1968 *Present :* **Sirimane, J., and de Kretser, J.**

A. M. PREMADASA, Appellant, *and* V. ATTAPATTU, Respondent

S. C. 263/66—D. C. Colombo, 50/ R.E.

Rent-controlled premises—Division of the premises into a number of separate premises—Authorised rent for each of them—Computation—Meaning of expression "premises"—Rent Restriction (Amendment) Act 10 of 1961, s. 11—Rent Restriction Act. (Cap. 274), ss. 5, 7.

Where a rent-controlled building which was assessed prior to November 1941 is subsequently divided into a number of separate premises assessed separately, the number of new premises takes the place of the old and the basis of the authorised rent for each of them is the amount of the annual value fixed when they are assessed as separate premises for the first time.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, Q.C., with *S. W. Jayasuriya* and *W. Karthigesu*, for the Defendant Appellant.

E. A. G. de Silva, for the Plaintiff-Respondent.

Cur. adv. vult.

July 22, 1968. SIRIMANE, J.—

The only question we were called upon to decide in this appeal was whether the learned District Judge was right in basing his calculation of the "authorised rent" for the premises in question on an assessment made in 1948. On that basis the authorised rent (it was conceded) was Rs. 252·72, and the Defendant was in arrears of rent and liable to be ejected.

The Defendant's case is that the premises had been assessed prior to November, 1941 and the correct basis for calculation of the authorised rent was the assessment made in that year. It was conceded again that had the premises in question been assessed in 1941, the correct authorised rent would be Rs. 171·92, and the Defendant would not be in arrears. According to Counsel for the Defendant he would have paid rent in excess of the authorised rent calculated on that basis, and after setting off the excess so paid for the period during which he was in arrears (1.6.61 to 31.8.63) there would still be due to him from the plaintiff a sum of Rs. 723·40 after taking into account various payments he had made. These figures were not disputed.

The premises in respect of which this action has been brought and described in paragraph 2 of the plaint bearing Assessment No. 53, is *part* of an old building. Any doubts as to the exact meaning of the word " premises ", have now been dispelled by the definition of that word

in section 11 of the Rent Restriction (Amendment) Act 10 of 1961. " Premises " mean any building *or part of a building* together with the land appertaining thereto.

The evidence led in the case which the learned District Judge has accepted shows that the old building consisted of two such premises Nos. 53 and 55, which had been assessed as such for the first time in 1948. (No. 53 had later been sub-divided, but that fact is not material for the decision of this case.) In fact, an agreement entered into between the parties on 25.2.57 referred to the two different " premises " Nos. 53 and 55.

The learned District Judge was therefore right, in my opinion, when he reached the conclusion that the subject matter of the present action " as it exists today was not in existence as a separate entity in 1941 ".

The old building had been assessed prior to 1st November, 1941. It then bore the No. 53. The argument for Defendant is that once this had been done, the standard rent could never be changed by subsequent assessments of different parts of the building. It was submitted that the standard rent remained the same as in 1941, for each one of the different parts of the building which were assessed as separate entities in 1948. The argument was based entirely on the second proviso to section 5 of the Rent Restriction Act (Cap. 274) which reads as follows :—

> " Provided, further, that in the case of any such premises which are first assessed or first separately assessed after the appointed date, the Board may, on the application of the tenant, fix as the standard rent of the premises such amount as may in the opinion of the Board be fair and reasonable."

As the tenant had made no such application, it was submitted that the standard rent was that of the whole building as it stood in 1941.

I cannot accede to this argument.

If one applies the proviso in that manner, then, where a building (premises) is first assessed after the appointed date such premises would have no standard rent unless the tenant chooses to get that rent fixed.

The proviso, in my view, was enacted for the benefit of the tenant, who if he finds that the first assessment of a building or a part of it, after the appointed date is such, that it compels him to pay a high rent, then he may seek the assistance of the Board to obtain relief. It is no authority for the proposition that where premises (as defined in the Act) are first assessed or first separately assessed after the appointed date, and the tenant chooses not to make any application to the Board, then the provisions of section 5 (1) relating to assessments made after the appointed date become inoperative.

Our attention was drawn to two decisions of this Court. The first is the case of *Chettinad Corporation Limited v. Gamage*[1]. In that case the subject matter of the action bore assessment No. 273/2 and was assessed for the first time in November, 1948 at an annual value of Rs. 850/-. There was a tenement adjoining it bearing assessment No. 275. In 1951 the two premises were consolidated and assessed together at an annual value of Rs. 425/-. The court held that the annual value of premises No. 273/2 remained at Rs. 850/-. It will be seen that (unlike in the present case) these premises existed as a separate entity and were assessed as such when the first assessment was made. Basnayake, C.J., in the course of his judgment said that the annual value remained at Rs. 850/- " as the annual value of the *premises in question* was fixed at that figure when the assessment was made for the first time in 1948 ".

The second is the case of *Sali Mohamed v. Syed Mohamed*[2]. There, there were three premises bearing three different assessment Nos. 102, 104 and 100. They were so numbered and in existence on 1st November, 1941 and had been assessed together. In 1945 the premises bearing Nos. 102 and 104 were assessed together again, but separately from No. 100. The subject matter of the action consisted of the premises bearing these two numbers. In 1955 separate assessments were made for each of the two premises bearing Nos. 102 and 104. The court expressed the view that despite the separate assessments in 1945 and 1955 the standard rent of the premises bearing Nos. 102 and 104 was and is, the amount of the assessment made for the premises jointly with premises No. 100 in November, 1941. The case was, however, decided on a different point, and the learned District Judge looked upon these dicta as obiter.

