*Present* : De Sampayo J. and Dias A.J.

1920.

JAYAWARDENE *v.* THE MUNICIPAL COUNCIL OF COLOMBO.

*374—D. C. Colombo, 52,902.*

*Assessment—Annual value—Municipal Councils Ordinance—Land adjoining sea—Sale of sea sand—No other income.*

The owner of a piece of land adjoining the sea allowed persons to remove the sea sand that collected on the seabeach on payment of a certain rate. There was no other income derived from the land.

*Held*, that the annual value was the profit made by the owner in connection with the sale and removal of the sea sand after making allowance for expenses and other charges, and that it was wrong to assess the property on the footing that it produced no income whatever.

THE facts appear from the judgment.

*H. St. V. Jayawardene*, for the appellant.

*Keuneman*, for the respondent.

[1] *(1892) 3 Ch. Div. 201.*

[2] *(1888) 37 Ch. Div. 234.*

1920.

May 5, 1920. DE SAMPAYO J.—

*Jayawardene v. The Municipal Council of Colombo*

This is an action brought by the plaintiff against the Municipal Council of Colombo to reduce the amount of assessment levied by the Council on a property belonging to him. The property is a piece of land at Colpetty adjoining the seashore. It appears the value of the property assessed consists in the sale of sea sand collected on the premises and removed by persons who pay a certain rate to the owner. This business is conducted under a license issued by the Government Agent, and renewed from month to month. The Council originally assessed the premises at Rs. 2,700, but on an objection taken by the plaintiff it was reduced to Rs. 1,800. The plaintiff, being still dissatisfied, has brought this action to reduce the assessment to Rs. 12 a year, on the footing that the premises produced no income whatever, and that the utmost they are liable to be assessed at under the Ordinance is the nominal amount of Rs. 12, at the rate of Re. 1 per month. The District Judge took evidence as to the profits made by the plaintiff in connection with the sale and removal of sea sand, and after making allowance for expenses and other charges, he has assessed the annual value at Rs. 1,440. The plaintiff has appealed from this judgment. It is contended that the District Judge went upon a wrong basis. But I am unable to agree with this contention. The annual value is defined in the Municipal Councils Ordinance as the annual rent which a tenant might reasonably be expected, taking one year with another year, to pay for any house, building land, or tenement. What the District Judge in this case has practically done is that he has taken into consideration what profit a hypothetical tenant could make, and accordingly what he would be prepared to pay to the landlord for any lease of the premises. That, I think, is the right question to put. It is no doubt true that the profit is not made out of the land in the ordinary sense, but, nevertheless, the character of the land and its situation would induce a possible tenant to pay a higher rent than he would ordinarily pay for a land situated elsewhere. Mr. Jayawardene cited an Indian case, *Secretary of State for India v. Karuna Kanta Chowdhey*.[1] That case was concerned with the question whether fees paid by holders of stalls at a fair can be said to constitute rent payable to the landlord so as to be taken into calculation in the assessment under the Indian Act. The Indian Act and the circumstances of that case are entirely different from those with which we are concerned in this case, and I think, although, perhaps, the question might have been better stated in the issues, the District Judge came to a right conclusion on the real question involved.

I would dismiss the appeal, with costs.

DIAS A.J.—I agree.

*Appeal dismissed.*

[1] *35 Cal. 82.*