WAKKUMBURA
v.
NANDAWATHIE

SUPREME COURT
DHEERARATNE, J.,
WIJETUNGA, J.,
BANDARANAYAKE, J.
S.C. (AP). NO. 52/97
S.C. Spl. LA 156/96
C.A. (AP). NO. 765/88 (F)
D.C. HORANA NO. 2612/RE
JUNE 01 AND JULY 31 1998

Rent Act, No. 7 of 1972 – Business premises – Excepted premises – Regulation 3 – Premises assessed twice as three separate units and twice as a single consolidated unit – Applicable annual value.

The respondent was the tenant in respect of 3 adjacent premises Nos. 83, 81, 83/1, during the period 1958 – 1987. The premises were subject to 4 assessments, twice as three separate units and twice as a single consolidated unit.

The plaintiff-appellant instituted action against the defendant-respondent to have her ejected from business premises formerly bearing assessment Nos. 83, 81 and 83/1, and presently assessment No. 81. It was contended by the plaintiff that the premises No. 81 is a business premises, that it was first assessed as No. 81 in 1983, and the said premises are excepted premises. The defendant's position was that the first assessment of the premises as a single unit and that as business premises was in 1970, and therefore the premises are not excepted premises.

The District Court held that, the premises are not excepted premises which was affirmed by the Court of Appeal.

Held:

(1) For the purpose of the existence of a new premises it is essential that some kind of physical alteration to the premises was carried out. In a situation where there is a physical alteration to a premises the extent and significance of that physical alteration would certainly have to be taken into consideration.

(2) The premises are business premises. The first time the premises were assessed as one unit as business premises after January, 1968, was in 1970. There is no evidence of substantial physical alteration to the building thereafter; in this circumstances, it cannot be said that a new premises have come into existence and therefore the assessment in 1970 will continue to govern the premises.

APPEAL from the judgment of the Court of Appeal.

Cases referred to:

1. *Ramya Gunawardena v. Pieris* – 1995 – 2 S.L.R 225.
2. *Ansar v. Hussain* – 1986 1 CALR Vol. I – Part 3 365.
3. *Hewavitharana v. Ratnapala* – 1988 – 1 S.L.R 240.
4. *Weerasena v. Perera* – 1991 – 1 S.L.R 121.
5. *Chettinad Corporation Ltd. v. Gamage* – 62 N.L.R 86.
6. *Sally Mohamed v. Seyd.* – 64 N.L.R 486.
7. *Premadasa v. Atapattu* – 71 N.L.R 62.

A. K. Premadasa, P.C., with *C. E. de Silva* for appellant.

T. B. Dillimuni with *Tissa Bandara* for respondent.

Cur. adv. vult.

July 31, 1998

SHIRANI BANDARANAYAKE, J.

The plaintiff instituted this action on 03.01.1985 against the defendant, her tenant, to have her ejected from premises formerly bearing assessment Nos. 83, 81 and 83/1 and presently bearing assessment No. 81, Anguruwatota Road, Horana. Admittedly, the premises in question are business premises situated within the Urban Council limits of Horana. The main question in dispute at the trial was whether the premises are excepted premises or not within the meaning of regulation 3 of the Schedule to the Rent Act, No. 7 of 1972. The learned trial Judge held in favour of the defendant that the premises in question are not excepted premises. The Court of Appeal affirmed the judgment of the learned District Judge and the plaintiff has now appealed.

The facts leading to the filing of this action are briefly as follows:

The respondent had been a tenant of the appellant in respect of 3 adjacent premises, viz Nos. 83, 81 and 83/1, Anguruwatota Road, Horana. According to the Assessment Register of the Urban Council, Horana, during the period 1958 to 1987 the premises in suit were subject to 4 assessments, twice as three separate units and twice as a single consolidated unit (වී1).

A. 1958 to 1969 – assessed under 3 units of assessment.
83 – tiled textile shop and land
73/12 – tiled tenament and land
83/1/1 – tiled studio and land

B. 1970 to 1976 – the three sub divisions were consolidated as one unit of assessment No. 83, described as upstair study and dispensary. The annual value of 1970 consolidated assessment was Rs. 1,222/-.

C. 1977 to 1982 – there was a sub division of the assessment into three units as assessment numbers 83, 81 and 83/1:

i. No. 83 was assessed as tiled textile shop and land at an annual value of Rs. 556/-.

ii. No. 81 was assessed as tiled upstair photo studio at an annual value of Rs. 444/-.

iii. No. 83/1 was assessed as tiled small house and land at an annual value of Rs. 222/-.

D. 1983 to 1987 – the three premises were assessed together as assessment No. 81 and described as tiled boutique and land at an annual value of Rs. 2,348/-.