Though, with respect, I would have been inclined to take a different view in that case, I think, the facts there can be distinguished from the facts here. The " premises in question " in that case were, in fact, in existence as separate entities bearing separate assessment numbers, and had been assessed (though in conjunction with other premises) in 1941. In the present case the premises in question were not in existence as a unit that had been assessed, prior to 1948. They were assessed for the first time only in that year.

I would affirm the judgment of the learned District Judge and dismiss the appeal with costs.

DE KRETSER, J.—

The facts are set out in the judgment of Sirimane J. with whom I agree. It appears to me that Section 7 of the Rent Restriction Act throws some light on the matter in dispute. It says :

" Where any premises to which this Act applies are let or occupied in separate parts (whether furnished or unfurnished) *which are not separately*

[1] *(1960) 62 N. L. R. 86.* [2] *(1962) 64 N. L. R. 486.*

assessed for the purpose of rates, and the aggregate of the amount demanded or received as the rent of such separate parts exceeds the authorised rent of the premises, the landlord shall be deemed to have contravened the provisions of Section 3 of this Act "—in other words there is only one assessed premises despite several parts of it being let.

Why is there a difference when the several parts are assessed ? The answer appears to be that then they become separate premises. It would be well to remember that a premises according to the definition is a building or part of a building. Mr. Renganathan for the Defendant submits that what remains of the original premises after parts of it become separate premises would still command only a rent in accordance with the 1941 (or first) assessment. But that appears to me can only be correct if what remains has not been assessed at the break up into units as a separate premises—which would be a question of fact. If a building assessed as a premises in 1941 is divided and each portion is separately assessed then it appears quite impossible to claim that one such division in preference to another remains the original premises. The numbers that each separate unit carried must not be allowed to cloud the issue.

The resulting position is then that a number of new premises take the place of the old and the basis of the authorised rent for each of them is the amount of annual value fixed when they are assessed as separate premises for the first time. The proviso to Section 5 (1) allows a tenant to apply to the Board to fix a standard rent for any such premises if the Board agrees with the tenant's submission that the authorised rent of such a separate premises that has come into being is unfair and unreasonable. It therefore appears to me that the object of the Rent Restriction Act which is to safeguard the tenant is in no way thwarted when a premises dies in giving birth to others.

Mr. Renganathan cited the case of the *Chettinad Corp., Ltd. v. Ganage* [1]. There a tenement which bore the number 273/2 was assessed for the time in 1948 at an annual value of Rs. 850/00. In 1951 the same tenement with the adjoining tenement No. 275 were consolidated and assessed together at the annual value of Rs 425/00 and given the number 56. Basnayake C.J. with whom H. N. G. Fernando J. agreed said : " whatever may have been the result of the consolidated assessment and the alteration of the number of the premises, the annual value of the premises for the purposes of the Rent Restriction Act remains Rs. 850·00 as the annual value of the premises in question was fixed at that figure when the assessment was made for the first time in 1948." Here it is to be noted that what was let to the Defendant was old number 273/2 now bearing a new number 53 and sharing an assessment with No. 275. It seems clear that in terms of Section 5 the amount of the annual value of this building as specified in the assessment of November 1941 must govern the authorised rent. This decision then hardly helps at all in the solution of

[1] *(1960) 62 N. L. R. 86.*

the present problem. Mr. Renganathan invited our attention to the case of *Sally Mohammed v. Seyd Mohammed* [1]. The facts as gathered from the judgment are as follows :—

Premises 100, 102 and 104 in 2nd Cross Street, Pettah, in 1941 were assessed together in a single assessment. In 1945 No. 100 was assessed separately but Nos. 102 and 104 were assessed together. In 1955 Nos. 102 and 104 were each separately assessed. The question that arose for determination was what was the authorised rent the defendant who had taken both on rent would have to pay. In appeal, the case turned on another matter which is not relevant to the present case but in it H. N. G. Fernando J. with whom L. B. de Silva J. agreed, in an obiter dictum gave their opinion on what should be the correct authorised rent and how it should be arrived at. I regret to find that I cannot agree with them. It is correct that the proviso to Section 5 (1) does not state that any assessment is to determine the standard rent on which the authorised rent is based. It does not need to, for that is found in Section 5 itself and the proviso only helps a tenant with regard to a premises assessed after 1941 or first separately assessed after 1941 to ask the Board to fix a standard rent which is fair and reasonable if they considered the authorised rent calculated on the basis of the assessment, too high. I entirely agree that if two parts have been assessed jointly whether before or after 1941, that the authorised rent would have to be calculated in terms of Section 5 (1) (*a*) by reference to that assessment. But I cannot agree that if thereafter separate assessments are made for each part that it is the Board that would have to fix a standard rent for each or both parts. It will be seen that the proviso makes provision only for application by a tenant for the fixing of a fair rent. That presupposes that otherwise the tenant will have to pay a rent which is in accordance with the new assessment. If he thinks that rent unfair and unreasonable he can apply to the Board and if the Board agrees with him, the Board will fix a rent which it thinks is fair and reasonable in lieu of the rent calculated on the basis of the assessment now made for the first time. It will be noted no provision is made for a reference to the Board by a landlord—presumably because he has been heard by the assessors and is thereafter bound by the assessment made for the premises. It is my view that when a premises, that is in terms of the definition of premises, a building or part of a building, has been assessed in 1941 that the authorised rental has to be calculated in terms of that assessment. If it is assessed for the first time after 1941 then that first assessment is the one which governs the authorised rent, but that is subject to the right of a tenant to get a rent which is in the opinion of the Board fair and reasonable fixed in lieu of such authorised rent.

In the instant case for the reasons I have already set out, I am of the opinion that the Trial Judge has correctly decided that judgment should be for the plaintiff as prayed for and I dismiss the appeal with costs.

Appeal dismissed.

[1] *(1962) 64 N. L. R. 486.*