Clive Buildings (Calcutta), Limited Vs Corporation of Calcutta

Court: Calcutta High Court

Date of Decision: Aug. 19, 1955

Acts Referred: Calcutta Municipal Act, 1923 â€" Section 127, 135, 139
Calcutta Municipal Act, 1951 â€" Section 168

Citation: (1957) 2 ILR (Cal) 529

Hon'ble Judges: Mallick, J; Bachawat, J

Bench: Division Bench

Advocate: Sudhir Ranjan Banerjee, Soumendra N. Mukherjee and Bejoy Kumar Mukherjee, for Clive Buildings Calcutta, Limited, for the Appellant; Atul Chandra Gupta and Krishna Lal Banerjee for the Corporation of Calcutta, for the Respondent

Final Decision: Dismissed

Judgement

Bachawat, J.
This judgment is intended to cover appeals Nos. 284 to 305 of 1953, 21 to 41 and 73 to 85 of 1954.

2. Clive Buildings (Calcutta), Limited is the owner of the building known as Clive Buildings. The building contains several flats which were all

erected for letting purposes and are, in fact, let to tenants. The learned advocates for both parties admitted before us that the main entrance,

passages, stair-case, corridors and lifts in the building are in the control and occupation of Clive Buildings (Calcutta), Limited and are not let to

tenants and that the tenants have the right to use them in common with the other tenants. Each flat which is separately let to a tenant has been

assessed as a separate building under Clause (a) of Section 127, read with Section 135 of the Calcutta Municipal Act, 1923.

3. The assessment of 35 of these flats is in dispute in these appeals.

4. Each flat is let to a tenant under a written lease in common form. A specimen lease is an exhibit.

5. Clauses 1, 2(a), 2(b), 2(c), 4(a) and 4(b) of the specimen lease are as follows:

1. The Lessor hereby leases to the Lessees of the building called Clive Buildings (Calcutta) Ltd., together with the Lessor"s wiring for electric lights

and fans and fixtures and fittings thereon reserving full and free rights of access, drainage and passage of electricity, gas, water and soil through the

leased premises in respect of other parts of the said building to hold unto the Lessees from the... day of 194... for the period of... years paying

therefore the monthly rent of Rs. on or before the fifth day of each month without any deductions, the last payment to be made one month in

advance.

2(a). To pay the said rent as aforesaid and all charges for electric current, water and things supplied or used for the leased premises. The Lessor''s

apportionment of any charges requiring apportionment to be accepted.

2(6). To pay on or before the fifth day of each month during the period of the lease the sum of Rs. being the Lessee''s contribution towards the

upkeep of the lifts, maintenance of the lighting of the staircases and corridors and payment of salaries of Durwans, such monthly payment being in

addition to and apart from the aforesaid rent.

2(c). To pay or reimburse the Lessor the payment of the occupier''s share of Municipal rates and taxes payale from time to time in respect of the

leased premises.

4(a). That the Lessees and persons authorised by them shall have the right to use in common with others entitled (subject to the Lessor''s

regulations from time to time as to mode of user) the main entrance, passages and lifts of the said building for access to the leased premises.

4(b). If the said rent or any part thereof shall be in arrear for 21 days or if there shall be any breach of the Lessee''s obligations hereunder or any

attachment or execution levied on the leased premises or if the Lessees shall make any arrangement with creditors, become insolvent, cease to

carry on business or to occupy the leased premises or being a Company enter into liquidation compulsory or voluntary or being a firm dissolve

partnership the Lessor may re-enter the leased premises and determine this lease without prejudice to any claim for any antecedent breach of the

Lessor''s obligations.

6. In each lease the area in square feet of the flat, the rent payable under Clause 1 and the lessee''s contribution for service charges under Clause

(2b) are specified. The main entrance, passages, stair-cases, corridors and lifts mentioned in Clause 2(b) and Clause 4(a) of the lease are not

situated within the area of the flats so leased.

7. The rent bills issued to tenants separately charges for the rent payable under Clause 1 and for the service charges payable under Clause 2(b) of

the lease.