It was the contention of learned President's Counsel for the appellant that, the premises No. 81 is a business premises, that it was first assessed as No. 81 in 1983 at an annual value of Rs. 2,348/- and that for this reason the said premises are excepted premises in terms of regulation 3 of the Schedule to the Rent Act. Learned President's Counsel further contended that the question at issue is the fact of assessment of the premises and not the structural alterations. Learned counsel for the respondent on the other hand contended that the first assessment of the premises in suit as a single unit and that as business premises was in 1970. Regulation 3 of the Schedule to the Rent Act, No. 7 of 1972, reads as follows:

> Any business premises . . . situated in any area specified in Column 1 hereunder shall be excepted premises for the purpose of this Act if the annual value thereof as specified in the assessment made as business premises for the purposes of any rates levied by any local authority under any written law and in force on the first day of January, 1968, or, where the assessment of the annual value thereof as business premises is made for the first time after the first day of January, 1968, the annual value as specified in such assessment exceeds the amount specified in the corresponding entry in column II.

I	II
Area	Annual value
. . . . .	
Town within the meaning of the Urban Councils Ordinance	Rs. 2,000

Clearly the assessment in force as at January, 1968, could not be applied because what existed then were 3 premises 2 of which were business premises while the other was residential premises. The assessment made in 1977 too could not be applied for the same reason.

The question at issue then is whether for the purpose of regulation 3 of the Schedule to the Rent Act, No. 7 of 1972, the annual value assessed in 1970 is applicable or whether the annual value assessed in 1983 is applicable.

Several authorities were relied upon by Mr. Premadasa, learned President's Counsel for the petitioner and Mr. Dillimuni, learned counsel for the respondent.

Learned President's Counsel for the appellant, submitted that three units which existed from 1977 to 1982 were formally consolidated and a new unit, namely, No. 81 came into being on 01.01.1983. This was assessed at an annual value of Rs. 2,348/- and entered in the Assessment Register. His position was that on this basis, the new unit should be regarded as excepted premises. Learned President's Counsel for the appellant, submitted that one of the 3 units of assessment that existed immediately prior to the 1983 assessment has been described as a small house (කුඩා ගෙය). His submission was that when this assessment is combined with the assessment of the remaining two units of business premises that co-existed in 1982, the consolidated premises in 1983 should be considered as a new premises.

Mr. Premadasa relied on the decision of the Court of Appeal in *Ramya Goonewardene v. Peiris*[1]. In that case 3 units were let to the tenant which were consolidated under a single assessment number 318, in October, 1980. The premises No. 318 was assessed for the first time at an annual value of Rs. 3,750/- thus falling within the ambit of excepted premises. The landlord sued the respondent-tenant for ejectment. The appellant-landlord relied upon the entries in the relevant Assessment Register. The learned District Judge relied on certain letters written by the Acting Chief Assessor to the Chairman, Urban Council, Panadura, pointing out that the assessment was made by error and dismissed the action. Grero, J. was of the view that to ascertain whether the premises are excepted premises, recourse should be had not only to the Rent Act, No. 7 of 1972, but also to the

provisions of sections 233, 235 and 237 of the Municipal Councils Ordinance. He went on to state that:

> I am of the view that a consolidation effected under section 233 (1) to any existing house, buildings etc., need not have physical alterations as contemplated in section 237 (1) of the Municipal Councils Ordinance. Once such assessment is made in respect of consolidated premises and the annual value is entered in the Register, unless it is amended according to the procedure laid down in section 235 of the Municipal Councils Ordinance, the annual value remains in force. On the basis of such annual value rates are calculated and entered in the Assessment Book (Register).

To follow *Ramya Goonewardene* (supra) in effect would be to take the law back to the time when the regulation regarding the excepted premises read as 'the annual value thereof as assessed for the purposes of any rates levied for the time being by any local authority under any written law exceeds . . . (see 1956 LE chapter 274, schedule).

Learned counsel for the respondent on the other hand relied on *Ansar v. Hussain*[2], *Hewavitharana v. Ratnapala*[3] and *Weerasena v. Perera*[4], where it has been consistently and repeatedly upheld that a subsequent assessment cannot be considered as a first assessment of a premises unless there is cogent evidence to show that there were substantial alterations and additions to the premises. In *Ansar v. Hussain* (*supra*) the plaintiff instituted action for ejectment of defendant on the ground that the rents were in arrears for more than one month in terms of section 22 of the Rent Act. The premises used as business premises were rent controlled and governed by the provisions of the Rent Act. They had undergone changes by way of subdivision and consolidation. After a careful consideration of a series of cases, Wanasundera, J. was of the view that:

> It would be observed that all these judgments deal with varying actual situations and such situations can be multifarious. A single assessed unit may be subdivided into two or more units and each separately assessed; two or more separately assessed units may be consolidated into one. Separately assessed units may be joined to adjacent units already under assessment. Portions of such adjacent units may simultaneously undergo changes by division or

other consolidations. There is no limit to the permutations and combinations that are possible in this regard. It would be extremely difficult to work out any kind of general theory to cover all such situations some of which are known, but there may be others which may be beyond contemplation and arise in the future.

