1969 *Present :* H. N. G. Fernando, C.J., and Weeramantry, J.

R. A. W. RANASINGHE, Appellant, *and* K. D. L. JAYATILLAKE, Respondent

S. C. 513/66 (F)—D. C. Kalutara, 1083/M.R.

Rent-controlled premises—Authorised rent—Determination by Rent Control Board—Claim based on it for refund of rent overpaid during a past period—Validity—Rent Restriction Act, as amended by Act No. 10 of 1961, ss. 4, 5, 16, 16A, 20 (5), 20 (13).

Section 16A of the Rent Restriction Act, as amended by Act No. 10 of 1961, provides not for a fixation of the authorised rent but for a determination of the amount of the authorised rent. The purpose of section 16A is not that the Rent Control Board alters the authorised rent from one amount to another but that it determines what is the authorised rent in terms of the relevant provisions of the Act.

A refund of rent overpaid during a past period may be claimed by a tenant on the basis of the authorised rent as determined by the Rent Control Board in terms of section 16A. The Board's determination is evidence of the amount of the authorised rent for a past period.

When the Rent Control Board has made determination of authorised rent under section 16A, the parties must be given authentic notice of the contents of the order affecting them.

APPEAL from a judgment of the District Court, Kalutara.

Nimal Senanayake, with *Neil Dias*, for the plaintiff-appellant.

J. W. Subasinghe, for the defendant-respondent.

Cur. adv. vult.

June 20, 1969. H. N. G. FERNANDO, C.J.—

The plaintiff instituted this action for the recovery of a sum of money alleged by him to have been overpaid to his landlord the defendant as rent for the period 1st January 1962 to 30th September 1964. The premises are situated within the limits of the Town Council of Matugama and the plaintiff proved that he has during this period paid a sum of Rs. 100 per month as rent together with Rs. 158·73 cents as assessment rates on the premises.

In October 1964 the plaintiff made an application to the Rent Control Board of Matugama requesting the Board to fix the rent of the premises "in terms of section 4 of the Rent Restriction Act". Notice of this application was given to the landlord and an inquiry was held on 5th November 1964, at which however the landlord was not present. The Board apparently realised that the plaintiff's application was intended to be one for the order under s. 16A of the Rent Restriction Act as amended by Act No. 10 of 1961, which provides as follows :—

> "16A. The board may, upon an application made in that behalf by the landlord or the tenant of the premises, by order determine the amount of the authorised rent of the premises."

It will be seen (as I had occasion to remark in the case of *William v. Somasundaram*[1]) that s. 16A provides not for a fixation of the authorised rent but for a determination of the amount of the authorised rent. Section 16 of the principal Act originally provided that the landlord must supply the tenant on request with a statement of the standard rent, and the amount of any claimed permitted increase. It is clear that the Legislature considered this provision to be insufficient in the tenant's interest because of possible inaccuracy in a statement so supplied by the landlord. The deficiency was supplied by the new section 16A, under which a tenant can have the amount of the authorised rent more certainly calculated and

[1] *(1968) 71 N. L. R. 459.*

determined by the Rent Control Board. The tenant will thus be in a position to assure himself that he does make correct payments of rent to his landlord.

The Rent Control Board in this case determined that the rent of the premises in question is Rs. 58/82 per month. The learned District Judge had two reasons for not accepting the Board's determination and I shall now consider these.

The defendant marked in evidence as D1 the Board's office copy of the notice which was sent to the defendant by the Board after the inquiry held on 5th November 1964. In this copy, which is signed by the Secretary of the Board, the defendant was quite clearly informed of the Board's order that the monthly rent payable to the landlord of the premises is Rs. 58/82. From the terms of D1 the learned District Judge has inferred that the notice which the Board sent to the defendant was identical with D1, and has further held on this footing that a notice in the form of D1 is not due compliance with the Board's duty to send to the defendant a copy of its order.

Sub-section (13) of s. 20 requires that every order made by the Board shall be reduced to writing and signed by the Chairman, and further that a copy of the order shall be transmitted to each party. A very strict construction of this sub-section might justify the opinion that the copy of an order sent to a party must be a duplicate, and must itself bear the signature of the Chairman, and I must concede that this case has revealed the need for Rent Control Boards to be advised as to the form and manner in which the requirements of the Act must be observed. Nevertheless I am satisfied that a notice in the form D1 adequately satisfies the object of sub-section (13), which is only that the parties must have authentic notice of the contents of an order affecting them. I hold therefore that the defendant did receive in the communication D1 what was substantially a copy of the Board's order.

