

.DITEM NO.101
Part-heard

COURT NO.4

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

C.A. NO. 3950 of 2001

Calcutta Municipal Corporation
ant(s)

Appell

VERSUS

Motilal Naresh Kumar
Respondent(s)

(with office report)

Date: 30/11/2006 This/these matter(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. Tapash Ray, Sr. Adv.
Mr. L.C. Agrawala, Adv.
Mr. Bijan Ghosh, Adv.

For Respondent(s)

Mr.P.K. Ghosh, Sr. Adv.
Mr. Rajindra Singhvi, Adv.
Mr. K.K.L. Gautam, Adv. for
Mr. Ashok K. Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Appeal is disposed of.

(Parveen Kr. Chawla)

Court Master

[Signed Order is placed on the File]

(Kanwal Singh)

Court Master

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3950 OF 2001

Calcutta Municipal Corporation

Appellant (s)

Versus

Motilal Naresh Kumar

Respondent (s)

O R D E R

Calcutta Municipal Corporation (for short 'the Corporation'),
appellant herein, has filed this appeal with the leave of the Court against
the decision of the High Court at Calcutta in C.O. No. 1889 of 1995
dated 5.2.1999 whereby and whereunder the High Court has reversed
the order passed by the Municipal Assessment Tribunal (for short 'the
Tribunal') in M.A. Appeal No. 149 of 1991 and re-determined the annual
letting value of the property and the consequent tax liability of the
owner, respondent herein.

Facts:

Respondent is a registered partnership firm and was the owner
of a space measuring about 6053 sq. ft. on the first floor (eastern block)
in premises No.1, Crooked Lane, Calcutta (hereinafter referred to as the
'premises') which is a two storied building. Respondent inducted Bank
of India as a tenant in respect of the aforesaid space of said premises at
a monthly rent of Rs.60,510/-. This amount included the occupier's
share of tax and commercial surcharge. The said apportioned share of
the said premises became the subject matter of intermediate re-
valuation under section 180(2) of the Calcutta Municipal Corporation
Act, 1980 (for short 'the Act') for the period commencing from the

fourth quarter of 1986-87.

The Hearing Officer in his order dated 10th March, 1988 fixed

the annual value of the premises at Rs.6,53,720/- (Gross annual rent Rs.60,510/- x 12 = Rs.7,26,120/- (-) 10% statutory deduction under Section 174(1) of the Act), whereas the exact figure would be Rs.6,53,508/- instead of Rs.6,53,720/-.

Respondent, being aggrieved, filed M.A.Appeal No. 149/91 before the Municipal Assessment Tribunal, Calcutta (for short 'the Tribunal'). Respondent had claimed the following deductions:

i)	Commercial surcharge	Rs.1,30,744/-
ii)	Half of the total rate on a/c. of occupier's share	Rs.1,32,378/-
iii)	Maintenance charges	Rs. 13,693/-
iv)	Electricity charges for common areas	Rs. 2,967/-
		<hr/>
		Rs.2,79,782/-

The Tribunal upheld the order of the hearing Officer and dismissed the appeal, inter alia, on the following grounds:

"i) U/s. 2 (20) of the CMC Act, 1980, consolidated rate (now called property Tax) includes surcharge levied on the consolidated rate;

ii) Commercial surcharge is leviable under sub-section 4 of Section 171 where the building or portion thereof is used for commercial or non-residential purpose at such rate not exceeding 50% of the consolidated rate as the corporation may from time to time determine;

iii) U/s. 193 of the Act, the Consolidated rate is primarily leviable if the land or building is leased, upon the lessor. So, in the instant case, the consolidated rate including the commercial surcharge is payable by the respondent, the lessor.

iv) U/s. 230 (a) of the Act, the person primarily

liable may recover from the occupier half of the rate so paid and under sub-sec. (b) to sec. 230 the entire amount of surcharge on the property tax from the occupier who uses it for commercial purpose.

v) So the statute has provided for recovery of a sum of Rs.1,30,744/- on a/c. of commercial surcharge and Rs.1,32,378/- being half of the total due on occupier's share, by the respondent from its tenant;

vi) Maintenance charges of Rs.13,693/- was found to be payable by the respondent to the promoters irrespective of letting out as also electricity charges of Rs.2,967/-."

