

(1955) 03 CAL CK 0025

Calcutta High Court

Case No: F.M.A. 36 of 1955

Sitaram Poddar and Others

APPELLANT

Vs

The Commissioners of Howrah
Municipality

RESPONDENT

Date of Decision: March 25, 1955

Acts Referred:

- Calcutta Municipal Act, 1923 - Section 142(2), 161(1)

Citation: 59 CWN 1069

Hon'ble Judges: S.R. Das Gupta, J; Mallick, J

Bench: Division Bench

Advocate: Ashoke Chandra Sen and Radha Kanta Bhattacharjee, for the
Appellant; Bholanath Roy, for the Respondent

Final Decision: Allowed

Judgement

S.R. Das Gupta, J.

In this application the question which arises for our consideration is what is meant by the words "pending the final determination of the objection" appearing in section 161(1) of the Calcutta Municipal Act, 1923; Does it mean final determination of the objection by the Subordinate Judge or does it mean final determination of the objection by the High Court, if the matter is pending before the High Court on appeal ? Section 164(1) reads as follows :

When an objection to a valuation has been made u/s 139, the consolidated rate shall, pending the final determination of the objection, be paid on the previous valuation". Subsection (2) of section 164 provides as follows :

If, when the objection has been finally determined, the previous valuation is altered, then

(a) any sum paid in excess shall be refunded or allowed to be set off against any present or future demand of the Commissioner, and

(b) any deficiency shall be deemed to be an arrear of the consolidated rate and shall be payable and recoverable as such.

2. Mr. Roy appearing on behalf of the Municipality strenuously contended before us that the final determination of an objection within the meaning of that expression in section 164(1) would take place when the objection has been finally determined by the Subordinate Judge before whom an appeal had been preferred from the decision of the Assessment Committee. In support of the aforesaid contention Mr. Roy relied upon the provisions of section 138, 139, 140, 141 and 142 and particularly upon sub-section (2) of section 142 of the Calcutta Municipal Act, 1923. Section 138 provides that the Chairman shall, in all cases in which any land, bustee or building is for the first time valued, or in which the valuation of any land, bustee or building previously valued is increased u/s 131, give special notice thereof to the owner or occupier of the same. Section 139 provides that any person: dissatisfied with such valuation may prefer an objection, and prescribes a period of time within which the said objection has to be filed. Section 140 (1) lays down that all such objections shall be entered in a register to be maintained for the purpose and on receipt of an objection notice shall be given to the objector of a time and place at which his objection will be investigated. Sub-section (2) of section 140 lays down that at the said time and place a Committee consisting of not less than five Commissioners (three to form a quorum) to be called the Assessment Appeal Committee and to be appointed annually by the Commissioners at a meeting shall hear the objection in the presence of the objector or his agent if he appears, or may for reasonable cause adjourn the investigation. Sub-section (3) of section 140 lays down that when the objection has been determined, the order passed shall be recorded in the said register together with the date of such order. Section 141 deals with the question of an appeal to the Subordinate Judge. How-rah. and provides that any person may appeal to the Subordinate Judge, How-rah. and that such appeal shall be presented in some particular form. Then comes sec. 142 and it is on sub-sec. (2) of section 142 that Mr. Roy lays emphasis for the purpose of his contention. Sub-section (1) of section 142 provides that every valuation made by the Chairman, u/s 131 shall, subject to the provisions of sections 139, 140 and 111, be final. Sub-section (2) of section 142 lays down that every order passed by the Assessment Appeal Committee u/s 140 shall, subject to the provisions of section 141, be final and we have already mentioned that section 141 provides for an appeal to the Subordinate Judge of Howrah. against the order of the Assessment Appeal Committee. Sub-section (3) of section 112 lays down that an appeal from a decision made by the Subordinate Judge of Howrah, u/s 141 shall lie to the High Court. Mr. Roy contended that in view of the provisions of sub-section (2) of section 142 every order passed by the Assessment Appeal Committee shall be final subject to the provisions of section 141. that is to say, subject to an appeal to the Subordinate Judge, How-, rah. The

said sub-section does not say subject to the appeal to the High Court. Therefore, Mr. Roy contended when an order has been passed by the Assessment Appeal Committee and if there is no appeal to the Subordinate Judge, Howrah, then the said order shall be final and if there is an appeal then the order of the Subordinate Judge, Howrah, would be final and the expression appearing in section 164(1) namely pending final determination of the objection has to be read with reference to the provisions of sub-section (2) of section 142. The net result of those two provisions, according to Mr. Roy is that an objection filed u/s 139 shall be final as soon as the Subordinate Judge, Howrah, has made his decision and the consolidated rate has to be paid on the new valuation after such determination.

