APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

V.E.R.M. CHETTIAR AND OTHERS

v.

THE CORPORATION OF RANGOON.*

1935

May 9.

Municipal assessment—Rice mill in Rangoon—Basis of assessment—Contractor's test—Annual value—Annual rent of hypothetical tenant—Gross annual rent and agreed rent plus *landlord's expenses—Consideration of all facts by Commissioner—City of Rangoon Municipal Act (Burma Act IV of 1922), s. 80 (2).*

In determining the assessment of a rice mill favourably situate in the Kanaungto Creek, Rangoon the contractor's test ought not be applied, and an assessment based upon that principle would be *ultra vires*. The assessment must be based on the annual rent which a hypothetical tenant might reasonably be expected, taking one year with another, to give for the property, if he paid the usual tenant's rates and taxes and the landlord paid the expenses necessary to enable the mill to earn the rent. It may or may not be that the gross annual rent would be equivalent to the actual agreed rent *plus* the sum reasonably expended in order that the rent might be obtained; but these two sums need not be the same in every case. Where the Commissioner has made the assessment after taking into consideration the circumstances and the assessments relating to the other rice mills on the creek, and at the same time has considered the special conditions and circumstances relating to the mill in question he has based his assessment on the right principle.

Great Western and Metropolitan Railway Companies v. *Kensington Assessment Committee*, (1916) 1 A.C. 22; *Liverpool Corporation* v. *Llanfyllin Assessment Committee*, (1889) 2 Q.B. 14; *Narayanchandra Das* v. *Panihati Municipality*, I.L.R. 57 Cal. 162; *Nundo Lal Bose* v. *The Corporation of Calcutta*, I.L.R. 11 Cal. 275; *Secretary of State for India* v. *Municipal Corporation of Rangoon*, I.L.R. 10 Ran. 539—*referred to.*

P. B. Sen for the appellant. In determining the annual value of any premises the actual rent is, *primâ facie*, the best test for determining what the hypothetical tenant would pay taking one year with another. In the absence of any rebutting evidence the Chief Judge of the Court of Small Causes erred in not calculating the assessable rent on that basis.

* Special Civil First Appeal No. 205 of 1934 from the order of the Small Cause Court of Rangoon in Municipal Appeal No. 6 of 1934.

1935

V.E.R.M. CHETTIAR v. THE CORPORATION OF RANGOON.

Ko Po Yee v. *The Corporation of Rangoon* (1); *The Municipal Corporation of Rangoon* v. *The Surati Barra Bazaar Co., Ltd.* (2); *Municipal Corporation of Rangoon* v. *E. Dawoodjee & Sons* (3).

In the present case the contractor's test was applied and the mill was assessed on a consideration of the comparative table prepared for the neighbouring mills on the same basis. The contractor's test should be applied only if there is no other satisfactory method of assessment. See *The Queen* v. *The School Board for London* (4)—a case of the assessment of a school building. The assessor also failed to take into consideration the economic conditions prevailing at the time.

The assessing authority should not have calculated the annual value by adding together the rent receivable under the agreement of lease and the sum of money likely to be spent by the lessee for putting the mill and its machinery in good repair. The latter amount is a capital expenditure, and should be taken into account only if this further expenditure is productive of additional rent. And in any event the whole of this capital expenditure should not be taken as part of the rent.

Jeejeebhoy for the respondent. The rent which is actually paid is only one of the factors in determining the annual value of any premises. It is in no sense conclusive.

The contractor's test was not applied in the present case, and it is not correct to say that the comparative table referred to by the appellant was prepared on the same basis. The Commissioner made his assessment after due consideration of all relevant factors including the conditions existing at the time, and the

(1) I.L.R. 5 Ran. 161.
(2) I.L.R. 1 Ran. 668.
(3) I.L.R. 6. Ran. 669.
(4) (1886) 17 Q.B.D. 738.

assessments on the other mills in the neighbourhood. The amount spent by the lessee for the repair of the mill and its machinery was also a factor for consideration because this expenditure put the mill in a condition fit to earn the rent.

PAGE, C.J.—This is an appeal from the decision of the Chief Judge of the Small Cause Court, affirming an assessment by the Commissioner of the Corporation of Rangoon in respect of a rice-mill known as No. 1, Kanaungto, Rangoon.