This decision was followed in *Hewavitharana v. Ratnapala* (*supra*), where Dheeraratne, J. after a careful consideration of all available authorities held that the 1968 assessment is applicable to the premises in question for the purpose of regulation 3 and that it does not become excepted premises as a result of the assessment made in 1975. In this case two adjacent business premises Nos. 350 and 356, admittedly governed by the provisions of the Rent Act upto October, 1975, were occupied by one tenant under the same landlord. The tenant had connected the two premises by an inter communication door. At the request of the landlord in October, 1975, the Municipal Council gave one assessment number to both premises and fixed the annual value at Rs. 8,310/- by addition of the two previous annual values increased by Rs. 10/-. The landlord filed action against the tenant for ejectment on the basis that the premises were excepted premises. The question arose as to whether for the purpose of regulation No. 3 as to excepted premises, the annual value of January, 1968 or the annual value fixed in October, 1975, should be applied.

This question was discussed again in *Weerasena v. Perera* (*supra*). In this case the plaintiff let to the defendant premises bearing assessment No. 97A, Stanley Tillekeratne Mawatha, Nugegoda in 1972 and the premises being business premises assessed for the first time at an annual value of over Rs. 2,000/- was admittedly excepted premises within the meaning of regulation 3 of the schedule to the Rent Act. The rear portion of the premises, a storeroom was later separately assessed as 97B. The plaintiff's action for ejectment failed as premises No. 97B was alleged to be covered by the Rent Act and there being no valid termination of the tenancy. The Court of Appeal reversed the judgment and directed ejectment from the full premises. The Supreme Court held that applying the test in *Ansar v. Hussain* (*supra*) in the absence of any physical alteration to the premises 97B, it cannot be said that a new premises has come into existence. After a careful consideration of the question before him, Dheeraratne, J. stated that:

The problem may also be approached differently by examining the application of regulation No. 3 of the schedule to the Rent Act to premises No. 97B. It may be asked whether the assessment of the annual value in force in January, 1968 or the assessment made in July, 1972, is applicable. On this question, it appears to me that the decided authorities have taken three different approaches. The first, was to give prominance to the original assessment, paying little attention to the transformation the premises has undergone subsequently attracting separate new assessments. This approach is reflected in the cases of *Chettinad Corporation Ltd. v. Gamage*[5] and *Sally Mohamed v. Seyd*[6]. The second was to grant almost absolute sanctity to a new assessment made by rating authorities and to treat that as giving birth to new premises in place of the old as reflected in the case of *Premadasa v. Atapattu*[7]. The third, is that reflected in the judgment of Wanasundera, J. in *Ansar v. Hussain* (*supra*), a via media through which the Court will not only look at the mere fact of a separate assessment, but also, at the extent and significance of the change involved and the impact of that change on the valuation and assessment. This last approach, commends itself to me as a safeguard both against capricious assessments made by rating authorities affecting rights of parties to the letting and also against possible manipulations of the assessments by interested parties with intent to give undue advantages either to landlords or to tenants (see for example *Hewavitharana v. Ratnapala*) . . . Considering the absence of any physical alterations whatsoever made to premises No. 97B, I am unable to hold that new premises have come into existence. The original assessment in force as at January, 1968, will continue to govern the entire premises.

I am in complete agreement with the view expressed by Dheeraratne, J. in *Weerasena v. Perera (supra)* that the mere fact of a separate assessment alone is not sufficient to hold that a new premises has come into existence. For the purpose of the existence of a new premises it is essential that some kind of physical alteration to the premises was carried out. In a situation where there is physical alteration to a premises, the extent and significance of that physical alteration would certainly have to be taken into consideration.

It is common ground that the premises in question are business premises. The first time the premises were assessed in one unit as business premises after January, 1968, was in 1970. There is no

evidence of substantial physical alteration to the buildings thereafter. In the circumstances, I am unable to hold that new premises have come into existence and therefore the assessment in 1970 will continue to govern the premises in question. For the above reasons, the appeal is dismissed and the judgment of the Court of Appeal is affirmed. There will be no costs.

DHEERARATNE, J. – I agree.

WIJETUNGA, J. – I agree.

Appeal dismissed.