

APPELLATE CIVIL.

Before Mr. Justice Heald, and Mr. Justice Cunliffe

S. S. HALKAR

v.

THE CORPORATION OF RANGOON.*

1926

Dec. 16.

City of Rangoon Municipal Act (Burma Act VII of 1922), Chapter 2, Schedule III, clauses 1 to 7, section 91 (3)—Right of appeal when there is question of principle affecting basis of assessment—Enhancement of assessor's preliminary valuation without notice to owner illegal.

The rental value of appellant's house was assessed by the Rangoon Municipality at Rs. 350. On the day fixed for hearing of the objection of the appellant to the assessment of which notice had been given to him, he was absent. The Commissioner raised the valuation to Rs. 380. Appellant appealed to the Chief Judge of the Rangoon Small Cause Court; that appeal being dismissed, he appealed to the High Court.

Held, that although no appeal may lie on a mere question as to the amount of a particular valuation, the question in this case affected the basis or principle of assessment and was appealable under section 91 (3) of the Act. The Commissioner in disposing of the complaint against the assessor's preliminary valuation could have either reduced the valuation as desired by the appellant or else confirmed it. According to the provisions of clauses 1 to 6 of Chapter 2, Schedule III of the Act, the valuation as entered in the lists of the assessor could be confirmed and the lists signed by the Commissioner without alteration, or if a complaint of the assessee is allowed, the valuation in the lists could be reduced. But no question of enhancement arises in either case. If the municipal authorities desired enhancement, the procedure laid down in clause 7 must be followed, and notice given to the owner of the property who must have an opportunity of objecting to it.

S. S. Halkar—in person.

N. M. Cowasjee—for the Corporation.

HEALD, J.—In the assessment lists of the Rangoon Municipality the monthly rental value of appellant's house was entered as Rs. 350, appellant complained of that valuation as being unduly high, and was served with a notice that his complaint would be investigated on the 15th of February last. He failed to attend on that date, and the Commissioner raised the valuation to Rs. 380.

* Civil Miscellaneous Appeal No. 115 of 1926 from the order of the Small Causes Court of Rangoon in Municipal Appeal No. 5 of 1926.

Appellant appealed to the Chief Judge of the Rangoon Small Cause Court, but his appeal was dismissed.

He now claims to appeal to this Court.

Respondent's learned Advocate takes a preliminary objection that no appeal lies to this Court in such a case because the Act allows an appeal to this Court only on questions as to liability to assessment or as to the basis or principle of assessment and the present appeal is not as to the basis or principle of assessment but is merely as to the amount of a particular valuation.

It may be true that no appeal lies to this Court on a mere question as to the amount of a particular valuation, but it seems to me that the question which arises in this case is not merely a question as to the amount of a particular valuation but is a question of principle which affects the basis of assessment.

The provisions of the law as to assessments are laid down in Chapter II of Schedule III of the Act. Under clause 1 of the chapter the Assessor prepares a list yearly showing his valuation of properties for purposes of taxation. Under clause 4 the owner of any property is entitled to complain of the valuation of his property, and under clauses 5 and 6 his complaint must be investigated and disposed of before the Commissioner signs the assessment lists. Clause 7 provides for amendment of the lists after they have been signed. Among its provisions is a provision that where any land or building has been erroneously valued or where the rent has been raised since the date of the assessment the Assessor may amend the lists but that notice of the proposed amendment must be given to the person interested and that such person may tender a written objection to the amendment and must be allowed an

1926

S. S. HALKAR

v.

THE
CORPORATION OF
RANGOON.

HEALD, J.

1926
 S. S. HALKAR
 V.
 THE
 CORPORATION OF
 RANGOON.
 HEALD, J.

opportunity of being heard by the Commissioner in support of his objection.

The scheme of assessment provided by the Act is thus that there shall be a preliminary valuation by the Assessor, that complaints against that valuation shall be investigated and the valuation determined by the Commissioner, that the lists shall then be authenticated by his signature, and that if it is desired to amend the lists thereafter the owner of the property is entitled to object and must be heard by the Commissioner in support of his objection before the lists can be amended.

It is admitted that what happened in this case was that appellant complained against the Assessor's valuation at Rs. 350, that at the time when his complaint was investigated the Commissioner amended the Assessor's valuation by raising it from Rs. 350 to Rs. 380, and that appellant had no notice of the proposed amendment and no opportunity of objecting to it.