Being aggrieved by the judgment and order of the Tribunal,

respondent filed a petition under Article 227 of the Constitution of India

which has been accepted by the impugned order. The High Court has

set aside the judgment and order of the Tribunal and determined the

annual value of the premises in question as per calculations given

below:

Rent Rs. 60,510 x 12 = Rs.7,26,120.00

Less:

(i) Rates paid for the tenant as per tenancy Agreement

a) Commercial Surcharge Rs.1,30,744.00

b) Rates - Half of total rates due on Occupier's share Rs.1,32,372.00

(ii) Maintenance expenses Rs. 13,693.00

(iii) Electricity charges for areas occupied by the tenant and for the common areas Rs. 2,967.00
Rs.2,79,782.00

Rs.4,45,338.00 Annual Valuation should be

Less Rs. 44,634.00
Rs.4,01,704.00

So far as maintenance expenses for areas occupied by the tenant and electricity charges for areas for the common areas are concerned, counsel appearing for the respondent has conceded that

respondent is not claiming deduction for determination of the annual value of the premises. To that extent the order passed by the High Court needs to be revised.

The High Court, by a detailed order, came to the conclusion that the occupier's share of tax and commercial surcharge have to be excluded while determining the annual value of the premises.

Chapter XIII of the Act beginning with Section 170 and ending with Section 197 and Chapter XVI beginning with Section 214 and ending with Section 232 of the Act are self-contained code for the purposes of levy, assessment and calculation of property tax on lands and buildings including commercial surcharge. Section 171 authorises the Corporation to impose property tax on the annual value. Relevant portion of Section 171, at the relevant time, read as under:

"171. Consolidated rate on lands and buildings--(1)
For the purposes of this Act, a consolidated rate on the annual value, determined under this Chapter, of lands and buildings in Calcutta shall be imposed by the Corporation.

(2) Such consolidated rate shall be --

(a) Where the annual value does not exceed six hundred rupees, eleven per cent of the annual value;

(b) Where the annual value exceeds six hundred rupees but does not exceed eighteen thousand rupees, such percentage of the annual value as is worked out by dividing the annual value by six hundred and adding ten to the quotient, the sum thus worked out being rounded off to the nearest first place of decimal;

(c) where the annual fee exceeds eighteen thousand rupees, forty per cent of the annual value.

(3) In calculating the gross amount of consolidated rate including tax under the Howrah Bridge Act, 1926 (Ben. Act IV of 1926) that may be imposed on lands and buildings (including huts) per quarter and the net amount payable per quarter after allowing rebate under sub-section (2) of section 215, the fraction of a rupee shall be rounded off to the nearest rupee, fifty paise being treated as rupee one.

(4) Notwithstanding the provisions of sub-section (2) [and sub-section (9)], the Corporation may, where any land and building [or hut] or portion thereof is used for commercial or non-residential purpose, levy a surcharge on the consolidated rate on such land or building [or hut] or portion thereof at such rate not exceeding fifty per cent of the consolidated rate as the Corporation may from time to time determine:

Provided that where any portion of any land or building [or hut] is used for commercial or non-residential purpose, the amount of the consolidated rate payable in respect of such portion shall, while fixing the consolidated rate for the entire land or building [or hut], be separately calculated:

Provided further that subject to such rules as may be made by the State Government in this behalf for the grant of exemption from surcharge in respect of any class or classes of lands or buildings [or huts] used for educational, medical, public health or cultural purposes or for purposes of sports, the Corporation may exempt any such land or building [or hut] from payment of the surcharge:

Provided also that such exemption shall in no case exceed seventy-five percent of the surcharge.

