1957 *Present:* H. N. G. Fernando, J.

FREWIN & CO., LTD., Petitioner, *and* THE COLOMBO MUNICIPAL COUNCIL *et al.*, Respondents

S. C. 253—In the matter of an Application for the issue of a Mandate in the nature of a Writ of Mandamus

Municipal Councils Ordinance, No. 29 of 1947—Consolidation of separate buildings—Assessment in respect of rates leviable—Should notice thereof be given to the tenants of the separate buildings?—Sections 233 (1), 233, 235 (sub-sections 1, 2, 3, 4, 8), 242, 243, 252, 291, 325—Rent Restriction Act, No. 29 of 1948, as amended by Act No. 6 of 1953, s. 2 (4).

Where separate buildings are consolidated and assessed as a whole for the levy of rates, in terms of section 233 of the Municipal Councils Ordinance, the Municipal Council is not bound to serve on a tenant of a part of the premises assessed a notice of the new assessment either of the entire premises or of that portion which had previously been the subject of a separate assessment and of which the tenant is in occupation. The fact that, in consequence of the new assessment, the consolidated premises have become "excepted premises" within the contemplation of section 2 (4) of the Rent Restriction Act of 1948, as amended by Act No. 6 of 1953, is not material.

It would be sufficient if the notice of assessment in respect of the consolidated premises is served on or left at those premises in compliance with section 291 of the Municipal Councils Ordinance. Sub-section 3 of section 235 must be read in conjunction with the general provision for notice contained in section 291.

APPLICATION for a writ of *mandamus*.

D. S. Jayawickreme, Q.C., with *G. P. Samerawickreme*, for the petitioner.

H. V. Perera, Q.C., with *N. Nadarasa*, for the 1st respondent.

Felix Dias, for the 2nd respondent.

Cur. adv. vult.

July 18, 1957. H. N. G. FERNANDO, J.—

This is an application by the petitioner for a writ of Mandamus directing the Municipal Council of Colombo to serve on the petitioner a notice of assessment in respect of certain premises in Colombo and/or to inquire into objections to the said assessment.

The premises in question bears No. 40 G/3-7, Baillio Street, Colombo, and form part of a larger building numbered in separate portions as 40 G/1 to 40 G/7 and 40 G/10. On 29th December 1955 a notice of assessment of the entire building under the number 40 G/1-7 and 40 G/10 was served on one Gamini de Silva who was an employee of the tenant of premises bearing the number 40 G/2, but it is common ground that the notice of assessment was not served on the petitioner.

The rent which the petitioner had been paying to the landlord for the premises which are the subject matter of this application was Rs. 314.58, but on 29th February 1956, the landlord increased the rent to Rs. 1,950 per month. The petitioner states that he was informed that this increase in rent was made on the ground of the increase in the assessment of the annual value of the premises, meaning, I presume, that since the assessment of the main building had been fixed for the year 1956 at Rs. 9,525 the entire premises had become " excepted premises " within the contemplation of section 2 (4) of the Rent Restriction Act of 1948 as amended by Act No. 6 of 1953. The petitioner no doubt believes that if he had an opportunity of objecting to the assessment the premises may have remained subject to rent control, and his substantial complaint is that the denial to him of the opportunity to object to the notice of assessment has had the consequence that the landlord has been able to increase the rent inordinately.

The question I have to decide is one of law, namely whether it was the duty of the Municipal Council to serve on the petitioner, who is a tenant of a part of the premises assessed, a notice of the new assessment, either of the entire premises, or of that portion of which the petitioner is in occupation as tenant.

The relevant provisions of the Municipal Councils Ordinance which require consideration are the following :—

" Section 233 (1). The Council may, from time to time, as often as it may think necessary for the purpose of assessment, divide any house, buildings, lands, or tenement, and consolidate any separate houses, buildings, lands or tenements whatsoever within the municipality and assess, in respect of any rate or rates leviable under this Ordinance, each such divided portion separately, and each such consolidated premises as a whole :

Provided that in the case of any such consolidation the consolidated premises shall be assessed at the aggregate annual value of the several houses, buildings, lands, or tenements of which such premises are composed.

Section 233 (3). Nothing in this section shall be deemed to affect the requirements of section 235 regarding the service of notice of assessment.

Section 235 (1). The Council shall cause to be kept a book, to be called the " Assessment Book " in which the annual value of each house, building, land or tenement within the municipality shall be entered every year, and shall cause to be given public notice thereof and the place where the assessment book may be inspected.

