*Privy Council Appeal No.* 4 *of* 1938

*Bengal Appeal No.* 13 *of* 1937

**The Corporation of Calcutta** ... ... ... ... ... *Appellants*

*v.*

**Moti Chand Chowdhury and others** ... ... ... ... *Respondents*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH NOVEMBER, 1938

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*Present at the Hearing*:

LORD MACMILLAN
LORD ROMER
SIR GEORGE RANKIN

[*Delivered by* LORD MACMILLAN]

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On 15th September, 1932, the Corporation of Calcutta caused to be served upon the owners of certain premises within the municipality, known as No. 82 Nalini Sett Road, a notice assessing the premises at an annual value of Rs.4460 for the purpose of the imposition of the consolidated rate which, by section 124 of the Calcutta Municipal Act, 1923 (Bengal Act III of 1923), the Corporation is authorised to impose upon all lands and buildings in Calcutta. The premises having been newly erected had not previously been valued.

On an objection by the owners the valuation was reduced by the Deputy Executive Officer to Rs.4025. Being dissatisfied with his decision the owners appealed under section 141 of the Act to the Court of Small Causes which reduced the valuation to Rs.3168. From the order of the Chief Judge of the Court of Small Causes the Corporation in turn appealed under section 142 of the Act to the High Court which on 13th March, 1936, dismissed the appeal. The High Court refused an application by the Corporation for leave to appeal to His Majesty in Council but on a petition subsequently presented to His Majesty in Council special leave to appeal was granted, the Corporation by their counsel agreeing to pay the respondents' costs of the appeal in any

event. The Corporation is accordingly the appellant in the present appeal and the owners of the premises are the respondents.

The method of ascertaining the annual value of premises is prescribed in section 127 of the Act of 1923 as follows:—

> " 127. For the purpose of assessing land and buildings to the consolidated rate,—
>
> (*a*) the annual value of land, and the annual value 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 per cent. for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent; and
>
> (*b*) the annual value of any building not erected for letting purposes and not ordinarily let shall be deemed to be five per cent. on the sum obtained by adding the estimated present cost of erecting the building, less a reasonable amount to be deducted on account of depreciation (if any), to the estimated present value of the land valued with the building as part of the same premises."

It will be observed that two different methods of valuation are prescribed, one for " any building erected for letting purposes or ordinarily let " and the other for " any building not erected for letting purposes and not ordinarily let." The first question therefore which arises with regard to any building which has to be valued is whether it falls within the first class or within the second class. In the present case the evidence of the facts is meagre and unsatisfactory, but both parties were content to accept, for the purpose of raising the question of principle, the finding of the Chief Judge of the Court of Small Causes that " roughly half the premises is in actual occupation of the owner and half utilized for letting purposes." This is not a finding in terms of the Act but again the parties were content to accept it as equivalent to a finding that roughly the building as to one half is " ordinarily let " and as to the other half is " not ordinarily let."

Confronted with a building of this hybrid character, the Chief Judge of the Court of Small Causes solved the problem of valuation by valuing one half of it under paragraph (*a*) of section 127 as being ordinarily let and one half of it under paragraph (*b*) as not being ordinarily let and arrived at the valuation of the building as a whole by adding together the products of the two calculations. The High Court endorsed this method as the right one to adopt. The learned Judges stated that in the case of a building part of which answered the description in paragraph (*a*) and part of which answered the description in paragraph (*b*) " it would seem to be a misreading of the section to say that in spite of this fact the entire building must be taken as belonging to

one of the two classes mentioned in section 127. . . . For the purpose of section 127 'building' must include part of a building and it is quite conceivable that one part of the building will come under clause (*a*) and another part of the building under clause (*b*)."

Their Lordships cannot regard this method of valuation as permissible on a sound construction of section 127. The section may not be very satisfactorily framed but it is sufficiently clear that it was intended to classify all buildings as falling within one or other of two mutually exclusive categories. Each building is treated as a unit of valuation and its value must be ascertained in conformity with one or other of the two prescribed methods; it cannot be valued as to one part by one method and as to another part by another method for in that case the building as a unit could not be said to have been valued by either method, having been valued by both methods. No provision is made in section 127 for the case of a hybrid building, part of which answers the description in paragraph (*a*) and part of which answers the description in paragraph (*b*). The definition of the word "building" in section 3 (7) of the Act has no bearing on the present question and in particular it does not define the word as including "part of a building." The only provision for dividing a building appears to be in section 135 which authorises the Executive Officer "in his discretion" to assess any portion of a building separately from the other portions of such building, whereupon the portion so separately assessed is to be deemed a separate building. It does not appear that the Executive Officer was asked to adopt this course in the present case and at any rate he did not do so. Consequently the entire building must be treated as a single building forming a unit of assessment and indeed in the result the Courts below have so treated it, for they have arrived at one valuation for the building as a whole, though they have utilised two methods of valuation for one and the same building.

Of a building as to one half ordinarily let and as to one half not ordinarily let it cannot be predicated that it is ordinarily let, for only a part of it is ordinarily let. But it can be predicated of it that it is not ordinarily let if only a part of it is ordinarily let, for the whole of it is not ordinarily let. The test must be applied to every building as a whole and one or other method of valuation must be applied to it as a whole. There may possibly be cases where the portion ordinarily let or the portion not ordinarily let is so negligible in proportion to the whole of the building that the building might on the principle of *de minimis* be reasonably held as a matter of fact to be not ordinarily let or ordinarily let as the case may be, but the present is clearly not such a case.

Their Lordships are accordingly of opinion that the building in question was rightly valued by the Executive Officer in conformity with the method prescribed in paragraph (*b*) of section 127. They will therefore humbly advise

His Majesty that the appeal should be allowed; that the judgment of the High Court dated 13th March, 1936, except in so far as it finds no costs due to or by either party, and the judgment of the Chief Judge of the Court of Small Causes dated 23rd March, 1934, should be recalled; and that the order of the Deputy Executive Officer dated 15th September, 1933, should be restored. The appellants, in fulfilment of their undertaking, will pay the respondents' costs of the present appeal.

(13975—3A) Wt. 8168—30 190 12/38 P. St. G. 338

In the Privy Council

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# THE CORPORATION OF CALCUTTA

*v.*

# MOTI CHAND CHOWDHURY AND OTHERS

*Consolidated Appeals.*

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DELIVERED BY LORD MACMILLAN

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