

ALOYSIUS
v.
PILLAIPODY

SUPREME COURT
WIMALARATNE, J., RATWATTE, J., AND COLIN-THOME, J.
S.C. 4/82;
C.A. 72/77;
M.C. (CIVIL) JAFFNA 167/L
NOVEMBER 16, 1982

Landlord and tenant - Rent Act, No. 7 of 1972, sections 4, 22(2) (ii) (b) and 22(7) - Calculation of standard rent.

The plaintiff was the landlord of premises No. 49, Grand Bazaar Road, Jaffna having acquired it in 1948. The defendant was the tenant of the said premises having come into occupation of the premises long before 1948.

The plaintiff sued the defendant for ejection from the premises on the ground of reasonable requirement. In order to succeed under 22(2) (ii)(b) and 22(7) of the Rent Act he had to prove that the standard rent of the premises exceeded Rs. 100/- p.m.

No. 49, Grand Bazaar Road, Jaffna was described as a tiled house in 1941 and as a tiled boutique in 1956 in the Assessment Register. The question that arose was whether the annual value of the tiled house in 1941 or whether the annual value of the tiled boutique in 1956 was relevant to determine the standard rent.

The District Court and the Court of Appeal held that the standard rent exceeded Rs. 100/- on the basis of the annual value of 1956. The defendant appealed to the Supreme Court on the question of the calculation of standard rent:

Held -

The mere registration by the tenant of a business under the Business Names Registration Ordinance in 1954 will not have the effect of converting residential premises into business premises.

The description of the property as entered in the Assessment Register affords prima facie evidence as to whether the property has been assessed as residential premises or business premises. It is not necessary to call an officer from the Municipal Council to prove the fact. The standard rent of the premises should be calculated on the 1956 annual value as that was the first time that the premises were assessed as a business premises.

APPEAL from judgment of the Court of Appeal reported at (1982) 1 Sri L.R. p. 106.

H.L. de Silva, S.A. with *S.C. Crosette Tambiah* and *K. Thevarajah* for defendant-appellant.

K.N. Choksy, S.A., with *S. Mahathevan, Harsha Soza, Miss. I.R. Rajapakse, N. Fernando* and *R. Selvaskandan* for plaintiff-respondent.

Cur. adv. vult.

December 2, 1982

WIMALARATNE, J.

This is an action instituted by the landlord, who is the plaintiff-respondent, for the ejectment of the tenant, who is the defendant-appellant, from premises No. 49, Grand Bazaar Road, Jaffna, on the ground that the premises are reasonably required by the plaintiff for the purposes of his business. Admittedly the premises were, on the date of action, business premises to which the Rent Act, No. 7 of 1972 applied, and the annual value of which was less than the "relevant amount" (Rs. 1500/-). Admittedly also, the plaintiff had acquired ownership of the premises on a date (September 1973) subsequent to the date on which the defendant came into occupation (in 1948). The combined effect of sections 22(2) (ii)(b) and 22(7) of the Rent Act, is that the landlord could succeed in an action for the ejectment of a tenant from business premises on the ground of reasonable requirement only if he establishes that the standard rent for a month (determined under section 4 of the Act) exceeds Rs. 100/-, besides proving reasonable requirement.

The trial Judge as well as the Court of Appeal have held with the plaintiff on both matters, and the Court of Appeal has *ex mero motu* granted leave to appeal to this Court on the question of the calculation of the standard rent.

For the determination of the standard rent of business premises the formula laid down in section 4(1) is as follows:-

“4(1) The standard rent per annum.... of any 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 value of such premises is made for the first time after that month, the amount of such annual value as specified in such assessment, or

(b) if the rates levied in respect of such premises are, under the terms of the tenancy, payable by the landlord, the aggregate of the amount determined under paragraph (a) and of the amount payable per annum by way of rates in respect of such premises for the year 1941 or, as the case may be, for the year in which such first assessment is made”.

The burden was on the plaintiff to establish that the standard rent exceeded Rs. 100/- per month. In order to discharge that burden the plaintiff relied upon two documents - P1 & P13. P1 is a decision of the Rent Control Board of Jaffna made on 28.8.75 fixing the authorised rent at Rs. 126.69 p.m. On the basis that the standard rent was Rs. 1319.64 p.a. This fixation was as a result of an application to the Board by the tenant, apparently under section 34 of the Act. An appeal by the tenant to the Board of Review, had not been concluded when the trial reached a finality in the Magistrate's Court. Therefore the fixation by the Rent Board of the authorised rent (and hence of the standard rent) was not final and conclusive. Besides, as the fixation had not been made under section 4(5) of the Act, the amount determined cannot be deemed to be the standard rent for the purposes of the Act. So the standard rent has to be determined under section 4(1).

P13 is a copy of the Assessment Register produced at the trial without objection. This is a Register required to be maintained under

section 235 of the Municipal Councils Ordinance (Cap. 252). The plaintiff relied upon the change in the entries made in 1956. In 1941 these premises bore assesment number 32 and were assessed for the purposes of rates at an annual value of Rs. 720/-. The premises were described as "tiled house". In 1956 a new assessment number 49 was given; the annual value was increased from Rs. 960/- to Rs. 1173/- and the premises were for the first time described as "tiled botique". The Court of Appeal has accepted the contention on behalf of the plaintiff that the premises were for the first time assessed as business premises in 1956 and that the base annual value for the purpose of calculating the standard rent in terms of section 4(1) is the 1956 annual value, and not the annual value for any previous year, even though the premises may have been used for purposes of business.