(5) xx xx xx xx

(6) xx xx xx xx

(7) xx xx xx xx

(8) xx xx xx xx

(9) xx xx xx xx

Section 174, at the relevant time, read as under:

"174. Determination of annual valuation-- (1) Notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 (West Ben. Act XII of 1956) or in any other law for the time being in force, 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 including service charges, if any, at which such land or building might at the time of assessment be reasonably expected to let from year to year, less an

allowance of ten percent, for the cost of repairs and other expenses necessary to maintain such land or building in a state to command such gross rent:

Provided that there is a transfer, inter vivos, of ownership of any land or building since the last preceding periodical assessment under section 179, the annual value of such land or building shall be fixed at seven and a half per cent of the amount stated in the deed of transfer as consideration for such transfer or, if no consideration is stated in such deed of transfer, at seven and a half per cent of the estimated market value thereof:

Provided further that while determining the annual value in the case of any land or building or portion thereof exclusively used by the owner for his residential purpose, the gross annual rent of such land or building or portion, as the case may be, shall be reduced,--

(a) where the gross annual rent does not exceed six hundred rupees, by thirty per cent;

(b) where the gross annual rent exceeds six hundred rupees but does not exceed eighteen thousand rupees, by such percentage of the gross annual rent as is worked out by dividing the gross annual rent by six hundred and subtracting the quotient from thirty-one, the difference being rounded off to the nearest place of decimal:

Provided also that no such reduction in gross annual rent shall be made--

(a) in case the total covered area in any land or building under occupation for residential purpose by the owner exceeds one hundred and fifty square metres, or

(b) where a person owns or occupies for residential purpose more than one plot of land or building or portions thereof within the municipal limit of Calcutta.

xxx

xxxx

xxxx "

As per this provision, for the purposes of assessment of the property tax, annual value of the land or building is deemed to be the gross annual rent including service charges, if any, at which such land or building may at the time of assessment be reasonably expected to let

from year to year, minus ten percent towards the cost of repairs and other expenses necessary to maintain such land or building.

Section 193 of the Act deals with the incidence and payment of the property tax on lands and buildings. Under this provision, primary responsibility to pay the tax on the land and building is of the lessor.

Section 194 of the Act provides for apportionment of liability for the property tax on land and building between the lessor and the lessee.

Section 230 of the Act provides for apportionment of consolidated rate by person primarily liable to pay to the corporation.

The same reads as under:

"230. Apportionment of consolidated rate by the person primarily liable to pay - Save as otherwise provided in this Act, the person primarily liable to pay the consolidated rate in respect of any land or building may recover--

(a) if there be but one occupier of the land or building, from such occupier half of the rate so paid, any may, if there be more than one occupier, recover from each occupier half of such sum as bears to the entire amount of rate so paid by the owner the same proportion as the value of the portion of the land or building in the occupation of such occupier bears to the entire value of such land or building:

Provided that if there be more than one occupier, such half of the amount may be apportioned and recovered from each occupier in such proportion as the annual value of the portion occupied by him bears to the total annual value of such land or building;

(b) the entire amount of the surcharge on the consolidated rate on any land or

building from the occupier of such land or building who uses it for commercial or non-residential purposes:

Provided that if there is more than one such

occupier, the amount of surcharge on the consolidated rate may be apportioned and recovered from each such occupier in such proportion as the annual value of the portion occupied by him bears to the total annual value of such land or building."

Under this provision, the occupier is made liable to pay half of the tax. Occupier is also burdened with the payment of commercial surcharge on the property tax as mentioned in that section.

Section 231 deals with the mode of recovery. The same reads as under:

"Mode of recovery-- If any person primarily liable to pay any consolidated rate on any land or building and is entitled to recover any sum from an occupier of such land or building, he shall have, for recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to recover such sum."

Under the provisions of the Act, out of the total tax liability, occupier has been made liable to pay 50% of the tax. Occupier is further made liable to pay the entire commercial surcharge. The primary responsibility to pay the property tax is of the owner. Section 231 provides the mode of recovery of the occupier's share of tax and commercial surcharge by the owner who is primarily responsible for making the payment of the property tax to the corporation from the occupier.

The rent of Rs.60,510/- which the owner was charging from the occupier by an agreement included the occupier's share of all the existing taxes to be borne by the owner. The High Court came to the conclusion that the occupier's share of tax and commercial surcharge

included in the gross amount charged by the owner from the occupier had to be excluded for determining the annual value of the premises. To that extent we agree with the finding recorded by the High Court.

