

## CIVIL REVISION.

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*Before Derbyshire C. J. and Nasim Ali J.*

PROVINCE OF BENGAL

v.

CORPORATION OF CALCUTTA.\*

1939.

March 3, 6, 7.

**Jurisdiction**—*Consolidated rate, Liability to assessment of—Jurisdiction of the Small Causes Court to determine questions relating to such liability—Calcutta Municipal Act (Ben. III of 1923), ss. 139, 140, 141.*

The Court of Small Causes has, under ss. 139 to 141 of the Calcutta Municipal Act, 1923, jurisdiction to deal not only with questions relating to the quantum of assessment but also with those relating to liability to assessment.

*Corporation of Calcutta v. Bhupati Roy Chowdhry (1) and Secretary of State for India in Council v. Belchambers (2) relied upon.*

*Garrison Engineer of Fort William v. Corporation of Calcutta (3) distinguished and commented upon.*

CIVIL RULES obtained by the Province of Bengal, the appellant under s. 141 of the Calcutta Municipal Act, 1923, to the Court of Small Causes at Sealdah.

The facts of the case, material for this report, appear sufficiently from the judgment of Derbyshire C. J.

*The Advocate-General, Sir Asoka Roy, Radhabenode Pal and Shyamapada Majumdar for the petitioner.* For the purposes of these Rules the Court has to determine what is meant by the words "valuation" and "objection to such valuation" in s. 139 of the Calcutta Municipal Act, 1923. Does the word "valuation" in the section refer only to the amount

\*Civil Revision, Nos. 14 to 16 of 1939, against the orders of Tarani Kanta Nag, Judge, Court of Small Causes of Sealdah, dated December 12 and 13, 1938.

(1) (1898) I. L. R. 26 Cal. 74.

(2) (1905) 3 C. L. J. 169.

(3) (1937) 42 C. W. N. 789.

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assessed by the Executive Officer under Ch. X of the Act, the chapter which relates to the imposition of consolidated rates, or does the word also refer to liability itself to assessment? Upon the answer to this question would depend whether or not a rate-payer, can, under s. 141 of the Act, raise before the Court of Small Causes, questions relating not merely to the amount of assessment but also questions relating to his liability to assessment. There is authority for the proposition that the word "valuation" refers also to liability to assessment: *Corporation of Calcutta v. Bhupati Roy Chowdhry* (1); *Secretary of State for India in Council v. Belchambers* (2); *Corporation of Calcutta v. I. J. Cohen* (3). The observations of Panckridge J. in *Garrison Engineer of Fort William v. Corporation of Calcutta* (4) are not sound in law; besides, such observations were not necessary for the purpose of the decision at which the learned Judge arrived.

*S. C. Bose, Santosh Kumar Basu and Balaram Bose* for the Corporation of Calcutta, the opposite party. Section 141 of the Calcutta Municipal Act gives jurisdiction to the Court of Small Causes to hear objections to valuations made by the Executive Officer of the Calcutta Corporation, such objections being on grounds as could be pressed before the Executive Officer, that is, grounds which arise out of ss. 127 to 138 of Ch. X which deal with assessment. When the right of the Corporation to impose a consolidated rate in respect of a particular property is questioned, the objection is one which cannot be raised before the Executive Officer who has power under the rules made under the Act, only to fix the amounts of the rates.

By ss. 148, 149 of the Bengal Municipal Act, 1932, the question of liability to assessment as well as the question of amount of assessment is left to be decided by the chairman and two commissioners.

(1) (1898) I. L. R. 26 Cal. 74.

(2) (1905) 3 C. L. J. 169.

(3) (1901) 6 C. W. N. 480.

(4) (1937) 42 C. W. N. 789.

By s. 141 read with s. 139 of the Calcutta Municipal Act, the question of amount of assessment is expressly left to be decided by the Executive Officer and then, on appeal, by the Court of Small Causes. If the legislature intended to leave the question of liability to assessment to be decided by the Executive Officer and then by the Court of Small Causes, it would have made express provision to that effect.

I rely on *Garrison Engineer of Fort William v. Corporation of Calcutta* (1).

*The Advocate-General* in reply.

