PEIRIS
v.
RAMYA GOONEWARDENA

SUPREME COURT
G. P. S. DE SILVA, CJ.,
ANANDACOOMARASWAMY, J. AND
SHIRANI BANDARANAYAKE, J.
S.C. APPEAL NO. 71/95
C.A. APPEAL NO. 33/84 (F)
D.C. PANADURA NO. 17380
21 JULY, 1997.

Landlord and Tenant – Consolidation of property – S. 166 of the Urban Councils Ordinance read with S. 233 of the Municipal Councils Ordinance – Excepted premises – Rent Act No. 7 of 1972 – 3rd regulation in the schedule to the Act.

The plaintiff filed action against the defendant on 22.7.1981 for ejectment from premises No. 318. The assessment unit 318 was created in October 1980 when the Urban Council action under S. 166 of the Urban Councils Ordinance and S. 233 of the Municipal Councils Ordinance consolidated premises Nos. 318, 320 and 322 which were business premises under the Rent Act of which the defendant had been the tenant from 1960. The consolidation was without the knowledge or consent of the defendant and the new assessment was cancelled on a complaint made by the defendant after the institution of the action. The trial proceeded on the basis of one unit of assessment as the rights of parties had to be decided as at the date of the action. After consolidation, the new unit was given the value of Rs. 3,750/- which value made the premises excepted premises in terms of the schedule to the Rent Act.

Held:

The entry in the assessment register will bind the landlord and the tenant only if they were parties to the inquiry before the local authority. The consolidation of three units into one unit was without the knowledge of the tenant. Hence the earlier three units continued to be three separate units for the purposes of the Rent Act despite consolidation and new assessment at the time of the institution of the action, and therefore, the premises in suit continued to be governed by the Rent Act.

Cases referred to:

1. *Chettinard Corporation v. Gamage* (1961) 62 NLR 86.
2. *Sally Mohamed v. Syed Mohamed* (1964) 64 NLR 486.
3. *Premadasa v. Atapattu* (1969) 71 NLR 62.
4. *Ansar v. Hussain* (1986) C.A.L.R Vol.1 365.
5. *Hewavitharane v. Ratnapala* (1988) 1 Sri L.R. 240.
6. *Weerasena v. Perera* (1991) 1 Sri L.R. 121.
7. *Withanagamage v. Jothipala and others* C.A. Appeal 397/83 C.A. minutes 31 July 1991.
8. *Daluwatte v. Premalatha* C.A. Appeal 738/92 C.A. Minutes 30 November 1994.
9. *Udesiri v. Mather* C.A. Appeal 783/85 C.A. Minutes 18th January 1995.
10. *Wakkumbura v. Nandawathie* C.A. Appeal 765/88 C.A. Mnutes 28 February 1996.
11. *Imbuldeniya v. De Silva* (1987) 1 Sri L.R. 367.
12. *Rajakaruna v. Laura de Silva* (1971) 73 NLR 274. – Not followed.

APPEAL from the judgment of the Court of Appeal.*

C. Ladduwahetty for the defendant-appellant.

A. K. Premadasa, PC with *P. A. D. Samarasekera,* PC with *C. E. de Silva* for the plaintiff-respondent.

Cur. adv. vult.

9th October 1997

ANANDACOOMARASWAMY, J.

This is an appeal from the judgment of the Court of Appeal. Special Leave to Appeal was granted on the following two questions:

1. Whether the decision of the Court of Appeal that the premises in dispute are excepted premises is correct having regard *inter alia* to section 233 (1) of the Municipal Councils Ordinance?

2. Whether in applying the provisions of the Rent Act the consolidated assessment in terms of section 233 (1) of the Municipal Councils Ordinance could be ignored?

The facts relevant to this appeal are briefly as follows:-

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The plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) instituted this action to eject the defendant-respondent-appellant (hereinafter referred to as the defendant) from the premises bearing assesment No. 318, Main Street, Panadura.