(2) Every owner or occupier of any house, building, land, or tenement, or his authorised agent, shall be permitted free of charge, to inspect any portion of the said assessment book which relates to his premises.

(3) The Council shall cause a notice of assessment in English, Sinhalese, and Tamil to be served on or left at the premises of every occupier, whether he be proprietor, joint proprietor, or tenant of the house, building, land, or tenement assessed. The said notice shall be substantially in the Form set out in the Third Schedule, and there shall be appended thereto a demand of payment of the rate or rates leviable within such time and in such proportions as the Council may deem reasonable.

(4) Such notice shall further intimate that written objections to the assessment will be received at the Municipal Office within one month from the date of service of the notice.

(8) Every assessment against which no objection is taken shall be final for the year.

It is clear from the affidavit of the Assistant Municipal Assessor that prior to 1937 the main building had been assessed in separate portions and that in 1937 the Council in pursuance of section 116 of Chapter 193, which corresponded to the present section 233, consolidated all the portions and thereafter assessed the consolidated premises as a whole. One contention put forward on behalf of the petitioner is that despite this consolidation the Council was bound to make separate assessments in

respect of each portion which had previously been the subject of a separate assessment, and to serve notice of assessment separately in respect of each such portion. If this contention be correct, then clearly the Council was bound to assess separately each of the portions of the main building now occupied by the petitioner which had previously been assessed separately.

Section 233 (1) does not in my opinion directly affect the question which I have to decide. It does not deal with the assessment of annual value of particular premises but rather provides for the making and assessment of a rate which is to be leviable on an amount representing the annual value of all premises, the amount of such annual value being determined under other provisions of the Ordinance. The term "annual value" is defined in section 325 in terms which briefly expressed mean the annual rent which a tenant might reasonably be expected to pay in certain hypothetical circumstances. The Council from time to time having regard to that definition determines the "annual value" of each house, building, land or tenement and has a duty to enter the amount in the "assessment book" and to serve a notice of assessment in accordance with the provisions of sub-section (3) of section 235. I shall consider later the application of those provisions to the present case.

The first contention for the petitioner involves the interpretation of the provisions which originally formed part of section 116 of Cap. 193 and are now incorporated in section 233 of the current Ordinance. Those provisions empower the Council, *for the purpose of assessment to "consolidate any separate* houses, buildings, lands or tenements, " and to "assess . . . . each such consolidated premises as a whole". Thus far the intention of the Legislature seems to have been that the Council may, presumably for its own convenience in assessing property for rates, make one assessment of consolidated premises in lieu of making several separate assessments for each of the buildings which constitute the consolidated premises. But Counsel for the petitioner argues that the proviso to sub-section (1) of section 233 (or of the former section 116) requires that despite consolidation separate assessments must continue to be made in respect of the houses or buildings constituting the consolidated premises. The argument is that the proviso, in requiring that "the consolidated premises shall be assessed at the aggregate annual values of the several houses or buildings of which the premises are composed", requires an assessment to be made of the annual value of each of the several houses or buildings and that the consolidated premises will then be assessed at the aggregate of the annual values of all the several houses or buildings. Thus far I am in agreement with Counsel's argument and I would accept the view that consolidated premises are not to be assessed at the amount which a hypothetical tenant would pay as rent for the whole premises but should instead be assessed at the aggregate of the amounts which each of several hypothetical tenants would pay as rent for each of the several houses or buildings.

But it is further argued that when the Council makes separate assessments of the annual value of each of the several houses or buildings, the

procedure set out in section 235 of recording the assessment in the assessment book as being the annual value of the separate house or building and of giving notice concerning that particular assessment must be followed.

I would observe in the first place that if this were the intention, nothing is achieved through the exercise by the Council of the powers conferred by section 233 (former section 116), for, despite consolidation, the Council would have to continue to take the identical steps which it took before in respect of each of the several houses or buildings, the only change being apparently that there would in addition be a need to total up the separate annual values of the separate houses and buildings and record that total as being the assessment of the consolidated premises. I naturally hesitate to accept a view which renders the exercise of a statutory power quite nugatory and would naturally prefer an interpretation which renders the power effective if, of course, such an interpretation can reasonably attach. The proviso undoubtedly requires the Council to assess the annual value of each of the several houses or buildings of which consolidated premises are composed, but that requirement, in my view, is imposed only in order to provide a means whereby the Council must assess the consolidated premises. In other words, the direction given by the proviso to an assessing officer is that when consolidated premises are to be assessed the amount of the assessment shall be calculated by taking account of the annual value of each of the several houses or buildings; so that the officer must first determine what is in his opinion the annual value of each of the several houses or buildings. But the proviso does not require expressly that each such determination is to be an assessment for the purposes of section 235. In the event of objection being taken to the assessment of consolidated premises, the assessment may undoubtedly be attacked on the ground that regard has not been paid to the direction given in the proviso or that the opinion of the assessing officer as to the annual value of any particular house or building is incorrect and that the assessment of the consolidated premises should be altered accordingly. But the fact that objections can be taken on such a ground does not mean that separate entries must be made in the assessment book for each house or building, or that notices of assessment must be separately served with respect to each of them. Considering the proviso in its context, this construction of it is to my mind perfectly reasonable and has the advantage that it gives force and meaning to the statutory power of consolidating separate houses or buildings for the purpose of assessment.

