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

N. S. DON GERALD, Petitioner, *and* W. M. FONSEKA, Respondent

S. C. 351/68—Application for a Mandate in the nature of a Writ of Mandamus on W. M. Fonseka, Chairman, Urban Council, Horana

Landlord and tenant—Rent-controlled premises—Alteration of assessment of annual value to make them excepted premises—Omission to give notice to tenant—Irregularity—Assesement of annual value—Requirement of notice to occupier—Municipal Councils Ordinance, s. 235—Mandamus.

Certain rent-controlled premises falling within the limits of an Urban Council became excepted premises in consequence of a change made on 19th July 1967 in the assessment of the annual value of the premises. On 2nd February 1968 the landlord filed action against the tenant for ejectment. During the pendency of the action, the tenant requested the Chairman of the Urban Council to issue a notice of assessment for the year 1968 to himself. This request was refused by the Chairman on the ground that notices of assessment were invariably sent only to owners of premises and not to occupiers. The present application for a Writ of *Mandamus* was made by the tenant to compel the Chairman to issue the notice.

Held, that section 235 of the Municipal Councils Ordinance imposed on the Council the duty to serve a notice of assessment at the premises assessed. The object of s. 235 was to ensure that notices were received by occupiers.

APPLICATION for a Writ of *Mandamus*.

E. A. G. de Silva, with *S. S. Wijeratne*, for the Petitioner.

H. W. Jayewardene, Q.C., with *L. W. Athulathmudali*, for the Respondent.

Cur. adv. vult.

January 15, 1969. H. N. G. FERNANDO, C.J.—

The petitioner in this case was the tenant of certain premises situated within the limits of the Horana Urban Council. In September 1967 he received notice from his landlord to quit the premises on or before 31st December 1967, and on 2nd February 1968 the landlord filed action against him for ejectment. It would appear from the affidavit of the petitioner that he became aware only after this action was filed of the fact that the premises had become excepted premises for the purpose of the Rent Restriction Act. This was in consequence of a change in the assessment of the annual value of the premises, which had been made on 19th July 1967. The assessment thus made fixed Rs. 2,222 as the annual value, which figure is higher than the figure which would render the premises subject to Rent Restriction.

The petitioner's claim that he was not informed of this change in the assessment is admitted by the Chairman of the Urban Council who is the respondent to the present application. The Chairman has stated in his affidavit that notices of assessment were invariably sent only to owners of premises and not to occupiers. The petitioner in May 1968 requested the Chariman to issue a notice of assessment for the year 1968 to himself. This request was refused, and the present application is for a Writ of Mandamus to compel the Chairman to issue the notice.

Section 235 of the Municipal Ordinance which, according to the Counsel for the respondent, applies in relation to assessments made by Urban Council, clearly imposes on a Council the duty to serve a notice of assessment at the premises assessed. Thus the object of s. 235 is to ensure that notices are received by occupiers. Section 235 also provides for the making of objections against an assessment within thirty days from the date of the service of the requisite notice. The failure of the Council in the present case to serve on the occupier's premises a notice fixing an assessment higher than the figure of Rs. 2,000, has deprived the petitioner of an opportunity to object to that assessment. This has had particularly serious consequences in the instant case because the assessment actually made has deprived the petitioner of the protection of the Rent Restriction Act.

Counsel appearing for the respondent Chairman has argued that if an occupier of premises has for some period of time made no representations regarding the omission of the Urban Council to serve notices of assessment at his premises, the occupier must be deemed to have waived his right to a notice. But s. 235 requires a notice to be served in each and every year, so that a failure to make representations in any year will at the most amount to a waiver of the notice required for that year. When therefore the petitioner did not make representations relating to the notice of the assessment for 1967, he did not thereby waive his right to service on him of the notice for 1968.

Counsel has also urged that there may be many occasions in which a Local Authority has followed the practice of serving notices of assessment on owners, and not on occupiers. That being so, he submitted that in considering whether to grant the relief asked for in this case we should take into account the possibility that there may be numerous similar applications which might involve the making of fresh assessments for past years. We agree that this is a relevant consideration. But there is in the present case a special circumstance that if the petitioner is not now allowed an opportunity to object to the assessment of Rs. 2,222, he will be deprived of any chance of being able to plead the Rent Restriction Act in the action for ejectment which is pending against him.

We direct that a Mandate be issued in terms of the prayer in the petition. The respondent must pay to the petitioner the costs of this application.

WEERAMANTRY, J.—I agree.

Application allowed.