SYDNEY
v.
ABEYRATNA AND OTHERS

COURT OF APPEAL.
S. N. SILVA, J. (P/CA)
DR. R. B. RANARAJA, J.
C.A. 471/83(F)
D.C. COLOMBO 4272/RE
MAY 03, JULY 14 AND 29, 1994.

Landlord and Tenant – Rent Act 7 of 1972 amended by Act No. 55 of 1980, S. 22(2) (bb) ii of Rent Act – Ejectment – Deposit of 5 years Rent – Applicability of S. 22(7) (b) (ii) – Acquisition over the Head of Tenant – Applicable Annual Value – Relevant amount – Sub-division of existing Building – Consolidation S. 233(1), S. 237(1) Municipal Councils Ordinance – S. 10(13), 10(14), 19, 26(1), 48 of the Rent Act.

The Plaintiff-Respondent filed action for ejectment in terms of S. 22(2) (bb) (ii) of the Rent Act (as amended) upon depositing 5 years rent with the Commissioner of National Housing. It was admitted that the Plaintiff has satisfied the requirements of S. 22(2) (bb) (ii), but the Defendant contended that the action could not be maintained for ejectment in view of S. 22(7) (b) (ii), as the Plaintiff had acquired the premises over the Head of the Tenant. The Tenant came into occupation prior to 1.3.72 and the Plaintiff purchased the premises on 10.3.79. The Plaintiff successfully relied on the proviso to S. 22(7) (b) (ii) which removes the application of the bar to premises where the annual value exceeds 150% of the "relevant amount."

Held:

(1) The definition of the phrase "annual value" in S. 48 has two main parts. The **first part** defines the "annual value" generally as to mean the "annual value of premises as assessed by the relevant Local Authority, the **second part:** give a specific meaning to the phrase "annual value" when used in relation to the "phrase relevant amount."

It is this part which is applicable to the decision in this case. There are two separate limbs contained in this part of the definition which state the applicable annual value of two distinct categories of premises.

The distinction in these two limbs is based upon "premises" in respect of which there was an assessment in force in the month of January 1968. The second limb deals with premises in respect of which an assessment is made for the first time after January 1968.

(2) The definition of "annual value" in both limbs is in relation to "premises" as defined in S. 48 of the Act to mean "any building or part of a building."

In this instance there was a building or part of a building assessed as premises No. 99 as at January 1968, the Defendant was in occupation as a tenant of part of the building. Therefore the contract of tenancy relates to premises that were assessed as at January 1968 and on that basis first limb would be applicable. The second limb will apply only if the building or part of the building constituting premises No. 99 had not been assessed as at January 1968, and are assessed for the first time thereafter. In other words this limb will apply to new premises that are assessed after January 1968.

(3) It is seen that in the scheme of the Act where the term "premises" is used in relation to annual value, it refers to the building or part of the building constituting the unit of assessment of rating and not necessarily to the unit of letting.

(4) The provisions of the Rent Act reveal that the Act is intended to apply to situations where the "annual value" is assessed by the rating authority for a larger entity, a part of which constitutes the unit of letting. Therefore when the unit of letting forms part of a building which is the unit of assessment for levying rates, the applicable annual value would be of the premises (building) as assessed.

There are specific provisions in sections 10(13), 10(14) and 26 that apply in this regard. The legislature has made no such reservation in relation to the provisions of Section 22(7). Hence the applicable annual value would be of the premises, as assessed.

Cases referred to:

1. *Weerasena v. A. D. R. Perera* – 1991 1 SLR 121.
2. *Hewavitharana v. Ratnapala* 1988 1 SLR 240.
3. *Plate Ltd. v. Ceylon Theatres Ltd.* 76 NLR at 130.

AN APPEAL from the judgment of the District Court of Colombo.

Faiz Musthapha P.C. with *Hemasiri Withanachchi* for Petitioner.
A. A. De Silva with *M. C. Jayarathna* for Petitioner

Cur. adv. vult.

September 23, 1994.

S. N. SILVA, J. (P/CA)

The Defendant has filed this appeal from the judgment dated 27.9.1983. By that judgment Learned Additional District Judge granted the reliefs prayed for to the Plaintiff and ordered *inter alia* the ejectment of the Defendant and those holding under him from the premises in suit and the payment of damages in a sum of Rs, 400/- per mensem from 1.7.1980.