The question which arises in this case is therefore whether or not the Commissioner in disposing of a complaint against the Assessor's preliminary valuation has power to amend that valuation so as to enhance it without following the procedure laid down in clause 7.

That question* is in my opinion more than a mere question of the amount of the valuation. It is a question which affects the basis or principle of assessment. Section 80 of the Act says that property taxes are to be levied at certain percentages of the annual rental value of the properties, and section 91 says that the Commissioner shall determine that annual value in accordance with the manner prescribed in the Act or rules. Where therefore it is alleged, as it is alleged in this case, that the Commissioner

has disregarded the provisions of the Act which lay down the procedure to be followed by him in determining the annual value, I have no hesitation in finding that a question arises as to the basis or principle of assessment, and that an appeal lies to this Court under the provisions of section 91 (3) of the Act.

The case for the respondents is that clause 7 deals only with amendments of the assessment lists after they have been signed by the Commissioner, and that because in this instance the lists were amended by the Commissioner before they were signed by him, it was unnecessary to follow the procedure laid down in that clause.

The answer to that case seems to me to be that the Commissioner, in dealing under clauses 5 and 6 with complaints against the preliminary valuation made by the Assessor and entered in the assessment lists, is dealing merely with those complaints, and that it is contrary to the intention of the Act that the Assessor's valuation should be enhanced unless and until the procedure laid down in clause 7 has been followed. In his proceedings under clauses 5 and 6 the Commissioner is merely disposing of a complaint and amending or confirming the Assessor's valuation according as he finds that the complaint is or is not established. The only question which arises on a complaint against the Assessor's valuation is whether that valuation should be reduced as desired by the complainant or should be confirmed. If the complaint is dismissed the valuation as entered in the lists should be confirmed and the lists signed without alteration. If the complaint is allowed the valuation as entered in the lists should be reduced accordingly. No question of enhancement arises in either case. If, whether as a result of the investigation

1926

S. S. HALKAR

V.

THE
CORPORATION OF
RANGOON.

HEARD

1926
 S. S. HALKAR
 v.
 THE
 CORPORATION OF
 RANGOON.
 HEALD, J.

of the complaint or otherwise, the Municipal authorities desire to enhance the valuation entered by the Assessor in the lists, the intention of the Act seems to me to be that the procedure laid down in clause 7 must be followed, and the owner of the property must have notice of the proposed enhancement and must have an opportunity or objection to it. Any other procedure would clearly be inequitable.

In the present case it is admitted that appellant had no notice of the proposal to raise his valuation from Rs. 350 to Rs. 380, and no opportunity of objecting to the latter valuation, and in the absence of such notice and opportunity the Commissioner had in my opinion no power to raise the valuation.

I would therefore set aside the Commissioner's order of the 15th of February 1926 in so far as it increased the valuation from Rs. 350 to Rs. 380.

I would allow appellant's costs in both Courts, Advocate's fee in this Court to be five gold mohurs.

CUNLIFFE, J.—I also am of the opinion that the Commissioner's order of the 15th February 1926 in so far as it increased the valuation from Rs. 350 to Rs. 380 should be set aside.

The appeal was mainly argued on the point that it involved a question as to the basis of assessment. During the course of the argument I was in considerable doubt, and I am in considerable doubt still, as to whether the matter involved does turn on a question of the basis of assessment. But I have had the advantage of reading my Lord's judgment and in my view this appeal clearly raises a question on the principle of assessment. Schedule 3, Chapter 2, clause 7, sub-clause (1) of the Act provides that notice of an alteration of the assessment to the person interested must be given not less than one

month from the date of service of such notice at which the amendment is to be made. It is common ground that no notice was ever given to the appellant of the intention to alter the valuation from Rs. 350 to Rs. 380. Such an alteration was therefore *ultra vires* and I am of the opinion that a neglect to comply with the strict procedure of the Act in such connection does involve a principle. It has been said that such a point should be raised in the Court below and in the Court below only. Whether the question of the want of notice was argued in the Court below or not I have no means of ascertaining. It is by no means clear, however, from the judgment of the learned Judge that such an objection to the principle of assessment was present in his mind when he decided the case. It is for these reasons, in addition to those set forth in my Lord's judgment that I agree that the appellant succeeds.

1926

S. S. HALKAR

v.

THE

CORPORATION OF

RANGOON.

CUNLIFFE, J.