

**NISTHAR**  
**v**  
**GURUSAMY AND ANOTHER**

SUPREME COURT  
YAPA, J.  
DE SILVA, J. AND  
JAYASINGHE, J.  
S.C. APPEAL NO. 57/2002  
C.A. NO. 322/94(F)  
D.C. COLOMBO CASE NO. 7608/RE  
8 AUGUST AND 26 AUGUST 2003

*Landlord and Tenant – Business premises – Determination of premises as business premises – Section 48 of the Rent Act and Regulation 3 in the schedule to that section – Test for determining the year in which premises become excepted premises.*

The plaintiff instituted action against the 1st and 2nd defendants for their ejection from the premises in suit on the grounds of arrears of rent, subletting and the deterioration of the premises in suit. On 27.4.94, the District Judge held against the plaintiff on the said grounds but gave judgment in his favour on the ground that the said premises was excepted premises and hence the Rent Act had no application.

Under section 48 of the Rent Act ("the Act") residential premises means any premises for the time being occupied wholly or mainly for the purposes of residence.

Business premises means any premises other than residential premises. Regulation 3 in the schedule to section 48 of the Act provides that the annual value of business premises should be determined on the basis of annual value fixed by the local authority (where the premises is situated) as in 1968 or the annual value for that year.

The premises in suit is described from 1953 to 1971 as a house; from 1972 to 1987 it is described as office and house but the annual value appearing in the register of the Colombo Municipal Council had not reached the required amount for purposes of exception. However from 1988 to 1991 the premises is described as a store and the annual value is fixed at Rs.24,000/- viz. above the requisite value in Regulation 3, for the Colombo Municipal Council.

**Held :**

1. In considering whether the premises is excepted business premises or a residential premises when it is claimed to have been first assessed as business premises the use to which the premises is put into and the annual value should both be taken into account.
2. Applying that test and the evidence in the case, the premises in suit became business premises for the first time in 1988. It was, therefore, excepted premises in terms of Regulation 3 in section 48 of the Act, as from 1988.

**Cases referred to :**

1. *Atapattu v Wickramasinghe* (1986) II C.A.L.R. 289
2. *Nalini v Gunawardana* Sri Skantha's L.R. Vol II 143
3. *Aloysius v Pillaipody* (1982) 2 Sri LR 762
4. *Jinasena v The Commercial Investment and Finance Co.Ltd* (1985) 1 Sri LR 238

**APPEAL** from the judgment of the Court of Appeal

*L.C. Seneviratne, P.C.* with *Rohan Jayawardana* for 1st defendant-appellant

*A.K. Premadasa, P.C.* with *C.E. de Silva* for substituted plaintiff-respondent

*Cur.adv.vult*

October 23, 2003

**YAPA, J.**

In this case the plaintiff instituted action against the 1st defendant-appellant-petitioner-appellant (hereinafter referred to as the appellant) and the 2nd defendant-respondent-respondent-respondent (hereinafter referred to as the 2nd defendant) for ejection, recovery of arrears of rent and damages. The action was based on the grounds of arrears of rent, subletting and deterioration of the premises in suit. The appellant and the 2nd defendant filed answer denying the averments in the plaint and moved for dismissal of the action.

It is seen that the case had proceeded to trial on twenty six issues and at the end of the trial the learned District Judge on 27.04.1994, had held against the plaintiff with regard to arrears of rent, subletting and deterioration of the premises in suit but decid-

ed the case in favour of the plaintiff on the ground that the premises in suit is excepted premises and therefore the Rent Act has no application.

Thereafter, the appellant appealed against the said judgment of the District Judge to the Court of Appeal. Pending this appeal the plaintiff died and in his room the present substituted plaintiff-respondent-respondent (hereinafter referred to as substituted plaintiff-respondent) was substituted. When the appeal was taken up for hearing before the Court of Appeal both counsel for the appellant and the substituted plaintiff-respondent agreed to confine their arguments to the question whether the premises in suit is excepted premises or not. The issue No.7 before the District Court also related to the same question. Accordingly counsel before Court of Appeal made oral and written submissions on this question and thereafter the Court of Appeal on 24.05.2002, delivered its judgment dismissing the appellant's appeal with costs. 20