8. In the re-valuation with effect from January 1, 1947, the tenant''s payment for service charges was not included in the gross rent on the basis of

which the annual value was assessed. Deductions were then given from the gross rent for (a) 10 percent, on account of the occupier''s contribution

towards municipal taxes as the Assessee then paid both shares of taxes, (b) 10 percent, statutory deduction for repairs and maintenance and (c) a

fixed allowance for lifts.

9. The valuations which are the subject-matter of these appeals relate to the general re-valuation with effect from July 1, 1950. The valuation of 22

flats are the subject-matter of appeals Nos. 284 to 305 of 1953 and 21 to 41 of 1954. The Corporation in its assessment included the payment

for service charges in the gross rent and by way of relief gave 10 percent, statutory deduction for repairs and maintenance of the flats and a fixed

allowance for lift. Upon objection by Clive Buildings (Calcutta), Ltd., the Special Officer included a part of the payment for the service charges in

the gross rent and then gave the ten percent, statutory deduction and an allowance of Rs. 325 for lifts.

10. The learned Judge of the Court of Small Causes held that the payment for service charges is not rent and excluded the whole of such payment

from the computation of gross rent and it the same time disallowed the deduction for lifts.

11. I will give a concrete example. With regard to the flat which was the subject-matter of Municipal Appeal No. 1296 of 1951 before the learned

Judge of the Court of Small Causes the Special Officer by adding Rs. 295-12-9 pies on account of service charges to the sum of Rs. 1,004-5-3

pies paid on account of rent, held that the gross rent was Rs. 1,300-2 and made the assessment as follows:

Rs. as. P.

Rs. 1300-2-0 x 12 ... 0 0

15,601

Less 10 per cent. ... 1.5610 0

14,040 0 0

Less for lifts 325 0 0

Annual value ... 0 0

13,715

But the learned Judge of the Court of Small Causes made the assessment as follows:

Rs. 1.004-5-3 x ... 12,052 0 0

12

Less 10 percent. ... 1.205 0 0

10,847 0 0

12. In appeals Nos. 21 to 41 of 1954, the Corporation appeals against the decisions of the learned Judge of the Court of Small Causes with

regard to the valuation of 22 flats and contends that the service charges are rent and should be considered as such in determining the annual value

of the several flats. In appeals Nos. 284 to 305 of 1953, Clive Buildings (Calcutta), Limited appeals against the same decisions and contends that

the learned Judge ought not to have disallowed the deduction of Rs. 325 on account of lifts.

13. In appeals Nos. 73 to 85 of 1954, the Corporation appeals against the decisions of the learned Judge, Court of Small Causes, with regard to

the valuation of the remaining 13 flats on the ground that the learned Judge had wrongly excluded the service charges from the gross rental. There

are no cross appeals against these decisions by Clive Buildings (Calcutta Limited, because the deduction for lifts given by the Corporation in

respect of some of the flats was maintained by the learned Judge without any challenge by the Corporation.

14. We have heard learned advocates for both parties and on findings and conclusions are as follows:

While the actual rent payable by the existing tenant is not necessarily the legal measure of the rent which the hypothetical tenant would pay, no such

question arises in this case. Mr. Gupta admitted that the rent reserved by Clause 1 of the lease is what a hypothetical tenant would be willing to pay

for use and occupation of the flat at the time of the assessment and he expressly asked us to decide the appeals on the footing of this admission.

We, therefore, proceed upon the footing that the rent reserved by Clause 1 of the lease is the rent at which the flat might at the time of assessment

be reasonably expected to be let from year to year. Mr. Gupta contends that the charges for services and amenities reserved by Clause 2(b) of the

lease are part of the gross rent on the basis of which the annual value of the flats is to be computed under Clause (a) of Section 127 of the Calcutta

Municipal Act, 1923. We are unable to accept this contention. In our opinion, the charges for the service''s and amenities payable under Clause

2(b) of the lease form no part of the gross rent for the use and occupation of the flat on the basis of which the annual value is to be computed.