3. We have carefully considered the contention of Mr. Roy, but we are unable to accept the same. We cannot, understand how it can be contended that the order passed by the Subordinate Judge, Howrah, would finally determine the objection even though there is a right of appeal to the High Court and an appeal to the High Court may be pending. The objection can in such cases only be final when, the High Court finally determines the same. It is true that sub-section (2) of section 142 provides that every order passed by the Assessment Appeal Committee u/s 140 shall, subject to the provisions of section 141, that is to say, right of appeal to the Subordinate Judge, be final. But that only means that, so far as the Assessment Appeal Committee's order is concerned the same will cease to be final If there is an appeal to the Subordinate Judge that does not mean that the Subordinate Judge's order will be final even if there is an appeal to the High Court. Such a contention in our opinion is contrary to all principles of law and procedure. If there is an appeal from the decision of the Subordinate Judge, there the order of the Subordinate Judge cannot, be final until the matter is finally decided by the High Court.

4. This view is supported by an observation of Mr. Justice Das and Mr. Justice Guha Ray in the case of Royal Asiatic Society of Bengal v. Corporation of Calcutta, (1) (1954) 58 C. W. N. 537. Mr. Justice Das and Mr. Justice Guha Ray expressed the same view which we are taking in this case on this question. Mr. Justice Das who delivered judgment in that case, after reviewing all the material provisions of the Calcutta Municipal Act, observed as follows : "Thus the question of valuation cannot be said to have been finally determined unless a final decision by the Court of Appeal is reached in the matter of hearing objections." His Lordship further observed as follows : "Where an assessee is aggrieved by a valuation made by the Corporation and prefers an objection, till the objection is finally adjudicated upon, the consolidated rate has got to be paid on the existing valuation and that after the objection is finally disposed of in appeal, the final valuation fixed will determine the consolidated rate payable and will, in terms of section 147 remain in force for the period for which the first mentioned valuation was made."

5. Mr. Roy had to concede that according to their Lordships the final determination of the objection as contemplated in section 164 of the Act would be reached only

after the appeal pending in the High Court is disposed of. But Mr. Roy contended that the case before their Lordships did not necessitate such a decision; the point involved in that case according to him being something different. Be that as it may, the observations of their Lordships on this point are clear and they support the view which we are taking in this matter.

6. Mr. Roy also tried to contend that there is a difference between valuation and an objection to such valuation. The "final determination of the objection" as contemplated in sub-section (1) of section 164 according to him is with regard to such objection and not with regard to valuation. We cannot understand how such a distinction between objection and valuation can at all be drawn. When the Assessment Appeal Committee determines an objection, it passes an order under subsection (2) of section 142 and that order must be an order determining the valuation and when the matter is taken from the said decision of the Assessment Appeal Committee to the Subordinate Judge, Howrah, there is not only an appeal against the decision of the Appeal Committee on the objection, but also against its decision on the valuation and the decision of the Subordinate Judge must also be with regard to such objection and also with regard to the determination of the valuation. Similarly, when the matter comes up before the High Court the objection to the valuation by the assessee has to be decided and after disposing of this objection the valuation is to be either reversed or maintained or revised. Thus, in our opinion, the determination of the objection is followed by the determination of the valuation and the determination of the valuation must be dependent on the determination of the objection.

7. In the result, therefore, we hold that the contention of the Municipality must fail and the application is allowed and we make an order in terms of the prayer of the petition. The petitioners are entitled to costs of this application--hearing fee being assessed at two gold mohurs. It is urged by both the parties that the hearing of this appeal should be expedited. Paper-books are to be filed within a month from the date of receipt of the intimation of the arrival of the records in this Court. Permission is given to the appellants to prepare out of Court, eight type-written paper-books. After the paper-books are filed the parties will be at liberty to mention for the purpose of fixing a date of hearing.

Mallick, J.

I agree.