Aggrieved by the said judgment of the Court of Appeal, the appellant made an application for special leave to appeal to this Court and on 06.09.2002, special leave to appeal was allowed on the following questions of law. 30

- (i) Whether the definition of "business premises" in the interpretation section of the Rent Act 1972 as amended, applies to the premises in suit ?
- (ii) If so, has the Court of Appeal erred in law in its consideration of the said definition of the instant matter ?
- (iii) Have the premises-in-suit been used wholly as business premises from 1985? 40
- (iv) If so, should the annual value of the premises-in-suit in the years 1985, 1986 and 1987 be applied to determine whether the premises-in-suit is excepted or not ?
- (v) In determining the premises as residential or business should the Court apply the "user test" or content itself by the mere description of the premises in the assessment extract ?
- (vi) To determine whether business premises are excepted or not, should the annual value of the premises when it commenced to be used as business premises be applied or the

annual value of the premises described in the assessment extract irrespective of the "use" to which the premises have been put into be applied ? 50

It would appear that having regard to the questions of law raised in this appeal, the main issue to be decided in this case would be, as to when the premises in suit became business premises and if so whether it is excepted premises. The contention of the learned counsel for the appellant was that the premises in suit was used mainly as business premises by the plaintiff from the year 1958 to 1983 and thereafter the appellant used it wholly as business premises from 1985. However counsel submitted that both the original Court and the Court of Appeal, having accepted the position that to determine the question whether the premises in suit is business or residential premises the "user test" as highlighted in the case of *Atapattu v Wickramasinghe*<sup>(1)</sup> should be applied, overlooked the fact that the premises had been used wholly for business purposes from 1985. Hence, counsel contended that both Courts failed to take into account the annual value in the assessment extracts for the year 1985, and wrongly applied the annual value for the year 1988, on the basis that the premises in suit was assessed for the first time as business premises only from the year 1988. In these circumstances, learned counsel for the appellant submitted that from the year 1985, the premises in suit had been used as business premises and therefore the annual value for the years 1985, 1986 and 1987 namely Rs.2770/- should have been applied to determine the question whether the premises in suit is excepted premises or not. Thus, if the annual value of the premises for the said period 1985-1987 was applied, the premises in suit would be governed by the Rent Act, since the annual value during this period was below Rs.6,000/- as set out in Regulation 3 of the Schedule to the Rent Act. On the other hand, learned counsel for the substituted-plaintiff-respondent argued that the premises in suit had been assessed from the year 1988 as a "store" at an annual value of Rs.24,000/- and that the assessment in 1988, being the assessment made for the first time as business premises, the premises in question would be excepted premises in terms of the said Regulation 3 of the Schedule to the Rent Act. 60 70 80

According to the interpretation in section 48 of the Rent Act, No.7 of 1972 "business premises" means any premises other than

residential premises as hereinafter defined. "Residential premises" means any premises for the time being occupied wholly or mainly for the purpose of residence. According to Regulation 3, framed under the Rent Act as amended by Act, No.55 of 1980, any business premises situated in any area specified in Column I, shall be excepted premises for the purposes 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. According to Columns I & II of the Schedule to Regulation 3, of the Rent Act, in the Colombo municipal area, if the annual value exceeds Rs.6,000/- premises are business premises. There is no controversy with regard to the fact that the premises in question is situated in the Colombo municipal area. As stated above, the submission of learned counsel for the substituted-plaintiff-respondent was that the premises in suit was assessed as business premises for the first time in 1988, at an annual value of Rs.24,000/- and therefore the premises in suit became excepted premises. Whereas, it was the case of the appellant that since, the premises in suit from the year 1985, was used as business premises and the assessed annual value then was less than Rs.6,000/-, the Rent Act applied as the premises in suit was not excepted premises. In support of this submission, learned counsel for the appellant relied on the decision in the case of *Atapattu v Wickramasinghe* where it was held by Sharvananda, C.J. that one should not go by description of the premises given in the assessment register but should consider the use to which the premises have been put into, in order to decide the question whether the premises are residential or business premises.

