BENETT P. MEDONZA

v.

TISSA E. DE SILVA

SUPREME COURT.
SHARVANANDA, C.J., WANASUNDERA, J. AND COLIN-THOMÉ, J.
S.C. APPEAL No. 23/85 – C.A. No. 285/80 (F).
D. C. COLOMBO No. 2558/RE.
NOVEMBER 6, 1985.

Landlord and Tenant – Rent Act No. 7 of 1972 – Determination of receivable rent under section 7(1) and (2) – Whether these sections are retrospective in operation – Special tax.

Held –

The provisions of section 7(1) (*a*) and (*b*) of the Rent Act can operate conjointly. When the Rent Board exercises its power initially under section 7 (1) (*a*) of determining the receivable rent it can also at one and the same inquiry in a fit case go into the question of adequacy of the rent under section 7 (1) (*b*) and fix it accordingly. Whether the receivable rent so fixed would operate retrospectively is both a legal and factual question which must be determined by looking at the Act itself and the relevant evidence.

In the instant case the determination of the Board (under s. 7 (1) (*b*)) that the receivable rent of Rs. 180 (as found under section 7 (1) (*a*)) should, owing to its inadequacy be raised to Rs. 675 was correctly held by the District Court to be retrospective for the purpose of deciding the question of arrears and recoveries of the special tax and rightly upheld by the Court of Appeal.

Cases referred to :

(1) *Ranasinghe v. Fernando (1951) 53 NLR 163.*

(2) *William v. Somasunderam (1968) 71 NLR 459.*

(3) *Ranasinghe v. Jayatilleke (1969) 72 NLR 126.*

(4) *Ex parte Wier (1871) LR 6 Ch. App. 875.*

APPEAL from judgment of the Court of Appeal.

H. L. De Silva, P.C., with *S. C. Crossette Tambiah* for defendant-appellant.

Nimal Senanayake, P.C., with *P. A. D. Samarasekera, P.C., J. B. Puvimanasinghe* and *Miss S. M. Senaratne* for plaintiff-respondent.

Cur. adv. vult.

November 28, 1985.

WANASUNDERA, J.

The only question before us is the correct interpretation of section 7(1) and (2) of Rent Act, No.7 of 1972, and more particularly whether or not, as contended by the plaintiff-respondent (hereinafter referred to as the plaintiff), these provisions are retroactive in operation, resulting in the defendant-appellant (hereinafter referred to as the defendant) being in arrears of rent and at fault. The basic facts are not in dispute. The premises concerned are situated at the junction of Bullers Road and Reid Avenue, Colombo. It is a large house of a floor area of 4419 square feet with six rooms and appurtenances in a garden of 40 perches of land. The premises were "excepted premises" and were not rent controlled under the Rent Restriction Act.

The plaintiff and defendant were not only good friends but also are closely connected to each other by marriage. It is in evidence that the plaintiff lacked business acumen unlike his distinguished father and was indifferent to his interest, and was in addition a sick man with serious drinking problems and constantly in and out of hospital. The defendant is a director of a number of companies and a well-to-do businessman. Their relationship in regard to the letting of this house does not appear to have been an ordinary businesslike transaction,

and the defendant seems to have taken advantage of the plaintiff's weaknesses. For it is quite apparent that the premises could have fetched a much higher rental than the amount paid by the defendant. The defendant rented the premises in 1952 at a rental of Rs.180 per month and continued as tenant paying the same rent till 1967, when the parties entered into a lease agreement for a period of ten years with an option to the tenant to renew it on the same terms for a further period of ten years. The rent remained the same at Rs.180 per month. Although the agreement did not mention as to who should pay the taxes, the defendant has in fact paid the taxes which amount to Rs.450 per quarter. The defendant has in addition on certain occasions made an *ex gratia* payment of Rs.100 per month to the plaintiff, which is admittedly in the nature of an illegal payment.

In 1973, by letter dated 1.12.73 (D 9), the plaintiff's lawyer informed the defendant that the Municipal Council had called upon the plaintiff to pay the "Special Tax" as provided in Rent Act No. 7 of 1972, which amounted to Rs. 2,171/83 for the year 1972 and Rs. 2,606/20 for the year 1973. This had been computed by the local authority on a "receivable rent" or as a provisional "receivable rent" of Rs. 800 per month. The concept of a "receivable rent" was a new idea introduced by the Rent Act and a special tax or levy was computed on the basis of the receivable rent. By this letter the defendant was requested to pay a sum of Rs. 9,870, being the shortfall in the rent for the past period and which was legally payable by him. The defendant was also requested to pay the rent of Rs. 800 per month from then on, namely from December 1973. In his reply D 10 dated 28.12.73, the defendant disputed the computation of the rent and stated that according to the relevant legal provisions it should be calculated on the basis of the highest rent paid during the period of two years immediately preceding the date of the coming into operation of the Rent Act. He also added that the provisions of section 7 (2) under which the computation has been made operated prospectively and not retroactively. The defendant accordingly denied liability and informed the plaintiff that he would continue to pay the old rent until the matter is clarified.