Counsel also relies in support of his first contention on sub-section 3 of section 233 and argues that sub-section 3 of section 233 keeps alive, despite consolidation, the duty to serve notices of assessment separately in respect of each separate portion of the consolidated premises. Sub-section (3) follows immediately on sub-section (2) which provides for service of a notice of consolidation. In my opinion, sub-section (3) is merely a saving clause designed to ensure that the service of a notice of consolidation does not absolve the Council from the duty to serve a notice of assessment *if the service of the latter notice is required by section 235*. For

example, if consolidation is being effected for an year in respect of which no notice of assessment has already been given, the service of the notice of consolidation is not enough ; there must in addition be a notice of the assessment of the consolidated premises ; on the other hand if several premises have already been assessed for a particular year and those assessments have become final in terms of section 238 (8), then if consolidation is effected during that year the existing assessments will stand as separate assessments for that year and no new notices of assessments would be required for that year. I would point out in this connection that the language used in sub-section 3 of section 233 is that ordinarily employed in a saving clause.

The second argument urged on behalf of the petitioner is based on the provisions of sub-section 3 of section 235 which require a notice of assessment " to be served on or left at the premises of every occupier, whether he be proprietor, joint proprietor or tenant of the house, building, tenement or land assessed. It is urged that the petitioner is an occupier qua tenant of the premises in question, and that where there are several tenants of premises a notice must be served on every such tenant. It would follow if this contention be correct that the Council has a duty whenever it assesses any premises to ascertain whether there is only " one occupier " or " several " occupiers, and, if there are several, to further ascertain whether any of them are proprietors, joint proprietors or tenants, and if so to serve separate notices on each of them. This contention would be reasonable if the Ordinance imposed on tenants the liability or the responsibility for the payment of rates, but the provisions of the Ordinance are to the contrary effect. For instance section 243 gives to an occupier who is not an owner the right to deduct from the rent any amount which he pays as rates or the value of any of his movables which may be seized for non-payment, and even in regard to the seizure of movables, section 242 protects the movables of a tenant from seizure for arrears of rates beyond the two quarters next preceding the seizure. The principal sanction for the levy of rates is that contained in section 252 which confers on the Council the right to sell property of an owner who is in default. While the language employed in sub-section 3 of section 235 can be construed to mean that all " occupiers " must receive notice, the object of that section, in my opinion, can only be to ensure that when premises are assessed, a notice of the assessment must be served on or left at the premises assessed. In the present case the premises assessed are the consolidated premises and a notice has been served on or left at those premises, in compliance with section 291 of the Ordinance which deals with service of notice. There are several alternative modes of service prescribed in that section and one of the alternatives in that section is the delivery of the notice to some adult person on the premises. In my opinion the requirements of service under section 291 have been complied with in the present case by delivering to Gamini de Silva on the assessed premises the notice of the assessment on those premises. I do not agree with the argument on behalf of the petitioner that sub-section 3 of section 235 must be read by itself and cannot be read with the general provision for notice contained in section 291.

I have also to consider a subsidiary argument that the failure to serve a notice on the petitioner has deprived him of the benefit of the Rent Restriction Act. In the first place it has to be borne in mind that the statutory provisions I am examining in this case have existed since 1910 and perhaps longer and that the impact of these provisions on subsequent legislation cannot properly be taken into consideration in order to give them a construction different from that which would have been given if there had been no Rent Restriction Legislation. Moreover it is not contended that the petitioner could not, if the thought had occurred to him, have inspected the assessment book when public notice was given under section 235 that the book was open for inspection.

For these reasons I would dismiss this application with costs which I fix at Rs. 252·50 payable by the petitioner to the Municipal Council.

Application dismissed.