As stated above, the order of the Board was made on 5th November 1964, but the claim of the plaintiff in this action was that he had overpaid rent each month from 1962 until September 1964, in an amount representing the difference between Rs. 100 and the sum of Rs. 58/82 determined by the Board. The learned Judge has however declined to accept the Board's determination of Rs. 58/82 as being the authorised rent during a period which was prior to the date of the order. The Judge here purported to apply a judgment in the case of *Ranasinghe v. Fernando*[1]. This case related to premises to which paragraph (c) of section 5 (2) of the Act applies. According to the judgment in that case, it was not one in which the authorised rent of the premises had been fixed by reference to the assessment in November 1941, and thus it was one to which paragraph (c) of sub-section (2) of section 5 applied. Under that paragraph, the standard rent is declared to be the agreed rent or else an amount fixed by the Board on application to it. In that case therefore, until

[1] *(1951) 53 N. L. R. 163.*

there was a fixation by the Board, paragraph (c) made the agreed amount the standard rent, and the amount fixed by the Board became the standard rent only after the Board actually fixed it. In other words, the Board under that paragraph alters what was previously the amount of the standard rent. On these grounds Gratiaen J. held that the rent fixed by the Board did not apply to the premises prior to the date of the fixation.

The case is clearly distinguishable from one to which s. 16A of the Act applies. The purpose of s. 16A is not that the Board alters the authorised rent from one amount to another, but that it determines what is the authorised rent in terms of the relevant provisions of the Act. In the present case, the premises were during the relevant period assessed for rates by the Town Council, and accordingly the annual value of the premises as so assessed was the criterion by reference to which (in terms of s. 5 (1) (*a*) etc.) the authorised rent is to be ascertained. There is no allegation that the Board in determining Rs. 58/82 to be the authorised rent, erred in any manner in reaching its determination, and in any event the plaintiff was entitled to rely on the presumption of regularity. It must be assumed therefore that the Board's determination was reached upon due consideration of s. 5 (1) (*a*) of the Act and other provisions relevant to the ascertainment of the authorised rent.

It thus appears that the objection that the Board's determination of November 1964 is not evidence of the amount of the authorised rent for a past period, is at best purely technical. The provisions of the Act relating to the standard rent of assessed premises and to permitted increase of the standard rent are such that there is little possibility that the authorised rent of any premises at any time can be higher than the amount which was the authorised rent at any earlier period *. On the contrary, the only apparent possibility is one quite unfavourable to a landlord, namely that the authorised rent of premises say in 1962 or 1963 may be *lower* than the amount which a Rent Control Board may determine under s. 16A in 1964.

The amendment of the principal Act by Act No. 10 of 1961 contains no provision which expressly indicates the purpose of a determination under s. 16A by a Rent Control Board. But I note that such a determination is made in an order of the Board (section 20 (3)), that parties must be given an opportunity to be heard, that notice of the Board's order must be given to the parties, and that the order is subject to appeal to a Board of Review. In these circumstances it is fair to assume that the Legislature intended that determination under s. 16A should at least be prima facie evidence of the authorised rent of premises. If the correctness of the amount determined by the Board is not contested, and if no evidence is offered to show that the true authorised rent is different from the amount as determined by the Board, a Court must

* Fernando, C.J., has pointed out that this sentence of his judgment erroneously states the opposite of what he intended; the next sentence indicates the actual intention.—Ed.

accept and act upon the determination. The establishment of two statutory tribunals, the decisions of the second of which are declared to be final and conclusive, must surely eliminate the need for a Court to make a fresh determination of the authorised rent of premises in a case where no evidence is offered to challenge the correctness of the Board's determination.

I hold for these reasons that the plaintiff established that the authorised rent for the relevant period was Rs. 58/82 per month and accordingly that overpayments were made as claimed in the plaint.

The appeal is allowed and judgment will be entered for the plaintiff in a sum of Rs. 1517/67 and for costs in both Courts.

WEERAMANTRY, J.—I agree.

Appeal allowed.