Thereafter, both the defendant and the plaintiff applied to the Rent Board for a determination of the rent payable and a computation of the receivable rent respectively. The Rent Board took up for consideration the defendant's application and on the agreement of the parties by its

order D.23 dated 19.2.76 determined the receivable rent at Rs. 675, the standard rent at Rs. 550, and the authorised rent at Rs. 613. On the basis of this settlement the plaintiff's application to the Board was consequently withdrawn. It may be noted that this determination of the Rent Board would constitute that initial determination which the Board is enjoined to make under section 7 (1) to determine the receivable rent. It would also be observed that the Board went on to increase the receivable rent from the previous sum of Rs. 180 to the new sum of Rs. 675.

Consequent on this order, the plaintiff's attorney informed the defendant that the defendant was liable to pay a sum of Rs. 17,200, being the shortfall of the rent at the rate of Rs. 675 from 1.3.1972. The defendant however denied the claim for outstanding rent and sent a cheque for Rs. 675 for March 1976 and continued thereafter to pay this same amount. By letter dated 17.9.76 the defendant was given notice to quit and vacate the premises on or before 31.12.76. This was coupled with a demand for the payment of a sum of Rs.17,220 as arrears of rent.

The present action for ejectment was filed on 12.9.77 on the ground of arrears of rent for over one month after it has become due in terms of section 22 (2) of the Rent Act and for the recovery of the sum of Rs. 17,895 being arrears of rent and damages up to 31.8.77. The basis for the action was that the receivable rent of Rs. 675 fixed by the Board was payable by the defendant and was operative from 1.3.72, the date of the coming into operation of Rent Act, No. 7 of 1972. The defendant in his answer took up the position that the order of the Board of Review was prospective in operation and operated only from 1.3.76 and that accordingly he was not in arrears of rent.

The trial judge has held that the defendant was in arrears of rent and gave judgment for the plaintiff. The Court of Appeal has affirmed the judgment of the lower court. The only matter before us is whether or not the provisions of section 7 (1) and (2) of the Rent Act were retrospective in operation. If it was retroactive, then the defendant would be in arrears of rent and his appeal fails.

Section 7 of the Rent Act which relates to receivable rent is, as stated earlier, a new concept that was not found in the earlier law. It deals only with residential premises which had been exempted and not controlled by the Rent Restriction Act (Cap. 274). Many such residential premises had been let at high rents. The provision did not

seek to interfere with those lettings. It actually sanctioned such lettings. The Rent Act however provided for the local authorities to levy a "special tax" amounting to 75% of the difference between the receivable rent and the authorised rent of such premises – section 7 (3) – and to obtain a benefit from such lettings. This special tax has to be remitted by the local authorities to the Commissioner of National Housing, who has to credit it to the Repairs Fund established by the Act to be administered by the Commissioner. Section 7 (3) (*c*) states that the imposition and recovery of the special tax by the local authorities will be governed by the existing laws under which such local authorities impose and recover rates and taxes.

Section 7 (1) of the Rent Act, which is material for this discussion, is worded as follows :–

"7. (1) In the case of any residential premises the first assessment of the annual value of which was made prior to the date of commencement of this Act and the annual value of which, as specified in the assessment in force on the first day of January, 1969, or if the assessment of the annual value of such premises is made for the first time after such day, as specified in such first assessment, exceeds one hundred and fifty *per centum* of the relevant amount, the receivable rent per month of the premises means –

(*a*) where the premises have been let to a tenant, the highest amount established to the satisfaction of the board as having been received by the landlord by way of rent in respect of such premises for any month during the period of two years immediately preceding the date of commencement of this Act ; or

(*b*) where the premises have not been let to a tenant or where the rent referred to in paragraph (*a*) is in the opinion of the board low, and in all other circumstances not provided for in paragraph (*a*), such amount as may be determined by the board:".

