

APPELLATE CIVIL.

Before Sir Henry Pratt, Kt., Officiating Chief Justice, and Mr. Justice Cunliffe.

MUNICIPAL CORPORATION OF THE CITY OF
RANGOON

1928

July 31.

v.

E. E. DAWOODJEE & SONS.*

Rating Law—Principle of valuation—Hypothetical value of a printing press building—Building unsuitable for other purposes—General advance in value and in rents of house property nearby when an appropriate guide.

The Assessor of the Municipal Corporation of Rangoon increased to more than double the valuation of an old building held under a long lease by a Press. The premises were not suitable for ordinary business purposes or for tenement dwellings. The enhancement was made because of a general advance in the value of house property in the neighbourhood and because of the fact that occupiers of nearby buildings were paying much higher rents than the rent paid by the Press.

Held, that it is a canon of Rating Law that the principle of the valuation of any given hereditament is the hypothetical value of the hereditament as it stands to any hypothetical tenant. It was not appropriate in this case to take as a guide the actual rents paid for other and widely dissimilar buildings occupied on different terms of tenancy.

N. M. Cowasjee for the Corporation.

Clark for the assessees.

CUNLIFFE, J.—This appeal must be dismissed. It arises in the following circumstances. No. 486, Merchant Street, was previously rated at Rs. 1,265 per month. The Assessor to the Municipal Corporation recently increased this valuation at Rs. 2,950 per month. The assessee who is the owner of the premises appealed to the Commissioner who confirmed the assessment. The assessee then preferred an appeal to the Chief Judge of the Small Cause Court. He reversed the order of the Commissioner. The Corporation now come to this Court in further appeal.

* Civil Miscellaneous Appeal No. 350 of 1928 against the judgment of the Small Cause Court of Rangoon in Municipal Appeal No. 2 of 1928.

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CUNLIFFE, J.

No. 486, Merchant Street, is in the occupation of the Rangoon Times Press under a lease for a term of years. The reasons adduced to support the enhancement of the valuation were a general advance in the value of house property in the neighbourhood and the fact that occupiers of nearby buildings were paying much higher rents than the rent paid by the Rangoon Times Press to the assessee. Elaborate calculations of floor space and so on were set out in the Report of the Assessor. Before the Commissioner the assessee gave evidence that No. 486, Merchant Street, were difficult premises to let and by no means suitable for ordinary business purposes or for tenement dwellings. The building was not new.

It is a canon of Rating Law that the principle of the valuation of any given hereditament is the hypothetical value of the hereditament as it stands to any hypothetical tenant. It seems to us not to be appropriate in such a case as this to take as a guide the actual rents paid for other and widely dissimilar buildings occupied on different terms of tenancy. This is exactly what the Commissioner has done. In our opinion the only evidence in relation to the proper valuation before him was the evidence of the assessee himself. To rebut such evidence it would have been necessary to consider the value of a similar building, devoted to a similar business. It is for these reasons that we agree with the learned Judge of the Small Cause Court and dismiss this appeal, with advocate's costs ten gold mohurs.

PRATT, C.J.—I add that it is unnecessary under the circumstances to discuss the many authorities, which have been cited on the subject of the principles, which should determine the assessment of the building in question. The principles are not disputed, the difficulty is the application of the principles.

It is common ground that the assessment should be on the basis of the rent, which a hypothetical tenant would be prepared to pay for the building as it stands, to be used for the purposes of a printing and newspaper press.

The Assessor and the Commissioner considered that the correct way to obtain the rent, which the hypothetical tenant would be willing to pay, was to be obtained by a mathematical calculation based on the rents paid for buildings in the immediate vicinity.

The objection to this method is that three of the buildings are of a superior character used for different purposes, and the fourth is the ground floor only of a four storeyed building also used as a press. The learned Chief Judge of the Small Cause Court did not consider the buildings or the conditions similar, and held therefore this fact vitiated the conclusion arrived at.

He took into consideration the fact that it was not disputed that the building was so constructed that it could not be let in parts or tenants and was not new, and that it was consequently difficult to obtain a trustworthy tenant paying an adequate rent. He did not consider that an allowance of 25 per cent. on the rent calculated from the average of the adjoining buildings rendered the assessment equal to the hypothetical rent.

The Judge was of opinion that the actual rent paid was more truly representative of the hypothetical rent and was *primâ facie* evidence of the rental value of the building.

He has given his reasons in a lucid and convincing judgment and I consider no sufficient reason has been adduced to justify our differing from his conclusion.

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