

APPELLATE CIVIL.

Before Guha and Nasim Ali J.J.

CORPORATION OF CALCUTTA

v.

JARDINE SKINNER AND COMPANY.*

1936

Aug. 13, 14, 17,
19.

Assessment—Rates—Land with building on it—Valuation—Building—Method—Depreciation—Calcutta Municipal Act (Ben. III of 1923), ss. 127 (a), (b), 136.

For the purpose of meeting the requirements of s. 127 (b), Calcutta Municipal Act, the value of the land appertaining to the premises to be assessed has to be separated and kept distinct from the value of the building on the land.

The law requires that the valuation is to be on a basis other than the rental basis as indicated in s. 127 (a) ; and the rough and ready method, of taking the value of the land and building together on a rental basis and then deducting the value of the building, is not, therefore, a method contemplated by law, in view of the definite provisions laying down rules for determining the value of different classes of property for the purpose of assessment to rates and taxes, as stated in the different and separate cls. (a) and (b) of s. 127, Calcutta Municipal Act.

Though the statement of valuation of land apart from building in pursuance of notice given to the assessesees under s. 136, Calcutta Municipal Act, cannot operate as an estoppel against them in the matter of valuation of land with building as part of the premises, the position of the law as it stands must be recognised so that the return as submitted should be in compliance with the law.

APPEAL FROM ORIGINAL ORDER by the objector.

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

S. C. Bose and *Krishna Lal Banerji* for the appellant.

Santosh Kumar Basu (with him *Panna Lal Chatterji*) for the respondent.

Cur. adv. vult.

GUHA J. This is an appeal by the Corporation of Calcutta from a decision of the learned Chief Judge

*Appeal from Original Order, No. 428 of 1935, against the Order of C. O. Remfry, Chief Judge of Calcutta Small Cause Court, dated May 14, 1935.

of the Court of Small Causes, Calcutta, under s. 142 of the Calcutta Municipal Act, 1923, in a case under s. 14 of the Act, in which the respondents in this Court, Messrs. Jardine Skinner & Co., challenged the assessment of rates and taxes, as made by the Corporation of Calcutta, of premises No. 4, Clive Row, Calcutta, of which the respondents were the owners.

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The respondents were served with a notice under s. 136 of the Calcutta Municipal Act for furnishing a return for the purpose of assessment of the premises No. 4, Clive Row. A return was submitted in pursuance of that notice, stating the value of the land as Rs. 22,000 *per cottâ*; the value of the building standing on the land was separately shown as Rs. 2,86,000. Objections were raised to the assessment as made by the Corporation on the return submitted by the respondents; and as the result of the hearing of the objections, the value of the land was reduced to Rs. 21,000 *per cottâ*: it does not, however, appear on what basis such reduction was made by the Corporation. Depreciation was allowed on the value of the building as stated in the return submitted by the respondents at the rate of $12\frac{1}{2}$ *per cent*. The original assessment as made by the Corporation was reduced. The respondents, not satisfied with the reduction as made, started a proceeding under s. 141 of the Calcutta Municipal Act, before the Court of Small Causes, Calcutta, for contesting the assessment as made, on the annual value of the premises No. 4, Clive Row, as determined by the Corporation, at Rs. 45,491, on the basis stated above. The case stated in the application to the Court of Small Causes, by way of a plaint in a suit, was vague; but the points raised appear to have been made clear at the hearing of the case; and the learned Judge who heard the case was disposed to adjourn the case if the Corporation had asked for time to meet the case made by the assessee seeking relief under s. 141 of the Calcutta Municipal Act. The Corporation did not ask for any adjournment.

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The learned Chief Judge of the Court of Small Causes gave relief to the assesseses, respondents in this Court, by reducing the annual valuation as made by the Corporation, which had the result of reducing the assessment to rates and taxes. This was done by reducing the value of the land and by raising the percentage of depreciation of the value of the building. The Corporation of Calcutta appealed to this Court. It was urged in support of the appeal that the Court below had erred in holding that the value of the land in the case before us was Rs. 14,000 *per cottâ* and in raising the percentage of depreciation of the value of the building to 34 *per cent.* The main question raised in the appeal was that the Judge was wrong in his interpretation of s. 127(b) of the Calcutta Municipal Act, for the purpose of determining the annual value of the premises in question.

In the case before us, the provisions of law, as contained in s. 127 (b) of the Calcutta Municipal Act, 1923, had to be interpreted; and although the learned Judge in the Court below has observed that he was rather dubious about the method of assessing the rateable value of land, he held that the section [s. 127(b)] appeared to mean that "land was not to be valued as "bare piece of building land, but as part of the premises burdened with the building existing upon it", and the method of valuation suggested by Mr. Sawday, surveyor and valuer, examined as an expert by the assesseses, was adopted by the Judge on the footing that "the section certainly makes the value depend, to some extent, on the use of land, and there was no obvious "method of construing the section". According to the expert, the basis of valuation of land, which had to be adopted in the case before us, gave the figure Rs. 14,000 *per cottâ*, for the reason given by him in his evidence.

The Act says the land must be valued with building and not the vacant value of the land. No one could buy this building and get a return of more than Rs. 15 *per* 100 square feet = Rs. 3,800—taxes, repairs left nett return some Rs. 33,000 *per annum* = at 20 years, Rs. 6,60,000. If the Corporation values the building at Rs. 2,86,000 it leaves 4 lakhs for the land, about Rs. 14,000 a *cottâ*.

