APPELLATE CIVIL.

Before S. K. Ghose and Guha J.J.

CORPORATION OF CALCUTTA

v.

MATI CHAND CHAUDHURI.*

1936

Mar. 13.

Municipal Assessment—Assessment of building to consolidated rate—Building used in part for letting and in part for residential purposes—Annual value, Basis of calculation of—Calcutta Municipal Act (Beng. III of 1923), s. 127, cls. (a) *and* (b)*—Rules in "Assessment and Collection Manual".*

Where part of a building is used for residential purposes and part for letting, its annual value may be calculated for assessment to the consolidated rate partly under cl. (*a*) and partly under cl. (*b*) of s. 127 of the Calcutta Municipal Act, notwithstanding any rule in "The Assessment and Collection Manual" of the Corporation of Calcutta.

APPEAL by the defendant.

The facts of the case and the arguments in the appeal appear sufficiently from the judgment.

Krishna Lal Banerji for the appellant.

Amarendra Nath Basu and *Satish Chandra Sen* for the respondents.

The judgment of the Court was as follows:—

This is an appeal against a decision of the Chief Judge, Small Causes Court, Calcutta, dated March 23, 1934, by which he fixed the valuation for the purposes of assessment of certain premises in the town of Calcutta. The appellant is the Corporation of Calcutta. Premises No. 82, Nalini Set Lane (Road), Calcutta, came up for assessment before the Assessor of the Corporation of Calcutta and he assessed the premises at an annual value of Rs. 4,460. Thereupon, an objection was filed by the

* *Appeal from Original Order, No. 357 of 1934, against the order of N. C. Sen, Chief Judge, Court of Small Causes of Calcutta, dated March 23, 1934.

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respondents in this appeal and as a result of that objection the Deputy Executive Officer reduced the valuation to Rs. 4,025. Against that decision, the respondents filed a suit in the Court of Small Causes, Calcutta. Therein, the plaintiffs claimed that the annual value should have been assessed at Rs. 2,025 under s. 127 (*b*) of the Calcutta Municipal Act and not at Rs. 4,025 as has been assessed by the Corporation under s. 127 (*a*). The learned Judge held that roughly half the premises was in the actual possession of the owner and half was utilized for letting purposes. On this finding, he valued half the premises under s. 127 (*a*) and the other half under s. 127 (*b*) with the result that the total valuation came to Rs. 3,168. It may be pointed out that the valuation which is the subject-matter of dispute in this appeal has already become dead, because according to the notice given by the Corporation it was only up to the last quarter of 1933-34 and it is admitted by the learned advocate for the Corporation appellant that a fresh assessment is under consideration. Inspite of this, the appeal is pressed before us on the ground that it raises some questions of principle.

It is contended, in the first place, that the learned Judge below was in error in valuing half the premises on residential basis under s. 127 (*b*) and the other half on rental basis under s. 127 (*a*) of the Calcutta Municipal Act of 1923. The contention is that cls. (*a*) and (*b*) must be read disjunctively and not conjunctively with regard to the same building and that, therefore, the same building must be assessed either as used for the purpose of letting or for the purpose of residence and parts of the same building cannot be taken differently. No doubt, the word "and" has been sometimes interpreted to mean "or", but whether that interpretation applies to s. 127 or not would seem to depend on the circumstances of each particular case; that is to say, where a particular part of a building is erected for letting purposes or another part for residential purposes, it

would seem to be a misreading of the section to say that inspite of this fact the entire building must be taken as belonging to one of the two clauses mentioned in s. 127. According to the definition of building given in s. 3, sub-s. (7) of the Act, it includes house, outhouse, stable, *etc.* For the purpose of s. 127, building must include part of a building and it is quite conceivable that one part of the building will come under cl. (*a*) and another part of the building under cl. (*b*). As against this, the learned advocate for the appellants has relied on a rule which is r. 89, p. 23 of the Assessment and Collection Manual of the Corporation of Calcutta published in 1917. This rule directs that where the premises are partly occupied by the owner and partly let out, they will ordinarily be assessed on rental basis, *etc.*, and it concludes by saying that in no circumstances can more than one method of valuation be applied to the same premises. It may be stated that this very rule was relied upon by the respondents, plaintiffs in the Small Causes Court, and it was then sought to be repelled by the defendant, the Corporation. The learned Judge pointed out that these rules were promulgated in 1916 and have, therefore, become obsolete since the passing of the Calcutta Municipal Act. It is contended for the appellant that rr. 89, *etc.*, are statutory rules issued by the Government under s. 484 of the present Act. This, however, appears to be incorrect. The rules in the Manual are evidently by way of instructions issued to the officers of the Corporation. This is not only borne out by the preface of the Manual dated September 28, 1916, but it would appear to be so from the very nature of the rules themselves. They do not find place in any of the schedules appended to the Act and in fact the schedules do not contain any rules relating to assessment. Therefore the aforesaid r. 89 on which reliance has been placed by the learned advocate for the appellant Corporation has not the force of law and may be ignored if it is inconsistent with the provisions of the Act itself.