To consider these arguments, it would be useful to examine the previous assessments of the premises in question by the Colombo Municipality. The plaintiff (deceased) had placed this material when he gave evidence before the District Court by producing the relevant assessment extracts. According to the assessment extracts the premises were described and assessed for the various periods in the following manner.

Period	Description	Assessed Annual Value	Marked Document	130
1953-1957	House	Rs. 460/-	P19	
1958-1959	House	Rs. 460/-	P20	
1963-1966	House	Rs. 600/-	P27	
1968-1971	House	Rs. 600/-	P21	
1972-1975	Office & House	Rs. 1051/-	P22	
1980-1982	Office & House	Rs. 1380/-	P23	
1983-1987	Office & House	Rs. 2770/-	P24	
1988	Store	Rs. 24000/-	P25	
1988-1989	Store	Rs. 24000/-	P26	
1990	Store	Rs. 24000/-	P27	140
1991	Store	Rs. 14640/-	P27	

According to the assessment extracts it would appear that from the year 1953 to 1971 premises in question had been described as a "house". From the year 1972 to 1987 it is described as an "office and house" and from the year 1988 to 1991 it has been described as a "store". Further it is seen that the assessed annual value has gradually increased from Rs.460/- in the year 1953 to Rs.2770/- in the year 1987. Thereafter there has been a very substantial increase in the assessed annual value from Rs.2770/- in 1987, to Rs.24,000/- in the year 1988.

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It is to be noted that the learned counsel for the appellant sought to argue that the premises in question became "business premises" even during the period when the plaintiff was using it from the year 1958 to 1983. His argument was based on the evidence given by the plaintiff who had on one occasion stated that during this period he used only 1/3 of the premises as his residence and used 2/3 of the premises for his business as an accountant. However, it is to be observed that the evidence on this matter is not very clear and convincing for the reason that the plaintiff had also given evidence saying that he used 2/3 of the premises as his residence and used only 1/3 of the premises for his business. On a careful examination of the evidence available in this case, what is clear is that from the year 1953 till the time of the communal disturbances in the year 1983, the plaintiff, his family members and some of his close relations were residing in the premises in question. This evidence has not been challenged by the appellant. The description of the

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premises in the Assessment Register as an "office and house" from the year 1972 should be considered with the aforesaid evidence. In the case of *Nalini v Gunawardana*,<sup>(2)</sup> where the premises were described as an "Ayurvedic dispensary and house" in the assessment sheet, Samarakoon, C.J. held that such a description is equivocal, in the absence of evidence to show that the premises were mainly occupied for the purpose of residence. In this case however, there is clear evidence that the premises in question was used for the purpose of residence. Hence, there is no difficulty in concluding that the premises in question was occupied wholly or mainly as a residence. In other words the plaintiff and the members of his family used the premises as their residence during this period and the plaintiff carried on his business as an accountant from this residence.

Further, it was submitted by learned counsel for the appellant that the premises in suit was rented out to the appellant in July 1985, for the purpose of carrying on a business of selling empty gunny bags and for packing of soap for sale. The evidence of the plaintiff, his witness Podiappuhamy and the evidence of the appellant supported this position that the premises in suit was used from July 1985 for business purposes. Therefore, learned counsel contended that the annual value for the period 1985, 1986 and 1987 *i.e.* Rs.2770/- should have been considered by the District Court and the Court of Appeal, since the premises were used by the appellant wholly as business premises. However, this submission made on behalf of the appellant, should be examined in the light of the submission made by learned counsel for the substituted-plaintiff-respondent that the premises in question was assessed as business premises namely as a "store" for the first time in 1988, and therefore the annual value for the year 1988, should be considered to decide whether the premises are excepted premises. In this case it is common ground that the premises in suit was rented out to the appellant for the purpose of carrying on a business. Further, consequent to an application made by the appellant to the Registrar of Companies Western Province to register his business, a Certificate of Registration was issued in the name of Javed Enterprise. (vide P43 & V10). According to the Certificate of Registration the appellant and his wife were the partners in the said business. Then on 21.08.1987, the appellant had made an application to the Colombo Municipal Council seeking a licence in the name of Javed