15. Mr. Gupta pointed out that by Clause 2(b) of the lease, the owner landlord was given the right of re-entry for non-payment of the service

charges and relied on the decisions in Property Holding Co. Limited v. Clark (1948) 1 K.B. 630, and Alliance Property Co. Limited v. Shaffer

(1949) 1 K.B. 367, to show that the charges for services and amenities are part of the gross rent paid by the tenant of the flat. Those cases decide

that the charges by the landlord for providing services and amenities in a flat are part of the rent within the meaning of the Increase of Rent and

Mortgage Interest (Restrictions) Act, 1920. It was decided in Property Holding Co. Limited v. Clarke (1948) 1 K.B. 630, that the Apt

contemplated that the word rent was suitable to cover such payments, that certain provisions of the Act used that word to include besides rent

stricto sensu, namely, a payment for the bare occupation of the realty, payments attributable to the use of chattels or to services and other

amenities, that the subject-matter of the grant in that case was the right to exclusive possession of a flat partly furnished and the right to enjoy

certain amenities in connection therewith and that the additional payment for services and amenities was part of the consideration of the grant and,

as the lease gave a right of re-entry to the landlord for its non-payment, was also a condition of the right to enjoy the property granted and was,

therefore, rent within the meaning of the Act. This case was followed in Alliance Property Co. Limited v. Shaffer (1949) 1 K.B. 367 where

Denning, L.J:, however, pointed out that for rating purposes the value is fixed without taking into account, the payment for service charges. These

cases were followed by this Court in Residence Limited v. Surendra Mohan Banerjee (1951) 87 C.L.J. 322, where it was held that rent paid by a

tenant under a lease by which the landlord covenanted to provide certain free services was rent within the meaning of the West Bengal Premises

Rent Control (Temporary Provisions), Act, 1950. As the services were not separately charged for, the Court also observed that the rent so

reserved was rent at common law in England and under the ordinary tenancy law in India.

16. These cases are entirely distinguishable and they do not decide what payment ought to be considered as part of the rent for the purposes of

rating under the Calcutta Municipal Act. Even if a lump sum payment is made by the tenant of a flat as rent for use and occupation of the flat and

for services and other amenities, that part of the payment which is made for services and other things, in no way forming part of the charge for the

use and occupation of the flat, must be ascertained and deducted from the lump sum payment and only the remainder represents the rent for use

and occupation of the flat for which it is ratable.

17. Mr. Gupta referred us to Section 168 of the Calcutta Municipal Act, 1951 and contended that the proviso to that section shows that what is

rent within the meaning of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, is considered by the Legislature to be rent

on the basis of which the annual value for the purposes of rating is to be computed under the Calcutta Municipal Act, 1923. We think that the

proviso to Section 168 in the later Act does not furnish a legislative interpretation of the meaning of the annual value in the earlier Act. We,

therefore, do not express any opinion on the question of construction of Section 168 of the Calcutta Municipal Act, 1951.

18. Mr. Gupta next contended that the expenses for the upkeep of the lifts, maintenance of the lighting of the stair-cases and corridors and salaries

of durwans are expenses of the maintenance of the building in a state to command the gross rent for which the Assessee has already obtained a ten

per cent. statutory allowance and that exclusion of the charges for expenses from the gross rent would, in effect, be to allow the Assessee

expenses of maintenance of the building twice over. We are unable to accept this contention.

19. We are of opinion that the expenses of lighting the stair-cases and corridors, the salaries of durwans and expenses for the upkeep of the lifts in

question are not expenses of maintenance of the flat which is being rated. We are of opinion that the charges for those services must be excluded

from the gross rental and that these charges form no part of the charge for which the statutory allowance of ten per cent, has been given.

20. Both sides relied on and referred to proviso (ii) to Section 127 of the Calcutta Municipal Act, 1923. There is a dispute, if the proviso applies

to an assessment under Clause (a) of Section 127 of the Calcutta Municipal Act, 1923. We are of opinion that it does so apply and that there can

be valuation of machinery and fixtures both under Clauses (a) and (b) of Section 127. The opening words of the proviso (ii) show that it applies to

a valuation under the section and are to be contrasted with the opening words of proviso (iii) showing that proviso (iii) applies only to valuation

under Clause (b). Proviso (ii) also contemplates the possibility of valuation of land separately from the building but such valuation is possible only

under Clause (a) of Section 127.