It is common ground that the property is liable to assessment. The only question which is or can be agitated in the present appeal is whether "the basis or principle of assessment" followed in assessing this mill was in accordance with law. The learned Chief Judge in the appeal before him found that No. 1, Kanaungto

"is the foremost mill in Kanaungto creek not affected by the tide, and stands on a site which is unique in comparison to the other mills situated lower down the creek. It must also be remembered that this mill was in 1931 taken over from the Official Liquidator for 1½ lakhs of rupees, and leased to Messrs. Moolla Dawood Sons & Co. from 1-1-33 for a period of one year at the annual rental of Rs. 15,000; the lessee being responsible for all repairs, renewal and maintenance. Previous to that this mill had been leased out to Messrs. Bulloch Bros. Ltd. from 1-1-31 at the annual rental of Rs. 20,000 *plus* the sum of Rs 10,000 for repairs to the mill and machinery."

It was stated before the Commissioner that at the time when the present assessment was made this mill had been taken on lease for Rs. 10,000 for one year, the lessee expending the sum necessary for repairs, renewals and maintenance. The Commissioner assessed the annual value at Rs. 2,500 per mensem, and ordered that the municipal taxes should be levied upon that basis.

1935

V.E.R.M. CHETTIAR v. THE CORPORATION OF RANGOON.

PAGE, C.J.

Now, under section 80 (2) of the Rangoon Municipal Act (VI of 1922)

"'annual value' means the gross annual rent for which buildings and lands liable to taxation may reasonably be expected to let, from year to year, and, in the case of houses, may be expected to let unfurnished."

There is no doubt that in assessing rice-mills in this area the assessment authorities have flirted with the contractor's test. In my opinion, however, to rice-mills in the district under consideration the contractor's test ought not to be applied, and assessments based upon that principle would be *ultra vires* [*Narayanchandra Das* v. *Chairman, Municipal Commissioners of the Panihati Municipality* (1); *Nundo Lal Bose* v. *The Corporation for the Town of Calcutta* (2) and *Secretary of State for India* v. *Municipal Corporation of Rangoon* (3)].

In *Narayanchandra Das* v. *Chairman, Municipal Commissioners of the Panihati Municipality* (1) it was pointed out that gross annual rent must be ascertained by finding out the rent at which a hypothetical tenant might reasonably be expected to take the premises on lease from year to year, and that, where it is possible to ascertain the gross annual rent by finding out and comparing the annual value of other properties of a like nature in the district the contractor's test ought not to be applied. In *Liverpool Corporation* v. *Llanfyllin Assessment Committee* (4) A. L. Smith L.J., observed that although

"a certain rate of interest on the capital expended in creating the hereditament is by no means to be taken as necessarily equivalent to the rent which a hypothetical tenant would give

(1) (1929) I.L.R. 57 Cal. 162.
(2) (1885) I.L.R. 11 Cal. 275.
(3) (1932) I.L.R. 10 Ran. 539.
(4) (1889) 2 Q.B. 14, 21.

". . . the amount of capital expended is admissible in evidence as a criterion by which to estimate that rent in the case of works like these (*i.e.*, a public reservoir) which are incapable of being compared with other hereditaments which form the subject of letting."

In *Narayanchandra Das* v. *Chairman, Municipal Commissioners of the Panihati Municipality* (1) I had occasion to point out that

"in exceptional cases where the rent that a hypothetical tenant might reasonably be expected to pay for the holding cannot be ascertained by methods which would be efficacious in normal and ordinary cases; for example, where the holding consists of land upon which a railway, a gas-work, a catchment area, or a building such as the Bodleian Library at Oxford is situate, rough and ready tests alone may be available for ascertaining the annual rent that a hypothetical tenant of the holding might reasonably be expected to pay, but in every case the annual rental value is the basis of the assessment."

In *Great Western and Metropolitan Railway Companies* v. *Kensington Assessment Committee* (2) Lord Buckmaster L.C. stated that

"the term 'gross value' means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rent charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent."

This definition may, I think, be taken as denoting the meaning of "gross annual rent" in section 80 (2) of the Rangoon Municipal Act [*Secretary of State for India* v. *Municipal Corporation of Rangoon* (3)]. In determining the assessment upon the annual value of No. 1 Kanaungto the Commissioner must

(1) (1929) I.L.R. 57 Cal. 162. (2) (1916) 1 A.C. 22, 35
(3) (1932) I.L.R. 10 Ran. 539.

1935

V.E.R.M. CHETTIAR v. THE CORPORATION OF RANGOON.