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The learned advocate for the appellant has also contended that unless cls. (*a*) and (*b*) of s. 127 are read disjunctively it would be difficult to assess a building because it would be difficult to find out which portion is let out and which portion residential. There may be some difficulty, but nevertheless the difficulty may be met by the Corporation in a practical manner with regard to particular cases as has been done by the learned Judge below in this very case.

The next point urged in support of the appeal is that the assessee not having taken any ground of objection with regard to the basis of assessment before the assessing officer of the Corporation, it is not open to him to take that ground by way of appeal before the Small Causes Court. It is pointed out that according to s. 139 of the Act, a person who is dissatisfied with the valuation may deliver at the Municipal Office a written notice stating the grounds of objection to the assessment. The learned Judge has laid stress on the word "may" as showing that no written objection is insisted upon. The governing terms, however, are that the dissatisfied person may deliver a notice in writing stating the grounds of his objection and then, according to s. 141, any person who is dissatisfied with the order passed on his objection may appeal to the Court of Small Causes. For the respondents it is pointed out that there is no statutory prohibition against the appellant agitating his case in a Small Cause Court on other grounds. The position is not the same as in the case of certain other Acts where express prohibition exists, for instance, s. 33 of the Revenue Sale Law, s. 18 of the Land Acquisition Act, s. 35 of the Public Demands Recovery Act and s. 100 of the Code of Civil Procedure. On general principles it is undesirable that a party, who has given written notice stating the grounds of his objection and is dissatisfied with the decision thereon, should appeal to the Court of Small Causes on some new ground which the Corporation had not been allowed to meet.

In the present case, however, this matter has no practical importance. The assessee did file a written objection in which he stated as follows:—

> I beg to object to the said valuation on the ground that it is very high and unjust. Other grounds of objection will be stated at the time of my hearing of the case.

It is pointed out that the words "high and unjust" are very wide and at least the latter word would include the question of basis of valuation. There is also the evidence of the Corporation officer who stated that the appellant made objection to assessment and no record of proceedings is kept. It would be too much to hold that the sort of objection which was raised by the assessee exclude all cases of objection as regards the basis of valuation. There is, therefore, no force in this argument for the appellant.

It is next contended that the assessee has not discharged the burden of proof as to the amount of rent on the basis of which part of the assessment was made. This argument however, is not borne out by the record. There is the evidence of the plaintiff and it is quite definite to the effect that Rs. 110 was being realised as rent in respect of certain rooms and in support of this, the rent collection book has been produced. There was no cross-examination directed as to this point. The learned Judge appears to have been in error in thinking that the Corporation has not kept any register of objections under s. 140, sub-s. (*1*), because an extract from such a register was filed with the plaint and it is printed at pp. 7 and 8, part 2 of the paper-book. However, there is no doubt that the assessee has discharged the burden of proof as to the amount of rent realised by him.

The only other point which need be noticed is that it is contended in support of the appeal that the learned Judge below was wrong in making a deduction of 10 per cent. from the entire valuation,

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because such a deduction is only permissible with regard to such part of the premises which is made under cl. (*a*) of s. 127, in other words, the 10 per cent. should be deducted only on the amount Rs. 1,320 and not on the entire amount of Rs. 3,520. The result would be a difference of Rs. 220. On the other hand, the learned Judge proceeded upon the value of the property being Rs. 88,000 although as a matter of fact the final assessment as made by the Deputy Executive Officer was on the basis of Rs. 80,560. The net result, therefore, is that the Corporation has not suffered and on this ground the decision of the learned Judge below does not call for interference.

The appeal fails on all points. It is, therefore, dismissed. Having regard to the circumstances of this case, we make no order as to costs.

The cross-objection not being pressed is dismissed but without costs.

Appeal dismissed.

G. K. D.