21. In an assessment under Clause (a) of Section 127, the valuation is made on the basis of the gross annual rent. Reading proviso (ii) with Clause

(a) of Section 127, in computing the gross annual rent of the land or building to be rated, the gross annual rent of any machinery on such land or in

such building must be excluded but the gross annual rents of all fixtures including lifts and electric or other fittings which add to the convenience of

the building has to be included. In our opinion, on a true construction of proviso (ii), the expression, ""all fixtures ""including lifts and electric and

other fittings"", does not include a lift which is not a fixture of and is not on the building under assessment, even if the lift is such that it adds to the

convenience of such building. In the cases before us, the lifts are not fixtures of and are not on the flats under assessment and accordingly their

value is not to be included in calculating the value of the flats.

22. Mr. Banerjee relied on the case of Bell Property Trust Limited v. Assessment Committee for the Borough of Hampstead (1940) 2 K.B. 543.

That case decided inter alia overruling Pullen v. St. Saviour''s Union (1900) 1 Q.B, that under the English Valuation (Metropolis) Act, 1869, in

computing the gross value of a flat let on condition of payment of an inclusive sum described as rent for occupation of the flat and for the benefit of

services and amenities such as constant hot water, central heating the cost to the landlord of providing the services and amenities with the addition

of a reasonable allowance by way of his profit and the cost of repairs to and maintenance of those parts of the main building which were not

demised to tenants, such as passages, stair-cases, lifts and staff rooms were deductible from the gross payments by the tenant before arriving at the

gross value. We note, however, that the definition of ""gross ""value"" in the English Valuation (Metropolis) Act, 1869, is somewhat differently

worded from that of ""annual value"" in Clause (a) of Section 127 of the Calcutta Municipal Act, 1923. We note also that the deduction of costs of

repairs and maintenance of the building in the English Act referred to is not limited by any scale. We also find that the English Local Government

Act, 1948, has now introduced important modifications in the law of rating of flats in England. In these circumstances, instead of blindly following

the authority of Bell Property Trust Limited v. Hampstead Assessment Committee (Supra), we prefer to rest our conclusions on an examination of

the relevant provisions of the Calcutta Municipal Act, 1923.

23. In view of our findings, the Corporation of Calcutta, cannot succeed in their several appeals.

24. The several appeals of Clive Buildings (Calcutta), Limited must also equally fail.

25. Clive Buildings (Calcutta), Limited claimed an allowance for lifts under proviso (ii) of Section 127 of the Calcutta Municipal Act, 1923, in

addition to the statutory allowance of 10 per cent. under Clause (a) of Section 127 of the Calcutta Municipal Act, 1923. For reasons given above,

proviso (ii) does not apply to the lifts in question. The value of the lifts are not to be included in the annual value of the flats and accordingly no

deduction can be given under that proviso for the cost of repairs to, maintenance of and attendance on, such lifts.

26. Mr. Banerjee contended that the learned Judge of the Court of Small Causes had no jurisdiction to disallow the deduction on lifts which was

allowed by the Corporation of Calcutta, in its assessment of the annual value, as the learned Judge was dealing with an appeal by the owner and as

there was and could be no appeal by the Corporation under the Act. In our opinion, this contention is fallacious.

27. Section 139 of the Calcutta Municipal Act, 1923, gives a right to the owner to prefer objections to the valuation and on determination of the

objection by the Special Officer, a further right of appeal to the Court of Small Causes. In these cases the Corporation of Calcutta, in computing

the annual value, had included service charges in the gross rent of the flats and at the same time had allowed a fixed deduction for lifts by way of

relief. The owner appealed against the valuation on the ground that service charges should be excluded from the computation of gross rent. The

Court of Small Causes accepted the owner"s contention and held that the valuation was made on a wrong principle. The Court of Small Causes

was then called upon to make a valuation according to law and in doing so, the Court could not possibly allow deduction on lifts which was given

by way of partial relief to the increase in valuation by inclusion of service charges in the gross rent. The subject-matter before the Court was the

valuation which was a composite result of the computation of the gross rent the deduction for lifts and the statutory deduction of ten per cent. and

the Court of Small Causes had jurisdiction over the entire subject-matter. The Court of Small Causes, therefore, acted with jurisdiction and

properly disallowed the deduction for lifts.

28. All the appeals before us are, therefore, dismissed. Each party will pay and bear its own costs of the several appeals.

Mallick, J.

29. I agree.