The defendant's stepfather became the tenant of premises bearing assessment Nos. 304, 306, 308, Main Street, Panadura, on or about 1942 and ran a business in the said premises.

After his death in 1960 the defendant became the tenant of these premises and ran a ceramic shop, a banana shop and a hotel and bakery, respectively in the separate premises.

Later these numbers were changed to assessment Nos. 318, 320 and 322.

In October, 1980 the Urban Council made the said three premises one assessment unit (No. 318) as a business premises with an annual value of Rs. 3,750/-.

The defendant came to know of this on or about 27.04.1981 about 11 days after the notice to quit and by document marked 'V3' requested the Chairman, Urban Council, Panadura, to renumber the premises as it was earlier.

The plaintiff then filed action on 22.07.1981 to eject the defendant from the new premises No. 318 on the ground that the premises were not governed by the Rent Act as they were excepted premises under the 3rd regulation in the schedule to the Rent Act No. 7 of 1972.

The defendant made representation against the consolidation of the three units into one unit to the Chief Valuer. Ultimately by P6 dated 13.08.1981, the Chief Valuer directed that the consolidation be cancelled and the original assessed units of Nos. 318, 320 and 322 be restored. The trial proceeded on the basis that there was one unit of assessment, as the rights of parties had to be decided as at the date of the institution of the action, but the learned District Judge had gone on the correspondence that passed between the Chief Valuer and the Chairman of the Urban Council although the entry in the assessment register of Rs. 3,750/- for the unit No. 318 remained unchanged when the action was filed.

The first issue raised by the plaintiff at the trial was whether these premises were governed by the Rent Act No. 7 of 1972. At the trial it transpired that there were three units Nos. 318, 320 and 322 in existence and have been valued for purpose of rates long prior to the year 1968, and in 1974 the annual value was raised to Rs.1,750/-, Rs.1,000/-, Rs.1,000/- respectively in respect of the said premises. These amounts were in existence until October, 1980 when the U. C. without notice to the defendant consolidated the three premises into one and gave a value of Rs. 3,750/- which is an aggregate sum of the amounts stated earlier in this paragraph and for the first time taking the annual value of the consolidated premises above the relevant amount in the schedule to the Rent Act and thus taking the premises out of the Rent Act.

After trial the Learned District Judge held in favour of the defendant, that the property was governed by the Rent Act. In appeal to the Court of Appeal, the Court of Appeal held in favour of the plaintiff on the ground that the consolidation of the three units into one and the aggregate sum of the sums for the three units raised the annual value of the consolidated premises above the relevant amount in the schedule to the Rent Act and thus taking the premises out of the Rent Act. The appeal to this court is from the judgment of the Court of Appeal.

The question before this court is whether the assessment of the consolidated unit of the three earlier units in October, 1980 at Rs. 3,750/- was an assessment for the first time.

Learned counsel for the defendant submitted that consolidation does not give birth to a new premises unless there are structural changes or improvements or alterations of a substantial nature. On the other hand, learned counsel for the plaintiff submitted that once the earlier units are consoildated into one unit with a new assessment, it is that assessment which is material for the purpose of Rent Act and not the assessment of the earlier unit, because only the new assessment is entered in the assessment register and the landlord and the tenant are bound by the entries in the assessment register. It is not possible to hark back to the assessment of the three earlier units prior to October, 1980. Further, the authorised rent has to be calculated according to section 4 of the Rent Act, namely:

(a) Annual value in 1955, plus,
(b) Rates for the particular year.

Therefore if it is necessary to calculate the separate authorised rent for January, 1981 of No. 318 or 320 or 322, it is not possible to do so as there is no separate rate for No. 318 or 320 or 322, as all three have been consolidated. If there is no separate rate for premises controlled by the Rent Act, then the Rent Act becomes unworkable.

This question for adjudication by this court arose more than three decades ago.