Mr. de Silva for the appellant has argued before us that -

- (a) the definition of "premises" in the Rent Act as meaning "a building or part of a building together with the land appertaining thereto" has no relation to any purpose for which the premises is used; therefore the expression "of such premises" in section 4(1) means "of the building in question", and as the building in question was assessed in 1941 for the purposes of rates, it is the 1941 annual value which should be taken as the base value;
- (b) the entries in the Assessment Register, other than those in relation to annual value and rates are, in the absence of provision in any written law, not conclusive proof, nor even *prima facie* evidence of what they represent;
- (c) the fact that the premises are situated in the grand bazaar of Jaffna and were occupied by "Adam Bhai Stores" in 1941 rebuts any inference that the premises were assessed as residential premises that year.

Mr. Choksy for the respondent has contended that -

- (1) 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, that is whether it is residential or business premises. The description of the property as residential or business premises in the Assessment Register is therefore intimately linked with the assessment of the annual value;
- (2) if a description of the property assessed is not entered in the Assessment Register, then it would not be possible to work the Rent Act. The provisions in the Rent Act such as those relating

to standard rent, relevant amount and excepted premises cannot be construed apart from the written laws under which the annual value as assessed for the purpose of levying rates;

- (3) the description "tiled house" is not equivocal. It could have only one meaning, namely, a residential house, as contrasted with business premises;
- (4) the change in the description of the premises in the Assessment Register from "tiled house" in 1941 to "tiled botique" in 1956 is significant, and has to be given a meaning.

Section 48 of the Rent Act defines "annual value" 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 purpose of any rates levied by any local authorities under any written law, and as specified in the assessment under such written law...." (The emphasis is mine).

The written laws under which local authorities are authorised to assess the annual value of premises for the purpose of any rates levied by such local authorities are the Municipal Councils Ordinance (Cap. 252) the Urban Councils Ordinance (Cap. 255) and the Town Councils Ordinance (Cap. 256). The provisions relating to assessment of annual value of property in the Municipal Councils Ordinance apply to Urban Councils and Town Councils as well. Now "annual value" is defined in section 327 of the Municipal Councils Ordinance as meaning "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for any house, building, land or tenement..." It is common knowledge that the rent of business premises are generally higher than those of residential premises. Section 234 of the Municipal Councils Ordinance empowers the Council to require the owner and occupier of each house, building, land and tenement to furnish returns of the rent and annual value thereof, and empowers also an authorised officer to enter, inspect and survey such premises for a like purpose. The entries in the Assessment Register required to be maintained under section 235 are made only upon receipt of information obtained under section 234. On such information the Council is able to assess the premises as business or residential premises, and prior to assessment of the annual value the character of the premises is known to the Municipal Council. When the assessment register is compiled the description of the premises as well as its annual value, assessed for the purpose of rates are entered. Therefore the annual value entered in the

register is necessarily linked with the description of the property. The description of the property as entered in the register thus affords *prima facie* evidence as to whether the property has been assessed as residential premises or as business premises. It is not necessary, as contended by Mr. de Silva, to call as a witness an officer from the Municipal Council to prove that fact.

As section 48 of the Rent Act defines annual value as the value of the premises assessed as residential or business premises for the purpose of the rates levied by the local authority, and as such rates are levied and assessment made under the authority of the Municipal Councils Ordinance, the Urban Councils Ordinance and the Town Councils Ordinance, the Rent Act cannot be construed without reference to these laws. As the standard rent under the Rent Act is based upon the annual value, and as the annual value is determined under the written laws relating to local authorities, the standard rent cannot be determined without reference to those laws. Therefore not only the annual value and the rates, but also the description of the property as entered in the assessment register afford proof of the matters represented therein. The entries also afford material for determining the 'relevant amount' and also whether premises are or are not "excepted premises".

The next question is whether the description of the property in 1941 as "tiled house" is evidence that the premises were assessed as residential premises that year. Mr. de Silva contends that the term tiled house is equivocal because it could mean either a 'tiled residential house or a tiled business house. Mr. Choksy invites us to give a meaning to the change in description to 'tiled botique' in 1956, along with the increase in the annual value. The change, in my view, is significant. It means that the premises were first assessed by the Municipal Council as business premises in 1956. Prior to that the premises has been assessed as residential premises.

The inference to be drawn, if at all, from the description of the premises as "tiled house" in 1941, has been rebutted according to Mr. de Silva, by the fact that the premises are situated in the grand bazaar of Jaffna and that the name of occupier appears in the Register as "Adam Bhai Stores". It seems to me that these two factors by themselves do not rebut the inference, in the absence of evidence that there were no residential houses in Grand Bazaar Road, and that the premises were not used wholly or mainly for purposes of residence.

Then there is evidence (D1) that the defendant registered his business as a dealer in textiles and toilet requisites in 1954. Mr. de Silva invites us to treat the year 1954 as the year in which the premises were first assessed as business premises, in which event the standard rent would still be less than Rs. 100/- p.m. The mere registration by a tenant of a business under the Business Names Registration Ordinance (Cap. 149) will not have the effect of converting residential premises into business premises. If the tenant desired to have the premises described in the Assessment Register as business premises and assessed as business premises in 1954, then there was ample provision in sections 235 to 239 of the Municipal Councils Ordinance for him to have taken the necessary steps. He had not done so.

The landlord has therefore discharged the burden of establishing that the premises in question were assessed as business premises for the first time in 1956, and that the standard rent on the date of institution of action exceeded Rs. 100/- per month. This appeal is accordingly dismissed with costs.

RATWATTE, J. - I agree.

COLIN-THOMÉ, J. - I agree.