

(1957) 11 CAL CK 0014

Calcutta High Court

Case No: Appeal from Appellate Order No. 33 of 1956

Municipal Commissioners of
Howrah

APPELLANT

Vs

Narayani Dasi

RESPONDENT

Date of Decision: Nov. 25, 1957

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 146

Citation: 62 CWN 121

Hon'ble Judges: Guha, J; Das Gupta, J

Bench: Division Bench

Advocate: Bholanath Roy Mritunjoy Dey and Smriti Kumar Roy Choudhury, for the Appellant; Susil Kumar Biswas, for the Respondent

Final Decision: Dismissed

Judgement

Das Gupta, J.

This appeal must be disposed of on one simple ground. The admitted facts are that at the time of general valuation the premises in question, No. 12, Makardah Road. Howrah, was assessed at an annual value of Rs. 2,398. This was to take effect from the 1st of October 1951. To this valuation, The owner objected and gave written notice of his objection. The Assessment Appeal Committee of the Howrah Municipality reduced the valuation from Rs. 2,398 to Rs. 1,700. This was on the 17th June 1953. On the 28th July 1953 a report appears to have been put up before the Chairman of the Municipality, apparently by an officer of the municipality, that he had inspected the holding and that the valuation had been reduced to Rs. 1.700 by the Assessment Appeal Committee. It appears that thereafter the Chairman himself inspected the premises. On the 11th September 1953, he passed an order in these words:

Inspected. The party is realising rent of Rs. 306 per month. So the valuation is much lower in comparison with rent realised. So this should be dealt with u/s 146.

Thereafter the valuation was altered to Rs. 2,160 by the Chairman of the Municipality. There was again an objection to the Assessment Appeal Committee and that objection having been rejected, the owner appealed to the Subordinate Judge, 1st Court, Howrah. The main objection raised by her was that the order of the Chairman raising the valuation to Rs. 2,160 from the figure of Rs. 1,700, to which it had been reduced by the Assessment Appeal Committee earlier, was without jurisdiction. The learned Subordinate Judge held that there was no evidence of any misrepresentation or fraud and so the Chairman acted without jurisdiction in increasing the amount of valuation. He allowed the appeal and set aside the order of the Additional Administrator, confirming the revised valuation of Rs. 2,160 and restored the valuation of Rs. 1,700 as had been fixed by the Assessment Appeal Committee by its order dated the 17th June 1953.

2. The Chairman of the Howrah Municipality has undoubted jurisdiction under the provisions of the amended section 146 of the Calcutta Municipal Act, 1923, as applied to the Howrah Municipality, to increase the amount of valuation of any premises where in his opinion such premises at the time of the last general valuation have been substantially undervalued by reason of misrepresentation or fraud. The basis of his jurisdiction, however, is that the Chairman is of opinion that the premises have been substantially undervalued and that such undervaluation has been by reason of misrepresentation or fraud. In the present case, the order of the Chairman of the 11th September 1953 shows that in the Chairman's opinion the premises was substantially undervalued. We look in vain, however, for anything to show that the Chairman was also of opinion that the undervaluation was by reason of misrepresentation or fraud. The papers on the record do not show that the Chairman at all addressed his mind to this matter. We are unable to agree with the learned Advocate for the appellant that when the Chairman wrote that this should be dealt with u/s 146, he actually was of the opinion that there had been misrepresentation or fraud. It is impossible, in my opinion, to read into his use of the words, "should i.e. dealt with u/s 146" the formation by him of an opinion that there had been misrepresentation or fraud. On the contrary, it seems reasonable to hold, when he speaks about undervaluation but does not speak of this undervaluation having been caused by misrepresentation or fraud, that he was thinking wrongly that if there was undervaluation that without anything more gave him power to raise the valuation u/s 146. It was, in my opinion, essential for him to record his opinion that the undervaluation had been caused by reason of misrepresentation or fraud. Until and unless, he formed that opinion and unless we find it recorded by him that he had formed that opinion we must proceed on the basis that he had not formed such opinion. He had, therefore, no jurisdiction, in law, in this case, to increase the amount of valuation under the provisions of section 146 of the Calcutta Municipal Act.

3. The learned Subordinate Judge, therefore, rightly allowed the appeal against the order of the Additional Administrator confirming the order of the Chairman.

4. I would, therefore, dismiss this appeal with costs.

Guha, J.

I agree.