Enterprise for the year 1987, to store empty gunny bags. (vide P40). Further on 04.11.1987 the Colombo Municipal Council had issued a licence for the year 1987, in the name of Javed Enterprise for storing old metal. (vide P39). All this material therefore, goes to show that the appellant was carrying on a business of storing and sale of empty gunny bags, old metal and soap. The oral and other documentary evidence coming from the plaintiff, his witness Podiappuhamy and the appellant further support this position. Hence, there is no controversy about this matter. But, the question is, when did the Colombo Municipal Council come to assess the premises in suit as business premises for the first time ? 210

It is of interest to note that in the assessment register, the premises in suit has been described as a "store" for the first time in the year 1988. Until then, it had been described as a "house" till 1971, and "office and house" till 1987. Further, the assessed annual value which was Rs.2,770/- in the year 1987, had been increased to Rs.24,000/- in the year 1988. What is the value one could attach to the material stated in the assessment register? It has been held in the case of *Aloysius v Pillaipody* <sup>(3)</sup> that the description of property entered in the assessment register affords *prima facie* evidence as to whether the property has been assessed as residential premises or business premises. A similar view was expressed in the case of *Jinasena v The Commercial Investment and Finance Co.Ltd.*<sup>(4)</sup> As referred to above, there is no doubt that the premises in question had been rented out to the appellant to be used as business premises since July 1985. However, the substituted plaintiff-respondent relied on the change in the entry made in the assessment extract for the year 1988. That is, the premises which was earlier described as an "office and house" for the first time was described as a "store" and the annual value had been increased from Rs.2,770/- to Rs.24,000/-. This material is recorded in the assessment register which is maintained in terms of section 235 of the Municipal Councils Ordinance. The section relates to the valuation of property. When an assessment is made of the annual value of any premises, that assessment has necessarily to be based on the character of the premises namely residential or business premises. Therefore, the description of the property whether as residential or business premises in the assessment register would be closely linked or connected with the assessment of annual value. In the present case, the change in the 220 230 240

description of the premises from "office and house" in 1987, to a "store" in 1988, and the variation of the annual value respectively from Rs.2,770/- to Rs.24,000/- is very significant and has to be given some meaning. Further according to the definition of "annual value" in section 48 of the Rent Act, it means the annual value of such premises assessed as residential or business premises, as the case may be, for the purpose of any rates levied by any local authority under any written law. The written law in this case would be the Municipal Councils Ordinance, which makes provision for an owner or occupier of any house or building to furnish returns to enable the Municipal Council to assess the annual value. (*vide* section 234). It is on this information that the Municipal Council is made aware of the character of the premises to assess the annual value. If the correct information is not furnished or a change in the character of the premises from residential premises to business premises is not brought to the notice of the Municipal Council, the Council would not be in a position to assess the annual value of such premises correctly. In these circumstances the annual value entered in the Assessment Register has a close link or connection to the description of the property. Therefore, the description of the property entered in the Assessment Register cannot be totally disregarded, since the Rent Act has to be construed having regard to the assessment of annual value made by the Municipal Council.

In the present case, the change in the description of the property to a "store" in the year 1988, with a very substantial increase in the annual value from Rs.2,770/- to Rs.24,000/- appears very significant. It would mean that the premises in suit was assessed by the Colombo Municipal Council for the first time in 1988, as business premises. User of the premises in suit by the appellant for business purposes and the request he made to the Colombo Municipality on 21.08.1987 for a licence in the name of Javed Enterprise for storing of empty gunny bags and old metal etc. as the occupier of the premises, may have been the information on which the change in the assessment took place for the first time in 1988. In these circumstances, learned District Judge and the Court of Appeal rightly held that the premises in suit is excepted premises and the Rent Act does not apply. Therefore, I see no reason to interfere with their finding. Hence the questions of law raised in this appeal are answered as follows. Question No. (i) is answered in the affirmative. Questions Nos. (ii), (iii) and (iv) are answered in the

negative since the premises were not assessed as business premises. Question No. (v) should be answered on the basis that the use and the annual value of the premises when it came to be first assessed as business premises should be applied. Accordingly 290 the appeal is dismissed with costs fixed at Rs.5,000/-.

**DE SILVA, J.** - I agree.

**JAYASINGHE, J.** - I agree.

*Appeal dismissed.*