DERBYSHIRE C. J. In these matters, on January 6, 1939, Rules were issued at the instance of the Government of Bengal upon the Corporation of Calcutta to show cause why the orders complained of should not be set aside and the objections of the Government of Bengal decided.

There are three canals, first, the Circular Canal which begins at the Hooghly in the northern part of Calcutta and continues in an easterly and then in a southerly direction through the area in which Calcutta lies until it joins the second canal, *viz.*, the Beliaghata Canal, which continues in an easterly direction towards the Salt Lakes. From the Beliaghata Canal, near its northern end, branches the third canal, *viz.*, the New Canal. The Circular Canal was formerly the boundary between the old Municipality of Calcutta and the Municipalities of Cossipur and Maniktala previous to the incorporation of the two last-mentioned municipalities within the Municipality of Calcutta, about A.D. 1922. It is stated that this Circular Canal does not lie within any of the wards of the Municipality of Calcutta as specified in the Calcutta Municipal Act, 1923. The three canals in question are owned by the Government of Bengal and over them pass boats and barges

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which are said to pay tolls to the Government. Hitherto, these canals have not been rated by the municipality and have not paid municipal rates.

On or about March 16, 1932, Government received from the Corporation a notice, purporting to be under s. 138 of the Calcutta Municipal Act, 1923, in which (I refer now to the Circular Canal but the same considerations apply to the other two canals) for the first time the canal in question was given an annual valuation under s. 131 of the Act. The canal was given an annual valuation of Rs. 1,05,600 and the rate sought to be charged was Rs. 2 per *cottá per mensem* with effect from the first quarter of the year 1932-33. In all, a consolidated rate of Rs. 20,592 per year was sought to be imposed.

The Government filed a written notice of objection under s. 139 of the Act stating that the canal was not assessable at all under the Act on the ground, first, that it was Crown property, and secondly, that it did not lie within one of the wards and so could not be assessed under the provisions of s. 131 or any other section; further, the Government objected to the *quantum* of the valuation and the consolidated rate. The Deputy Executive Officer of the Calcutta Corporation heard the Government's objections and on May 21, 1938, confirmed the assessment. Thereupon, the Government preferred an appeal to the Court of Small Causes at Sealdah under s. 144 of the Calcutta Municipal Act, and took the same grounds in the appeal that they had urged before the Deputy Executive Officer. The appeal was registered as Municipal Appeal No. 6 of 1938, and the Government paid court-fees, Rs. 1,230, as on a plaint for the same valuation. On December 10, 1938, the Small Causes Court Judge dealt with the matter. He held that he had jurisdiction to deal with the *quantum* of the assessment but not to deal with the question of liability to assessment.

The Government of Bengal obtained a Rule in respect of that decision as set out above, contending that the Small Causes Court Judge had jurisdiction to hear the whole of their objections, not merely those as to *quantum* but also those as to liability.

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Section 124 of the Calcutta Municipal Act provides :—

A consolidated rate not exceeding twenty-three *per cent.* on the annual valuation determined under this chapter (*i.e.*, Ch. X of the Act) may be imposed by the Corporation upon all lands and buildings in Calcutta for the purposes of this Act.

Section 126 provides that certain buildings and lands “shall be exempt from the consolidated rate” and that the Corporation may exempt from the consolidated rate certain other lands and buildings “either wholly or partially”.

Section 127 provides for calculating the annual value of lands or buildings for the purposes of this Act.

Section 131 provides for the continuing, until further valuation, of the valuation of any land or building situated in the several wards, and by sub-s. (2)(b) it is provided :—

Any land or building the valuation of which has been cancelled on the ground of irregularity, or which for any other reason has no annual value assigned to it under this Act, may be valued by the Executive Officer at any time during the currency of the period prescribed in respect of such land or building by sub-s. (1), and such valuation shall remain in force, and the consolidated rate shall be levied according to it, for the unexpired portion of such period ;

It is under that section and sub-section, we are told, that the canals in question were valued.

Section 139(1) provides :—

Any person who is dissatisfied with a valuation made under this chapter may deliver at the municipal office a written notice stating the grounds of his objection to such valuation.