PAGE, C.J.

take into account all the materials at his disposal for the purpose of ascertaining what a hypothetical tenant might reasonably be expected to give as rent from year to year for this rice-mill. It is necessary therefore to consider the method that the Commissioner in fact adopted in determining the assessment in the present case. In the course of the order of assessment the Commissioner has stated

"that the mill is rented to Messrs. A. G. Das, millers at Rs. 10,000 per annum; all maintenance, repairs and renewals have however to be carried out by the lessees. It is therefore clear that the lease rent does not represent a reasonable rent of the premises. What has to be fixed under the Municipal Act is the reasonable expectation of rent taking one year with another, and not the rent at either the height of a boom period, or at the depth of a period of depression, but the reasonable rent under normal circumstances. I have just disposed of appeals against the assessments of all rice mills on this creek, and have fixed the valuation of 100 ton mills at approximately Rs. 2,100 p.m. The outturn of this mill was originally 400 tons but is now stated to be 300 tons. Rice Mill No. 3 has recently been rented at Rs. 1,500 which has only an outturn of 80 tons. I have given this case very careful consideration, and have examined the details of the property and the comparative statement of rice mills on this creek. Some temporary consideration must, I think, be given for the abnormal conditions under which the rice trade is now being carried on, but I do not think there is any justification for granting further reduction in the valuation of this property as I have already reduced it by over 43 per cent. In all the circumstances of the case I consider the reduced figure of Rs. 2,500 to be the lowest valuation which can reasonably be placed on this property."

Now, the comparative statement to which the Commissioner referred does, no doubt, set out what the assessment of the rice-mills on this creek would be if the contractor's test was applied, and if I thought that the Commissioner had in fact applied the contractor's test in making the assessment under consideration the proceedings would have to be

returned to him in order that he should assess the property upon the proper basis, and not by applying the contractor's test. In my opinion, however, it is manifest from the terms of the order of assessment that the Commissioner did not apply the contractor's test, but made the assessment after taking into consideration the circumstances and the assessments relating to the other rice mills on the creek, and at the same time bearing in mind the special conditions and circumstances obtaining in connection with the rice mill No. 1 Kanaungto upon which the assessment had to be made. In following this procedure the Commissioner in my opinion based his assessment upon the right principle, and the appeal, therefore, must fail.

It is advisable, I think, that we should add that it was contended on behalf of the respondent at the hearing of the appeal that "gross annual rent" means the actual rent payable *plus* the expenditure necessary to enable the hereditament to command that rent. In our opinion that is not the right way to approach the question. In every case that assessment must depend upon what the Commissioner determines is the rent which a hypothetical tenant might reasonably be expected to give for the property if he paid the usual tenant's rates and taxes and the landlord paid the expenses necessary to enable the mill to earn the rent. It may or may not be that the gross annual rent would be equivalent to the actual agreed rent *plus* the sum reasonably expended in order that the rent might be obtained, but it does not necessarily follow that these two sums would be the same. Here again, however, I do not think that the Commissioner did, or purported to, base his assessment upon a rule of thumb by adding to the actual rent the agreed sum

1935.

V.E.R.M. CHETTIAR v. THE CORPORATION OF RANGOON.

PAGE, C.J.

for maintenance and repairs. It appears to me that he took into account the circumstances obtaining at the other rice mills on the creek, and then, after considering the special situation in which No. 1 Kanaungto was placed, he came to the conclusion that the gross annual rent which a tenant might reasonably be expected to pay for that rice mill was Rs. 2,500 a month. I am of opinion that in such circumstances this Court would not be justified in holding that the Commissioner had adopted a wrong basis or principle of assessment. Whether the amount of the assessment was too much, too little, or correct are questions with which this Court is not concerned. That is a question of fact to be determined by the Commissioner subject to a right of appeal to the Chief Judge.

For these reasons, in my opinion, the appeal fails, and must be dismissed.

We think that it was not unnatural, having regard to the course of the proceedings before the Commissioner and the Chief Judge, that the appellant should have been under the impression that the contractor's test had been adopted, and if he had been right in the view which he took of the course of the proceedings the appeal would inevitably have been allowed. Now that the matter has been ventilated, for the reasons that I have given, we are of opinion that there is no ground which would justify the Court in holding that the Commissioner had followed a wrong principle in determining the assessment of this rice mill. In these circumstances we make no order as to costs.

BA U, J.—I agree.