Town of Calcutta* (1). In my opinion in the present case the commissioners were not justified in departing from the basis of assessment laid down in section 101, and while it is not the duty of this Court to instruct the commissioners as to how assessments

(1) (1885) I. L. R. 11 Calc. 275, 281.

should be made provided they adopt the methods prescribed in the Act, it appears to me that if the persons authorized to make the assessment apply their minds to the matter in hand no difficulty ought to be experienced in ascertaining according to the provisions of the Act "the gross annual rent at which" the plaintiff's holding "may be reasonably expected to let."

For these reasons, in my opinion, the decrees of the lower courts must be set aside, and a decree passed for a declaration that the assessment on the appellant's holding was *ultra vires* and illegal as prayed. The appellant is entitled to his costs in all the courts.

PATTERSON J. I agree.

N.G. *Appeal allowed.*