Section 140 provides :—

(1) All such objections shall be entered in a register to be maintained for the purpose ; and, on receipt of any objection, notice shall be given to the objector of a time and place at which his objection will be investigated.

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(2) At the said time and place the Executive Officer or a Deputy Executive Officer shall hear the objection, in the presence of the objector or his agent if he appears, or may, for reasonable cause, adjourn the investigation.

(3) When the objection has been determined the order passed shall be recorded in the said register, together with the date of such order.

### Section 141 provides :—

(1) Any person dissatisfied with the order passed on his objection may appeal to the Court of Small Causes having jurisdiction in the place where the land or building, to the valuation of which the objection was made, is situated.

(2) Such appeal shall be presented to such Court of Small Causes within thirty days from the date of the order passed under s. 140, and shall be accompanied by an extract from the register of objections containing the order objected to.

(3) The provisions of Parts II and III of the Indian Limitation Act, 1908, relating to appeals, shall apply to every appeal preferred under this section.

(4) No appeal shall be admitted under this section unless an objection has first been determined under s. 140.

### Section 142 provides :—

(1) Every valuation made by the Executive Officer under s. 131 shall, subject to the provisions of ss. 139, 140 and 141, be final.

(2) Every order passed by the Executive Officer or Deputy Executive Officer under s. 140 shall, subject to the provisions of s. 141, be final.

(3) An appeal from a decision made by the Court of Small Causes under s. 141 shall lie to the High Court.

I may mention in passing that the last provision, that an appeal in matters relating to rating, shall lie to the High Court, is new in the Calcutta Municipal Act, 1923.

Section 146 (1) provides that notwithstanding anything contained in s. 142, the Executive Officer may at any time amend the assessment-book

by inserting (in the assessment book) any land or building which is, in his opinion, liable to the consolidated rate, or by inserting a valuation when the land or building liable to be valued has not been valued.

Sub-section (2) of the same section provides that the provisions of ss. 139 to 142 shall, with all necessary modifications, be deemed to apply to an objection which is made against the Executive Officer's order for the amendment of the assessment-book under s. 146.

The learned Judge of the Small Causes Court has based his decision upon some observations which are found in the judgment of Panckridge J. in the case of the *Garrison Engineer of Fort William v. Corporation of Calcutta* (1). In that case the military authorities objected to pay rates in respect of the Presidency Military Hospital from the second quarter of the year 1937-38. The assessment, in respect of which, the rate was claimed, had been made some years previously, and rates had been paid down to the first quarter of 1937-38, when the military authorities alleged that they were not liable to be rated at all in respect of the hospital, because it lay within the boundary of the fort and was thereby excluded from the provisions of the Calcutta Municipal Act, 1923. The military authorities proceeded under s. 45 of the Specific Relief Act, 1877, and obtained a Rule calling upon the Chief Executive Officer to show cause why the assessment on the hospital should not be cancelled on the grounds set out above.

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The learned Judge on a consideration of the facts of the case found that the hospital did not lie within the boundaries of Fort William but lay within the boundaries of Calcutta as defined by sch. I to the Calcutta Municipal Act.

From a consideration of the facts of the case it will appear that it was too late for the military authorities to object under s. 139 to the valuation. The only course open to them appears to have been the one they took.

During the course of the argument which the Corporation put forward against the contentions of the military authorities, it was said that the procedure under s. 45 of the Specific Relief Act was not open to the military authorities, and in dealing with

(1) (1937) 42 C. W. :

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it the learned Judge considered ss. 139 to 142, and said:—

In my opinion, these sections have no application to the circumstances of the present case for they presuppose that the land and buildings which are the subject-matter of the valuation are assessable to the consolidated rate. In other words, they have reference to those cases where the liability to assessment and valuation is admitted, and the objection is to the *quantum* of the valuation, or the method in which it has been carried out.

It is on this observation that the learned Judge of the Small Causes Court has based his decision. In my opinion, this observation was not necessary to the decision Panckridge J. gave. He decided the matter on the facts and it was clear that the military authorities were too late to take advantage of ss. 139 to 142. I must regard those words, though they are entitled to great respect, as being *obiter*.