Mr. Senanayake for the plaintiff has referred us to certain other provisions of the Rent Act and to certain regulations enacted under the Act. Under section 7 (1), it would appear that it is the Rent Board that has to be satisfied or has to make a determination of the receivable rent. Section 37 enjoins the Board to maintain a Rent Register. Section 37 (2) states that in respect of premises let prior to the

commencement of the Act, the landlord shall within three months of that date send by registered post to the tenant and also to the Board a detailed statement relating to the tenancy. This statement must give particulars of 13 indicated matters, one (*h*) being the receivable rent of the premises. Section 37 (5) states that in the event of a dispute between the landlord and the tenant regarding any of the aforementioned particulars, the Board shall make a decision after due inquiry. Such decision shall be final and conclusive.

Part III of the Regulations framed under the Act and which is intended to be complementary to the main Act also indicates that the proper authority to determine the receivable rent is the Board. When the landlord and the tenant are not at issue on this matter, apparently the authorities would go by the amount mentioned by the landlord in his return. When there is a dispute, other considerations would apply. But whatever the position be, the proper legally receivable rent cannot be ascertained until it has been passed upon by the Board. It is also apparent that in all these matters the local authorities and the Board act in conjunction.

Part II of the Regulations contain provisions for the levy and collection of the special tax by the local authorities. Regulation 24 requires the local authorities to maintain a Receivable Rent Register. Regulation 25 states that the special tax "shall be collected by each local authority for the month of March 1972 and quarterly thereafter..." This indicates that the tax would be operative from the date of the coming into operation of the Rent Act. In the case of any objection to the notice of assessment of the special tax, the local authority must refer the matter for decision by the Board–regulation 27. Regulation 28 provides for cases of excess payment or shortfall and for refund or recovery as the case may be, clearly indicative of a provisional levy pending the determination by the Board.

The main submission by counsel for defendant-appellant was that section 7 (1) (*a*) and (*b*) cannot be applied conjointly because they deal with two separate situations. Mr. de Silva's submission was that section 7(1)(*a*) deals with the determination of the receivable rent by the Board and was retroactive, but when one comes to the fixing of rent as in section 7 (1) (*b*) the decision must operate prospectively. He relied on *Ranasinghe v. Fernando* (1), *William v. Somasunderam* (2) and *Ranasinghe v. Jayatilleke* (3).

Even if we accept the analysis of the law submitted by Mr.de Silva as a general proposition, I cannot see why the provision of section 7 (1)(*a*) and (*b*) cannot operate conjointly in an instance such as this When the Board exercises its power initially of determining the receivable rent, cannot it also at one and the same inquiry in a fit case go into the question of the inadequacy of the rent. Apart from administrative convenience, the non-duplication of work and the absence of delay and other benefits resulting from such a course of action, it seems to me that in the performance of its functions in the initial determination of the receivable rent, which is a revenue measure, the Board would be making a determination which is incomplete and lacking in fulness if it did not also at the same time consider whether or not the rent of the premises was too low if that issue is also raised before them at the time of such determination. The wording of section 7(1)(*b*) linking it with (*a*) also suggests this interpretation. That is exactly what happened in this case and further, everything that transpired before the Board had the consent of both parties.

Mr. de Silva also criticised the trial judge for interpreting the provisions of section 7 by resort to the regulations. It will be observed that I have myself referred to the machinery for the imposition and recovery of the special tax contained in the regulations to show the comprehensiveness of the taxing provisions which are supplementary to the provisions of the Act. Maxwell in his 12th Edition on Interpretation of Statutes states at page 74 that it is not possible to derive any settled principles from recent cases as regards resort to statutory instruments in the interpretation of a statute, but adds that in the present state of the law the Court of Appeal (U.K.) might still choose to follow the opinion of James and Mellish, L.JJ. in *Ex Parte Wier,* (4) where the court had resort to the regulations.

But the operation of the special tax from the date of the enactment of the Rent Act or its retroactivity from the date of the determination by the Board is not in dispute in this case. This has been conceded by Mr. de Silva. What is before us is a somewhat different question. When the Board in the initial exercise of determining the amount of the receivable rent also considers and determines in one and the same proceedings the raising of the existing rent as being too low, does such a determination also operate retroactively ? This is both a legal

and factual question. This question has to be determined by looking at the Act itself and the relevant evidence. The regulations have little bearing on this matter as my own reasoning set out earlier would indicate.

For these reasons I would affirm the judgment of the Court of Appeal and dismiss this appeal with costs.

SHARVANANDA, C. J. – I agree.

COLIN-THOMÉ, J. – I agree.

Appeal dismissed.