The Plaintiff-Respondent filed action for ejectment in terms of section 22(2) (bb) (ii) of the Rent Act No. 7 of 1972 as amended by Act No. 55 of 1980, upon depositing 5 years rent with the Commissioner of National Housing for payment to the tenant. It is admitted that the Plaintiff has satisfied the requirements of section 22(2) (bb) (ii) but the Defendant pleaded that the action could not have been instituted for ejectment in view of the provisions of section 22(7) (b) (ii) because the Plaintiff had acquired the premises subsequent to the "specified date" (over the head of the tenant). It is admitted that the tenant came into occupation of the premises prior to 1.3.1972 and that the Plaintiff purchased the premises on 10.3.1979. Therefore, ordinarily the bar in section 22(7) (b) (ii) will apply on the basis that acquisition of ownership by the Plaintiff was over the head of the tenant. But, the Plaintiff relied on the proviso to that subsection which removes the application of the bar to premises where the "annual value" exceeds 150% of the "relevant amount". It is not disputed that the applicable "relevant amount", in terms of section 48 is Rs. 2000/-. The only dispute in this case is as regards the applicable "annual value".

The action has been instituted in respect of premises bearing assessment No. 99, 1st Division, Maradana being the subject of the contract of tenancy. Certified extracts from the Assessment Registers of the Colombo Municipal Council, in respect of premises No. 99 have been produced for years 1941 to 1982 (P6 to P17). It is submitted on behalf of the Plaintiff that the applicable annual value, in terms of section 48 of the Rent Act is that of January 1968 which is Rs. 3925/-. That annual value exceeds 150% of the relevant amount of Rs. 2000/-. Therefore, the bar in section 22(7) will not apply to the action for ejectment instituted by the Plaintiff. On the other hand, it is submitted by the Defendant-Appellant that the premises assessed as No. 99 from 1941 up to 1979 was a larger building of which only a part was occupied by him as tenant. In 1979 the part occupied by him as tenant was separately assessed under the same number 99 and its annual value was fixed at Rs. 3000/-. The remaining portion of the building was assessed as No. 97 and its annual value was fixed at Rs. 5340/-. On that basis it is submitted that the annual value of 1979 should be considered as the first assessment in respect of the premises in suit and since it does not exceed 150% of the relevant

amount, the proviso will not apply. Therefore, the matter in dispute is whether in the application of the proviso to section 22(7) of the Rent Act the annual value of the premises should be taken as that of 1968 or whether it should be taken as that of 1979.

As noted above premises bearing No. 99, 1st Division, Maradana has been assessed for purposes of levying rates by the Municipal Council from 1941 onwards. These premises were first described as a hospital, dispensary and residence. The description continued up to 1973. Thereafter it was described as a furniture shop and residence. In 1979 premises No. 99 has been described only as a residence. Premises No. 97 has been described as a furniture shop. There has been no physical alteration or change in the structure of the building constituting premises No. 99 at any stage. In 1979 the Municipal Council subdivided the premises and attached the same number to the premises in suit and assessed the remaining area of the building under No. 97. The question to be determined is whether the assessment done upon this subdivision can be taken as the first assessment of the annual value of premises No. 99 in applying the proviso to section 22(7).

The proviso to section 22(7) reads as follows :

> "Provided, however, that the preceding provisions of this subsection shall not apply to the institution of any action or proceedings for the ejectment of the tenant of any premises the annual value of which exceeds one hundred and fifty per centum of the relevant amount where such tenant had come into occupation thereof prior to the date of commencement of this Act."

The phrase "annual value" is defined in section 48 of the Rent Act as follows :

> "annual value" of any premises means the annual value of such premises assessed as residential or business premises, as the case may be, for the purposes of any rates levied by any local authority under any written law and as specified in the assessment under such written law, and where used in

relation to the relevant amount, means the annual value of the premises as specified in the assessment in force during the month of January, 1968, or if the assessment of the annual value of the premises is made for the first time after that month, the amount of such annual value as specified in such first assessment."

Section 48 defines the term premises to mean "any building or part of a building together with the land appertaining thereto".

It is clear on the evidence that from 1941 there had been a building (constituting premises within the meaning of the Rent Act) which had been assessed for levying rates by the appropriate authority. The subject of the contract of tenancy in respect of which the action has been filed, is part of that building and bears the same assessment number that has been assigned to the premises from 1941. The Defendant has not given evidence and there is no evidence that any alterations or modifications whatsoever, were effected to the premises prior to the sub division in 1979. According to the evidence of the Plaintiff one room of the building had been assessed in 1979 under the No. 97. Therefore, it has to be concluded that the sub division was not effected in 1979 because a new premises came into existence but was done solely for the purpose of rating. In that background of the facts we have to consider the application of the definition of the phrase "annual value" as appearing in section 48.