The calculations made by the High Court needs to be modified, as, in our view, the tax element of the occupier's share of tax determined by the High Court is not correct. The High Court has calculated the annual value taking the gross monthly amount paid by the occupier to the owner whereas the annual value had to be determined after deducting the occupier's share of tax.

It is neither easy nor possible to arrive at the exact figure of the tax element of the occupier's share.

In the Calcutta Municipal Act, 1923 and Calcutta Municipal Act, 1951, predecessors of the present Act, had a provision similar to the one existing in the present Act except that under the 1923 Act, there was no provision for levy of commercial surcharge and it was introduced for the first time in the 1951 Act.

In 'Principles and Practice of Valuations (Land and Houses)' by John A. Parks, 4th Edition, 1970, the author has given the following formula for determining the annual value. The same reads as under:

"For the purpose of assessing land and buildings to the consolidated rate:--

(a) the annual value of land, and the annual valuation of any building erected for letting purposes or ordinarily let, shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let

from year to year, less, in the case of a building an allowance of ten percent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent.

To give an illustration, suppose a building was let for Rs.100 per month inclusive of tenants' rates, then the annual value would be :--

Monthly Rent inclusive of tax	Rs. 100/-
Annual Rent inclusive of tax	Rs.1,200/-
Deduct 10 per cent for repairs,etc.	Rs. 120/-
	<hr/>
	Rs.1,080/-
Deduct 10 per cent for occupiers' share of taxes	Rs. 108/-
	<hr/>
Annual value	Rs. 972/-

Under the 1923 & 1951 Acts, the rate of tax was 23 per cent at

the maximum whereas now it is 40 per cent for the lands and buildings,

provided the rent is above eighteen thousand. The commercial

surcharge was also not there at that time. The Corporation and the

owners' of buildings have been and are litigating in petty cases where

the rent paid by the occupier to the owner includes the occupier's share

of tax as well.

The learned counsel appearing for the parties prayed that this

Court may put an end to this litigation by pragmatically calculating the

owner's and occupier's share of taxes according to the scheme of the

Act. The request seems to be reasonable and in order to put quietus to

this litigation and such other similar cases, while exercising our

jurisdiction under Article 142 of the Constitution, we deem it

appropriate to provide method of calculating the tax according to the

scheme of the Act in the succeeding paragraphs of this judgment.

In the Parks' book, the occupier share has been taken at 10 per cent when the maximum tax payable was 23 per cent whereas under the present Act, the tax is forty per cent of the annual value out of which 20 per cent has to be paid by the occupier and 20 per cent has to be paid by the owner. Over and above this, there is a commercial surcharge to the extent of 50 per cent of the tax which is to be paid by the occupier. The total tax payable comes to 60 per cent of the annual value out of which 40% including commercial surcharge has to be paid by the occupier and 20 per cent has to be paid by the owner.

The figure of 10 per cent given in Parks' book for deduction of occupier's share is increased to 28 per cent where the property is used for commercial purpose, which will roughly come out to 2/3rd of tax being paid by the occupier and 1/3rd of the tax being paid by the owner, which is contemplated under the provisions of the Act. We have given this formula in order to avoid frivolous litigation over small amounts between the corporation and the owners. The tax payable by the owner in the present case works out to:

Rs. 60510 x 12	=	Rs.7,26,120.00
(Less) 10% for repairs	=	Rs. 72,612.00
		Rs.6,53,508.00
(Less) 28% for occupiers' share of taxes	=	Rs.1,82,982.24
		Rs.4,70,525.76
rounded off	=	Rs.4,70,526.00
40% tax on annual value	=	Rs.1,88,210.40
[20% has to be paid by the owner]	=	Rs. 94,105.00

The assessments which have already been finalised need not be re-opened. The pending assessments or the cases in which appeals or revisions are pending, shall be disposed of by applying the aforesaid formula for determining the share of the occupier's tax and the share of the owner.

Appeal is disposed of in the above terms.

.....J.
[ASHOK BHAN]

NEW DELHI
NOVEMBER 30, 2006

.....J.
[DALVEER BHANDARI]