It is to be noticed that for the purpose of meeting the requirements of s. 127 (b) of the Calcutta Municipal Act, the value of the land appertaining to the premises to be assessed had to be separated and kept distinct from the value of the building standing on the land; the law required that the valuation was to be on a basis other than the rental basis as indicated in s. 127 (a), and the rough and ready method, of taking the value of the land and building together on a rental basis and then giving a deduction of the value of the building, was not therefore a method contemplated by law, in view of the definite provisions laying down rules for determining the value of different classes of property for the purpose of assessment to rates and taxes, as stated in the different and separate cls. (a) and (b) of s. 127 of the Calcutta Municipal Act; and the learned Judge in the Court below has, in our judgment, on the expert evidence, placed a forced construction on the language of the statute, and on careful consideration of the same, we are unable to accept the conclusion arrived at by him. The land had to be valued separately; it was valued by the assesseses in the return submitted by them under s. 136; and no materials were placed before the Court, on which the valuation put upon the land by the Corporation—Rs. 21,000 *per cottâ*—could be reduced. We are unable to hold, in agreement with the learned Judge in the Court below, that Rs. 14,000 *per cottâ* could be taken to be the value of the land in the case before us for the purpose of determining the annual value of premises No. 4, Clive Row, required to be fixed under s. 127 (b) of the Calcutta Municipal Act.

It may be stated that there can be no question that the statement of valuation of land apart from building, in pursuance of notice given to the assesseses under s. 136 of the Calcutta Municipal Act, could not operate as an estoppel against them in the matter of valuation of land with building as part of the premises; but the position under the law as it stands must

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be recognised, that the return as submitted was in compliance with what was required to be done for the purpose of enabling the Corporation to fix a valuation of land, on which there was a building, as mentioned in s. 127 (b).

The building on premises No. 4, Clive Row was valued at Rs. 2,86,000; the question of depreciation of the building had to be taken into account; and the percentage of the same had to be fixed, on the materials before the Court. There was evidence of the age of the building, and there was also the evidence of the rate of depreciation, which was allowed to stand un rebutted and unchallenged by the Corporation. On the materials on the record, the Judge in the Court below was justified in coming to the conclusion that the percentage of depreciation ($12\frac{1}{2}$ per cent.) as allowed by the Corporation was wholly arbitrary, and could not be accepted. The presumption in favour of the Corporation, if any, fixing the percentage at $12\frac{1}{2}$ per cent. was rebutted by evidence before the Court; and there was no evidence given by the Corporation for rejecting the same. The percentage of depreciation has rightly been fixed at 34 per cent. on the footing that the building in question was at least 68 years old.

The result of our decision, as indicated above, is that, for the purpose of present assessment to rates and taxes in regard to premises No. 4, Clive Row, the annual value of the same is to be taken at 5 per cent. of the amount of Rs. 2,86,000, the cost of erection of the building, less 34 per cent. on account of depreciation, to which is to be added the value of the land on which the building stands, at the rate of Rs. 21,000 per cottá.

The appeal is allowed in part; the decision of the Court below, against which it is directed, is modified in the manner stated above. There is no order as to costs in the appeal.

NASIM ALI J. I agree with the order, which my learned brother has just now made in the case.

The points for determination in the appeal are :—

(1) Whether the appellant Corporation was wrong in valuing the land of the premises as bare building site; and

(2) Whether the appellant Corporation was wrong in allowing $12\frac{1}{2}$ per cent. depreciation on the cost of building the structures?

The contention of the respondents as regards the first point is that under cl. (b) of s. 127 of the Calcutta Municipal Act, the land is not permitted to be valued as bare land without any structure, as the concluding words of cl. (b) "land valued with the building as a "part of the premises" indicate that the land is to be valued as affected or burdened by the building standing on it. The words "affected by" or "burdened by" are not to be found in the section. I doubt whether they convey the meaning, which the respondents want to put upon them, seeing (i) that the section requires a separate valuation of the land, although there is the obvious difficulty of valuing the land separately after it has been built upon, and (ii) that although all lands with buildings standing on them are to be valued on a rental basis, the annual letting value is to be taken as the basis of rating only in cases coming under cl. (a) of the section. Assuming, however, that the contention of the respondents is correct, there is no satisfactory material to show that the land of the premises in question had been assessed by the appellant as a bare building site without any building on it. According to the evidence of Mr. Sawday, witness No. 2 for the respondents, the value of the bare land would be Rs. 22,000 to Rs. 24,000. The respondents in their return put Rs. 22,000 as the value of the land. The Deputy Executive Officer of the Corporation, however, assessed the value at Rs. 21,000. There is no satisfactory evidence to show that the value of the land as assessed by the Corporation is not a fair value, taking the existence of the building on it as a factor which affects its value. No evidence was given by the respondents to show to what extent the value of the land

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has been depreciated by the existence of the building on it excepting the evidence of Mr. Sawday to the effect that the value of the land would be Rs. 14,000 if the value of the cost of construction minus 34 *per cent.* on account of the depreciation be deducted from the value of the land and building taken together, calculated on a rental basis. As at present advised, I am not prepared to say that the method adopted by Mr. Sawday is the proper method of valuing the land in the present case, in accordance with the provisions of s. 127(b) of the Act and the valuation made by the Deputy Executive Officer of the Corporation is wrong.

As regards the second contention, the appellant Corporation did not adduce any evidence to show that the age of the building was not 68 years or that the rate of depreciation at $\frac{1}{2}$ *per cent.* is not a fair rate although they had notice of this objection and had ample opportunity of meeting it at the time of the hearing of the case. It is argued that the question of rate of depreciation at a higher figure was not raised in the plaint, but the structures of pleadings should not be stressed too far when fair notice of the case has been given. I am, therefore, of opinion that the learned Judge was right in allowing depreciation at the rate of 34 *per cent.* and the Corporation was wrong in allowing depreciation at 12 $\frac{1}{2}$ *per cent.* only.

Appeal allowed : decree modified.

G.S.