The definition has two main parts. The first part defines the phrase "annual value" generally as to mean the annual value of premises as assessed by the relevant local authority. The second part gives a specific meaning to the phrase "annual value" when used in relation to the phrase "relevant amount". It is this part which is applicable to the decision in appeal. There are two separate limbs contained in this part of the definition which states the applicable annual value of two distinct categories of premises. The distinction in these two limbs is based upon the date of assessment in respect of the premises. The first limb deals with premises in respect of which there was an assessment in force during the month of January 1968. In this category of premises the applicable annual value will be that of January 1968. The second limb deals with premises in respect of

which an assessment is made for the first time after January 1968. In this category of premises the applicable annual value will be that made at the first assessment of such premises. The Plaintiff contends that the premises are governed by the first limb stated above whereas the Defendant submits that the second limb applies.

The definition of the phrase "annual value" in both limbs is in relation to "premises". As noted above the term premises is defined in section 48 of the Act to mean any building or part of a building. If the question is posed whether there was a building or part of a building assessed as premises No. 99, as at January 1968, the obvious answer is that there was such a building. The Defendant was in occupation as tenant of a part of the building. Therefore the contract of tenancy relates to premises that were assessed as at January 1968 and on that basis the first limb of this part of the definition will apply. The second limb will apply only if the building or part of the building constituting premises No. 99 had not been assessed as at Janauary 1968 and are assessed for the first time thereafter. If the argument of the Defendant that this limb should apply is to be accepted, we have to import an artificiality and act on the basis that there was no assessment in force in respect of this building as at January 1968. Such an inference is not possible considering the fact that there had been a building which was assessed from 1941 under the number 99. The words "for the first time". appearing in the second limb clearly contemplate a situation where there had been no assessment in respect of the building as at January, 1968. In other words, this limb would apply to new premises that are assessed for the first time after January 1968.

A similar question has been considered by this Court and the Supreme Court in several cases in relation to the application of Regulation 3 in the Schedule to the Rent Act. This Regulation deals with excepted premises. Business premises are excepted if the annual value of 01.01.1968 or if the assessment is made thereafter, the first annual value exceeds the amount stated in the Regulation. The words in the definition of the phrase "annual value" in section 48 and the relevant words in Regulation 3 are broadly similar. In the case of *Weerasena v A.D.R. Perera* [1] the Supreme Court took the view *inter alia* that a mere sub division of existing premises does not give

birth to a new premises. Upon a review of the previous decisions Dheeraratne, J expressed his view on the matter as follows:

> "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."

Dheeraratne, J took a similar view whilst he was President of this Court in the case of *Hewavitharana v Ratnapala* [2] in relation to a consolidation of two existing buildings by constructing a communication door. The assessment done upon such consolidation was held not to constitute the first assessment of the premises. He attributed the assessment made, to section 233(1) of the Municipal Councils Ordinance which deals with assessments made upon a sub division or consolidation of existing buildings. The finding is that a new (first) assessment is made of an existing building only where "physical alterations" are effected to the building and as provided in section 237(1). As noted above, in this case no physical alterations have been done but a mere sub division was effected in terms of section 233(1) of the Municipal Councils Ordinance.

An examination of the provisions of the Rent Act reveals that the Act is intended to apply to situations where the annual value is assessed by the rating authority for a larger entity, a part of which constitutes the unit of letting. Sections 10(13), 10(14), 19 and 26(1) contain specific provisions in this regard. Thus it is seen that in the scheme of the Act where the term "premises" is used in relation to "annual value" it refers to the building or part of the building constituting the unit of assessment or rating and not necessarily to the unit of letting. In the case of *Plate Ltd. v Ceylon Theatres Ltd.* [3] Samarawickrame, J dealt with this matter as follows:

> "Learned counsel for the Defendant appellant submitted that for the purpose of the Act it was the unit of letting that should be the premises. The definitions of residential and business premises show that the nature of the occupation is relevant and is to be taken into account. There is nothing in the Act to

suggest that the unit of letting is to be the premises. On the other hand the references in sections 7 and 9 to premises let in parts or in part suggest otherwise."

Therefore when the unit of letting forms part of a building which is the unit of assessment for levying rates, the applicable annual value would be of the premises (building) as assessed, subject to the specific reservations made in the provisions referred above. The legislature has not made any reservation in relation to the provisions of section 22(7). Hence the applicable annual value would be of the premises as assessed.

For the reasons stated above, I see no error in the finding of the Learned Additiional District Judge that the annual value of the premises exceeds 150% of the relevant amount and that the bar in section 22(7) will not apply in relation to the premises. The appeal is dismissed. The Defendant-Appellant will pay a sum of Rs. 7500/- as costs to the Plaintiff.

RANARAJA J, – I agree

Appeal dismissed.