

1976 Present: Pathirana, J., Vythialingam, J., and
Colin-Thome, J.

S. M. M. ZAROOK, Petitioner
and

V. SACHITANANDAM and four others, Respondents.

S. C. Application No. 1138/74

Rent Act No. 7 of 1972, section 4(1)—Application to Rent Board to fix authorized rent—Assessment in force during November 1941, in respect of the premises as residential premises—Premises thereafter assessed in 1968 as business premises—Which is the first assessment for purpose of fixing the authorized rent—Decision of Board of Review—Error of Law—Writ of Certiorari.

Where certain premises the annual value of which had been assessed on the basis that they were residential premises during the month of November, 1941 had thereafter been assessed for the first time as business premises in the year 1968, the question arose as to which assessment was to be taken as the "first assessment" referred to in section 4(1) (a) of Rent Act, No. 7 of 1972, for the purpose of determining the authorized rent.

Held: That the assessment of the premises in question as business premises was made for the first time after November 1941. The annual value of the premises in order to fix the authorized rent should therefore be the amount of such annual value as specified in the first assessment of the premises as business premises which was in 1968.

APPPLICATION for a Writ of Certiorari.

Nimal Senanayake, for the petitioner.

A. Sivagurunathan, for the 5th respondent.

Cur. adv. vult.

June 17, 1976. PATHIRANA, J.

This is an application by the petitioner, the landlord, to quash the determination of the Board of Review fixing the authorized rent of the premises in question as residential premises in an appeal to it from the decision of the Rent Board which fixed the authorized rent of the premises as business premises on the basis of the annual value in 1968.

The question for decision in this case is whether the annual value for the purpose of calculating the standard rent under section 4(1) of the Rent Act, No. 7 of 1972, in respect of the

premises in question, which are business premises, should be the annual value of the premises as specified in the assessment in force during the month of January, 1968 or the annual value of such premises as specified in the assessment in force during the month of November 1941. It is common ground that the annual value of the premises does not exceed the relevant amount as defined in section 48 of the Act.

The petitioner is the landlord of the premises No. 109, Ambe-gamuwa Road, Nawalapitiya of which the 5th respondent is the tenant. The premises are described as a "tiled Dispensary and compound". The 5th respondent who is an indigenous medical practitioner resides and runs a dispensary called the "Modern Dispensary" in the said premises. The 1st respondent is the Chairman of the Board of Review, and the 2nd to 4th respondents are Members of the said Board.

The 5th respondent, the tenant, made an application to the Rent Board, Nawalapitiya, seeking *inter alia* a determination of the authorized rent of the premises in question. The Rent Board by its order dated 11.9.73, in dealing with the question whether the premises were to be treated as residential premises or business premises came to the conclusion on the Assessment Tax Receipt and other evidence that the premises in question were business premises since 1968, although the premises had originally been assessed as residential premises. The Rent Board held that the premises were first assessed as business premises in 1968 and therefore adopted the 1968 annual value of the premises and determined the authorized rent at Rs. 61 per month.

The 5th respondent, the tenant, appealed to the Board of Review of which the 1st respondent was the Chairman and the 2-4 respondents members thereof. Before the Board of Review both parties admitted that the premises were business premises. The 5th respondent took up the position that the 1968 assessment of the premises as business premises by the Rent Board was incorrect and that the assessment should be based on the 1941 annual value of the premises for the purpose of determining the authorized rent of the premises. The argument put forward on behalf of the landlord, the petitioner, was that the assessment of the premises in 1941 was done when it was residential premises and in view of the fact that the assessment of the annual value of the premises as business premises was made for the first time after November 1941 the amount of the annual value must be calculated in relation to the first assessment in 1968 of the said premises as business premises.

The 5th respondent countered this argument by submitting that even if the premises were business premises the annual

value must be determined in relation to the 1941 assessment as the reference to "first assessment" in section 4(1) (a) in the words—

"The amount of such annual value as specified in such first assessment,"

was the year 1941. The Act was only concerned with the first assessment and the change of character of the premises after that date was immaterial. By its order dated 21.10.74, the Board of Review despite the admission of the parties and the finding of the Rent Board that the premises were business premises reversed the finding of the Rent Board and held that the premises were residential premises as it was mainly occupied for residential purposes although the name-board "Modern Dispensary" was exhibited outside the premises. The mere entry of the word "Dispensary" in the Assessment Register, according to the Board of Review, did not make it business premises. The Board of Review therefore did not think it necessary to go into the question whether the standard rent was altered by reason of the fact that the premises were converted from residential premises to business premises. As the annual value did not exceed the relevant amount the Board of Review determined the rent in relation to the amount of the annual value of the premises as specified in the assessment in force in 1941 and fixed the authorized rent at Rs. 26 per month.

There is a definite finding by the Rent Board that the premises in question are business premises. Further, the parties had before the Board of Review admitted that the premises were business premises.

I do not think that in this case the reversal by the Board of Review of the finding that the premises in question were not business premises but were residential premises, could either be upheld or justified. The decision of the Board of Review fixing the authorized rent at Rs. 26 as residential premises on the basis of the annual value in 1941 cannot be upheld. On the basis that the premises are business premises on what basis should the annual value be determined to fix the authorized rent ?

Section 4(1) of the Rent Act which applies to this case reads as follows :

"Section 4(1) :

The standard rent per annum ofany business premises the annual value of which does not exceed the relevant amount, means :—

(a) the amount of the annual value of such premises as specified in the assessment in force during the month of

November, 1941, or if the assessment of the annual values of such premises is made for the first time after that month, the amount of such annual value as specified in such first assessment. . . . ”

The term “ annual value ” is defined in section 48 as follows :

“ In this Act, unless the context otherwise requires—

“ 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.* ”

In my view, the assessment of the annual value of the premises in question as business premises was made for the first time after November, 1941. Therefore, the assessment of the annual value of the premises is the amount of such annual value as specified in the first assessment of the premises as business premises which was in 1968. Further, the annual value, according to section 48 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. The Rent Board has accepted this mode of assessment by taking the annual value of the business premises in 1968 and fixed the authorized rent for the premises at Rs. 61 per month.

I am, therefore, of the view that the Board of Review has committed an error in law in setting aside the order of the Rent Board and determining the authorized rent of the premises in question on the basis of the annual value of the premises as residential premises as specified in the assessment in force in the month of November, 1941. The order of the 1st to 4th respondents who constituted the Board of Review is therefore quashed.

The petitioner will be entitled to costs fixed at Rs. 52.50 against the 5th respondent.

VYTHIALINGAM, J.—I agree.

COLIN THOME, J.—I agree.

Application allowed.