Present : Fisher C.J. and Drieberg J.

1928

MARIKAR BAWA *v.* MUNICIPAL COUNCIL, COLOMBO.

17—D. C. Colombo, 20,091.

Assessment—Appeal from decision of the Chairman of Municipal Council—Burden—Municipal Councils Ordinance, No. 6 of 1910, s. 124.

Where a person who is aggrieved by the decision of the Chairman of the Municipal Council with regard to an assessment institutes an action under section 124 of the Municipal Councils Ordinance,—

Held, that the onus was on the plaintiff to show that the assessment was unreasonable.

APPEAL from a judgment of the District Judge of Colombo. The facts appear from the judgment.

Hayley, K.C. (with *Keuneman*), for defendant Council, appellant.

H. V. Perera (with *Nagalingam* and *Marshalpulle*), for plaintiff, respondent.

September 21, 1928. FISHER C.J.—

In this case the Municipal Assessor assessed the annual value of the respondent's premises at Rs. 6,250. The premises, which are occupied by the respondent, are situated in an essentially shopping and business area and are used for carrying on the business of a jeweller and silk vendor. They occupy a position on what is said to be the better side of Chatham street to which passengers are wont to go for the purpose of making purchases. The shop front is especially imposing and attractive. The floor area of the shop proper is extensive, and altogether the evidence goes to show that the premises constitute a high class and commodious shop such as is very likely to catch the attention and therefore the custom of a large and lucrative class of customers.

It was urged that the system adopted by the Assessor for the purpose of making his assessment, a system which appears to be in vogue to a large extent in similar areas in Great Britain, was fallacious and misleading, and no doubt the conditions in the street in which these premises are situate make it somewhat difficult for a satisfactory average to be struck ; but we are concerned with the conclusion arrived at.

There are in this case shops which are similar to some extent with which a comparison can be made. How do the results of applying this system work out, and how do those results compare

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with the result of an endeavour to fix the rent which a hypothetical tenant would pay by a comparison which does not rest on a purely mathematical basis ? In the course of his judgment the learned Judge said : " I agree with Mr. Orr that No. 98 is a shop, the rent of which would be a fair basis for ascertaining the rent which might be paid by a prospective tenant for No. 90."

The actual rents paid for shops in the near neighbourhood might be a very good *prima facie* test, and if these rents are free from being affected by any artificial or fortuitous cause this test is probably the soundest which could be had. How then does No. 98 compare with No. 90 ? The shop No. 98 has a modern frontage. The front area, that is to say, the shop portion, is 1,100 square feet. The shop area of No. 90, the respondent's shop, is 1,815 square feet. Therefore, so far as size is concerned and from a shop point of view, No. 90 has a more than considerable advantage. The back area of No. 98 is 657 feet, while that of No. 90 is 423 square feet—229 on the ground floor and 194 upstairs. This gives a total area of 1,757 square feet in the case of No. 98 and a total area of 2,238 square feet in the case of No. 90, and the actual rent paid for No. 98 is Rs. 500 per month. What then should be the rent for No. 90 ? Putting it in this way, if premises 1,757 square feet in area pay Rs. 500, what should premises 2,238 square feet in area pay, assuming that there was nothing to choose between the premises as regards situation, adaptability for business, and attractiveness ? The result would work out at a little over Rs. 630 a month. It is said that No. 98 has an advantage in the way of situation. This advantage would appear to be slight. A matter of a few yards. As regards commodiousness of shop accommodation, which must be an important consideration when a large number of passengers are contemporaneously doing their shopping No. 90 has a very great advantage. It is fitted up in a modern, shop style. Its frontage is very distinctly more imposing in appearance, and it is calculated to make a greater impression on passengers than the less imposing premises No. 98. It would seem therefore that, on the basis of attractiveness and general aptitude for inducing customers, No. 90 has a very distinct advantage. Under all these circumstances an assessment based on the result of the calculation I have made would be in all probability lower than it should be, and might very reasonably include any allowance to be made in respect of the residence on the premises by the occupier of No. 98 and his family.

But the important question is whether there is any evidence to compete with Mr. Orr's evidence, or anything in Mr. Orr's evidence which justifies interference with the result of his calculation and comparison.

I think that in an appeal to the District Court under section 124 of the Municipal Councils Ordinance, No. 6 of 1910, the onus lies on the plaintiff to show that the assessment appealed against is unreasonable. In this case no evidence was produced by the plaintiff which shows that the assessment by Mr. Orr was unreasonable, and it can hardly be said that it was impossible to find persons of local knowledge, skill, and experience to go into the witness box to testify as to what the "annual value" of the plaintiff's premises really is and to submit their opinions to the test of cross-examination. Neither was there anything in Mr. Orr's evidence to support the contention that it cannot be relied upon to prove what the annual value of the premises is for the purpose of assessment.

In the result the appeal must be allowed, the cross-appeal must be dismissed, and the respondent must pay the costs of the appellant in this Court and in the District Court.

DRIEBERG J.—Agreed in a separate judgment.

Appeal allowed.