It was held in the case of *Chettinard Corporation v. Gamage*[1] that whatever be the result of the consolidated assessment and the alteration of the number of premises the earlier annual value of the premises before consolidation prevails.

A similar view was taken in the case of *Sally Mohamed v. Syed Mohamed*[2].

In the case of *Premadasa v. Atapattu*[3] a different view was taken. This was a case where an earlier existing premises was subsequently divided and assessed separately. The Court distinguishing the Chettinard Corporation Ltd. case (supra) held that the division created a new premises. It was further held in the Chettinard Corporation Ltd. case (supra) that the premises in question was in existence as separate entities. In this case the unit in question was not in existence prior to the second assessment.

In the case of *Ansar v. Hussain*[4] Wanasundera J., reviewed these cases and took a third view which was followed in *Hewavitharane v. Ratnapala.*[5] In that case it was decided that where separate existing premises which had an assessment as at 1st January 1968 are consolidated and subsequently assessed as one entity, the new assessment would apply only if a new premises has in fact come into being due to the physical alterations done to the separate units.

Weerasena v. Perera[6] was also a case where premises let was subsequently divided and assessed separately and in the absence of physical alterations it was held that a new premises had not come into being.

The above decisions were followed in *Withanagamage v. Jothipala and Two others,*[7] *Daluwatte v. Premalatha,*[8] *D. N. Udeshi v. Mather*[9] *and Wakkumbura v. Nandawathie.*[10]

In Wakkumbura case (*supra*) it was held "minor changes such as sub-division and assessment or consolidation and assessment have no impact on the valuation and assessments (Ansar v. Hussain (supra)) unless there is a significant structural or other changes of a similar nature (Hewavitharana v. Ratnapala (*supra*)). What is protected is the contract of tenancy and not the premises (*Imbuldeniya v. De Silva*[11] and Weerasena v. Perera (*supra*))".

Learned Counsel for the plaintiff relied on the decision *C. Rajakaruna v. Laura de Silva*[12] where it was held that in a rent and ejectment case, the Ccourt, the landlord and tenant are bound by entries in the assessment Register.

That was the decision by Samarawickrama, J. in an appeal to the Supreme Court from a judgment of the Court of Requests, Colombo. In view of the several decisions of the Supreme Court and the Court of Appeal, **the decision in C. Rajakaruna case (supra) can no longer be regarded as a binding authority.**

The entry in the Assessment Register will bind the landlord and the tenant only if they were parties to the inquiry into the objection against the assessment before the local authority.

Counsel for the plaintiff submitted that if the three units are consolidated and assessment made and entered in the register there would be no separate assessment for the three earlier units entered in the Assessment Register and therefore the calculation of the authorised rent is not possible. The answer to this question is in the proviso to section 233 (1) of the Municipal Councils Ordinance which reads thus:

> "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 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 serveral houses, buildings, lands or tenements of which such premises are composed".

Therefore if several premises are consolidated into one unit it is possible to ascertain the assessment of each separate unit, as the assessment of the new consolidated unit is the aggregate of the annual value of the several units.

Therefore the contention of learned counsel for plaintiff that the Rent Act becomes unworkable cannot be sustained.

In the instant case the three units were consolidated into one unit without the knowledge and/or consent of the tenant and after the institution of the action the new assessment was cancelled on a complaint by the defendant (tenant) after the institution of the action. This also goes to show that the entry in the Assessment Register is only prima facie vaild.

For these reasons these earlier three units continue to be three separate units for the purposes of the Rent Act, despite consolidation and new assessment at the time of the institution of the action, and therefore the premises in suit continue to be governed by the Rent Act.

For these reasons I allow the appeal with costs fixed at Rs. 10,500/-.

The judgment of the Court of Appeal is set aside and the judgment of the District Court is restored for the reasons adduced above.

G. P. S. DE SILVA, CJ. – I agree.

BANDARANAYAKE, J. – I agree.

Appeal allowed.