To decide whether the learned Judge of the Small Causes Court was right I must look at the provisions of the relevant sections themselves. It is clear that a person dissatisfied with the valuation may object to it under s. 139, that the Executive Officer or his Deputy must hear the objection, determine the matter and pass an order upon it under s. 140. Then under s. 141, if the objector is dissatisfied, he may appeal to the Small Causes Court.

Now, I see nothing in those sections limiting the grounds of objection to the valuation. When the objections have been determined against the objector under s. 140, I see nothing limiting the rate-payers' right to have the full order, made by the Executive Officer or his Deputy, considered with all the grounds of objection, on appeal to the Small Causes Court.

There is an appeal from the Small Causes Court to the High Court. It has been held in the case of *Corporation of Calcutta v. Manik Lal De* (1) that in an appeal under s. 141 of the Calcutta Municipal Act, 1923, the Small Causes Court Judge must record evidence in such a way that the High Court may,

(1) (1929) 33 C. W. N. 1173.



on appeal, come to its own conclusion as to whether the decision of the Judge was right or wrong on the evidence.

Thus, a scheme is set out in the Act whereby any person who is dissatisfied with the valuation, which is the indispensable preliminary to his being rated, shall urge his objection, first, to those who make the valuation, then to a local tribunal whose duty it is to take evidence and hear and determine the matter according to law with an appeal to this Court. There is full provision made for safeguarding the rights of the owner or occupier of land or buildings in Calcutta. The procedure is, it seems to me, analogous to that which obtains in rating appeals in England where there is an appeal against an item of the valuation list to the Assessment Committee, from the Assessment Committee to the Court of Quarter Sessions which may deal with questions of fact and law, and then to the High Court which may determine the matter finally according to law.

I can see no reason for holding that the learned Judge of the Small Causes Court is confined to the question of *quantum* of valuation only. If that were so, questions of liability would fall to be determined by another Court, which would mean multiplicity of legal proceedings, vexatious and costly to the rate-payer and a hindrance to the Corporation in its collection of rates.

It seems to me that the Act was designed to provide a chain of tribunals, the Executive Officer or his Deputy, the Small Causes Court and the High Court, to determine the rights and liabilities both of the Corporation and of those upon whom it is sought to levy rates.

In these circumstances, it seems to me, that the learned Judge was wrong in the decision that he gave.

The result is that the Rules are made absolute and the case sent back to the Court of Small Causes to be dealt with in accordance with the provisions of the law in the light of the observations made above.

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The petitioner is entitled to costs—a consolidated hearing-fee being assessed at fifteen gold *môhurs*.

NASIM ALI J. I agree with my lord, the Chief Justice, that these Rules should be made absolute.

The word “valuation” in s. 139 of the Calcutta Municipal Act may, according to Oxford Dictionary, mean either the estimated value; or, the act or process of valuing. I see nothing in this section to limit the meaning of the word “valuation” to the *quantum* of valuation only. It includes the whole process of valuing: *Corporation of Calcutta v. Bhupati Roy Chowdhry* (1); *The Secretary of State for India in Council v. Belchambers* (2).

The grounds of objection to the valuation before the Small Causes Court Judge under s. 139, therefore, would be to the process of valuing as well. If the process is bad, the amount of valuation in its entirety or in part will be bad. The case of the petitioner is that the entire process of valuing is bad inasmuch as it contravened the provisions of Ch. X of the Calcutta Municipal Act, relating to the valuation of land or buildings. It appears from the grounds of objection filed by the petitioner before the Small Causes Court Judge that his case is that the valuation in its entirety is bad, as the property valued is not “land” within the meaning of s. 127 or “land “.....situated in (any of) the several wards” of the Calcutta Municipality, as contemplated by s. 131 of the Act. If a rate-payer is entitled to object to the over-valuation I see no reason why he cannot object to the valuation in its entirety. The grounds of objection as contemplated by s. 139, therefore, may relate not only to a part of the estimated value but to the whole of it.

*Rules absolute.*

P. K. D.

(1) (1898) I. L. R. 26 Cal. 74.

(2) (1905) 3 C. L. J. 169.