
(1970) 07 CAL CK 0023

Calcutta High Court

Case No: F.M.A. No. 262 of 1967

Santosh Kumar Bose

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision: July 8, 1970

Citation: (1971) 2 ILR (Cal) 532

Hon'ble Judges: P.N. Mookerjee, J; Amiya K. Mookerji, J

Bench: Division Bench

Advocate: Mukul Gopal Mukherji, for the Appellant; Bhabani Sankar Bagchi, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.

This appeal is by the Assessee and it arises out of a proceeding for assessment of municipal premises No. 3/1A Nafar Kundu Road.

2. The Special Officer's assessment was at the annual value of Rs. 1,080. The Assessee (Appellant) appealed to the Court of Small Causes at Sealdha, and the learned Additional Judge there has affirmed the said assessment and dismissed the Appellant's appeal. The matter is now before us for finalisation of the disputed assessment which is for the period starting from fourth quarter of 1963-64.

3. The materials on record are very meagre. This is primarily due to the fact that neither party was really serious in its endeavour to- prove its case. It is not quite intelligible why in these proceedings the municipal authorities should not produce all relevant papers, bearing on the question of the disputed assessment, before the Court. We are told by Mr. Bagchi that they rely, on this aspect of the matter, on the doctrine of onus and as, according to them, the onus is on the Assessee to prove that the assessment made by the department is erroneous, the Corporation authorities think that they are under no obligation to produce the relevant records before the Small Cause Court.

4. In the above connection, we need only draw the attention of the authorities concerned to the very emphatic observations of the Judicial Committee on this aspect of the matter in 21 CWN 761 (Privy Council) . It is only fair to the Court and to the parties concerned that the relevant municipal papers should be produced by the municipal authorities for a proper assessment. Indeed, even on the question of onus, so far as the instant case is concerned, the above view of the authorities may not be strictly correct in view of the decision reported in [Lalchand and Sons Vs. Corporation of Calcutta](#) , the apparently contrary decisions, [Corporation of Calcutta Vs. On the death of Sm. Rajlakshmi Debi her heirs Nani Gopal Mukhopadhyay and Another](#), and [General Electric Co. of India Ltd. and Another Vs. Corporation of Calcutta and Another](#), being distinguishable from the present case. In this state of things we deem it necessary to impress upon the municipal authorities the necessity of producing all relevant papers before the Court in the matter of such assessments, and we hope that they will not fail in the discharge of this duty which is necessary for doing justice in these cases.

5. So far as the present case is concerned, the evidence before us indicates that the disputed premises No. 3/1A Nafar Kundu Road along with the adjoining premises (vacant land), 3/IB Nafar Kundu Road, were held by a particular tenant at rental of Rs. 44 per month from about 1931.

6. It is true that the evidence on record also seems to indicate that, since the last assessment, which was on an annual value of Rs. 437 there has been some addition to the disputed premises (3/1A Nafar Kundu Road) by the construction of a first floor consisting of two or three rooms. On the above state of the evidence, as appearing from the records, it seems to us that the assessment of the disputed premises on the basis of a municipal rental of Rs. 100 p.m., as made by the Special Officer of the Corporation of Calcutta and affirmed by the Court of Small Causes, would not be quite correct and would be somewhat excessive.

7. Indeed, on a consideration of the materials before us, taking Rs. 44 as the municipal rental of the two premises mentioned above, and considering their nature, situation and extent, as, appearing from the records, and the law on the point, in particular the Rent Control Law, we feel inclined to fix the monthly rental of the disputed premises (3/1A Nafar Kundu Road) at Rs. 65 per month for the purpose of the present assessment. Upon that basis, after allowing the two deductions of tea per cent, as accepted by both parties, the resultant annual value would come roughly to Rs. 632.

8. We would,. accordingly, allow this appeal, modify the decision of the learned Additional Judge, Court of Small Causes, Sealdah, and the assessment made by the Special Officer of the Corporation of Calcutta, by reducing the relevant annual value from Rs. 1,080 to Rs. 632 and direct that the assessment for the period in question be made on that basis.

9. We need only add that, having regard to the unsatisfactory state of the materials on record, we would leave the matter open to the parties to have a proper assessment for

the next revaluation period and, in the making of the same, neither party will be prejudiced by anything said in the instant judgment.

10. The appeal is disposed of as above and the assessment reduced as noted hereinbefore.

11. There will be no order for costs in this appeal.

Amiya K. Mookerji, J.

12. I agree.