(1976) 11 CAL CK 0020

Calcutta High Court

Case No: F.M.A. No. 56 of 1968

Pushpalata Monday and Another		APPELLANT
	Vs	
Corporation of Calcutta		RESPONDENT

Date of Decision: Nov. 16, 1976

Acts Referred:

- Calcutta Municipal Act, 1951 - Section 168(1)

Citation: 81 CWN 437

Hon'ble Judges: N.C. Mukherji, J; B.C. Roy, J

Bench: Division Bench

Advocate: Himangsu Kumar Basu, for the Appellant;Sunil Kumar Basu, for the Respondent

Final Decision: Allowed

Judgement

N.C. Mukherji, J.
This is an appeal against the judgment and order dated 8th of February, 1966 passed by Shri P.K. Banerjee, Judge 2nd Bench of the Court of Small Causes of Calcutta in Municipal Appeal No. 149 of 1965 rejecting the claim of the appellant.

The facts of the case may briefly be stated as follows:--

The Special Officer of the Corporation of Calcutta by his order dated 20th May, 1965 assessed the annual valuation of premises No. 50, Nalini Seth Road, Calcutta, at Rs. 4,360/- with effect from 3rd quarter of 1963-64. Bering aggrieved by the aforesaid order, the appellant preferred an appeal before the Court of Small Causes, Calcutta. It is the case of the appellant that the assessment made by the Special Officer is illegal and excessive;. The learned Judge held that the Special Officer was correct in making the assessment taking Rs. 455/- per month as the rent realised by the owner In that view of his finding the appeal was dismissed. Being aggrieved, the present appeal has been filed.

Mr. Himangsu Kumar Basu, learned Advocate appearing on behalf of the appellant, submits that the learned Judge ought to have held on evidence that the monthly rent was 231 and not Rs. 455/-. He draws our attention to the evidence of A.W. 1 Sunil Kumar Mondal examined on behalf of the appellant. This witness states that there are three, tenants in the disputed premises. Monthly rent realised is Rs. 231/-. Counterpart has been proved, which is Ext. 1. He further states that Munni Devi, one of the tenants, has sublet her portion. The respondent examined on Sachindra Kumar Some, Assessing Inspector of Calcutta Corporation. He inspected the premises and noted the names of the tenants and the rents paid by them It is his evidence that Rs. 682/- were being realised from the tenants. But in cross-examination he admits that the names of the sub-tenants under Munni Devi have been included in the inspection report. Direct tenants under the landlord were three. This admission fully supports the evidence adduced on behalf of the appellant that the tenants under the landlord only were three. That being so, it is contended by Mr. Basu that the Special Officer and the learned Judge ought to have considered that the rent realised by the landlord was only Rs. 231/- per month, and that being so, the assessment was wrongly made taking Rs. 455/- as monthly rent.

2. Mr. Sunil Kumar Basu, learned Advocate appearing on behalf of the respondent submits that the assessment is made on the rent which is expected to be realised by the landlord and not on the amount actually realised as rent. In support of his contention he refers to Section 168 (1) of the Calcutta Municipal Act, 1951 which provides : "For the purpose of assessment to the consolidated rate the annual value of any land or building shall be deemed to be the gross annual rent at which the land or building might at the time of assessment be reasonably expected to let from year to year...." There is no controversy with regard to the provisions of the Act referred to above. But the point is that where actually the premises is let out then the question of gross annual rent at which the building might at the time of assessment be reasonably expected to let cannot arise. When the actual rent realised is known that should form the basis of assessment. In this connection the proviso to sub-rule (1) of Section 168 may be referred to. Proviso reads as follows :--

"Provided that in respect of any land or building the standard rent of which has been fixed u/s 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the annual value thereof shall not exceed the annual amount of the standard rent so fixed."

Mr. Sunil Kumar Basil in support of his contention refers to a decision reported in 31 C.W.N. 864 (Corporation of the Town of Calcutta v. Ashutosh De). In this case it has been held by a Bench of three judges "That the Corporation of Calcutta in assessing certain premises u/s 131, sub-sec. (1) of the Calcutta Municipal Act at a time when the Calcutta Rent Act was in force were not competent to increase the assessment above the rent at which the premises were let on the 1st November 1918 which under Sec. 2, sub-sec. (f) Clause (i) of the Calcutta Rent Act was the standard rent of those premises".

3. Mr. Sunil Kumar Basu next contends that in the previous general revaluation, the valuation of the premises was assessed at Rs. 4360/-. In the present valuation the assessment has not been increased, and that being so, the owner cannot challenge the amount which was fixed in the previous valuation. In short, Mr. Basu wants to contend that the valuation cannot be made at an amount below the earlier one. In this connection he draws our attention to Section 184 of the Calcutta Municipal Act which provides that "Every valuation made u/s 172 shall, subject to the provisions of sections 181, 182 and 183, be final".

4. Mr. Himangsu Kumar Basu, on the other hand, contends that as soon as a general revaluation is made it gives right to the owner to challenge the said valuation even when the previous valuation has not been increased. Be further submits that finality of a previous valuation remains in force till the next valuation is made. In support of his contention he refers to a Bench decision of this Court reported in The Royal Asiatic Society of Bengal Vs. Corporation of Calcutta and Another, . It has been held in this case; that "An order passed by the Chief Executive Officer on an objection filed under Sec. 139 of the Calcutta Municipal Act relating to the annual valuation of the premises fixed under Sec. 131 at the time of the general revaluation, though not appealed from, is not final under sub-secs. (1) and (2) of Sec. 142 in the sense that it precludes the filing of an objection under Sec. 139 to a fresh valuation under the same Sec. 131, made during the currency thereof, or questioning it in any way". Their Lordships further held "The finality referred to in sub-secs. (1) and (2) of Sec. 142 of the Calcutta Municipal Act remains in force only so long as the valuation in question remains in force. If by an act of the Corporation authorities the valuation arrived at on a previous occasion is revised in any manner contemplated by sec. 131 it gives rise to a new cause of action and the assessee acquires a fresh right to file objections under sec. 139 and becomes entitled to all the reliefs which are contemplated by sees. 140, 141 and 142". It is true that in this particular case the valuation which was made under the previous general revaluation was not increased. Nevertheless, a general revaluation was made and that being so, the earlier valuation came to an end with the making of new valuation. And as soon as new valuation was made the owner was certainly entitled to challenge the same. We have already found that rent realised by the owner is Rs. 231/- per month and the learned Judge was wrong in taking into consideration what one of the tenants was realising from her subtenants. In the result, the appeal is allowed on contest. The judgment and order passed by the learned Judge are set aside. The assessment made by the Corporation of Calcutta is set aside. The Corporation of Calcutta is directed to make assessment afresh taking Rs. 231/- as the monthly rent realised by the owner from the disputed premises. In the facts and circumstances of the case there will be no order as to costs.

B.C. Ray, J.

I agree.