HEWAVITHARANE
v.
RATHNAPALA

COURT OF APPEAL.
DHEERARATNE, J. (PRESIDENT C/A) AND
WIJETUNGE, J.
C.A. 316/80 (F) AND 782/81(F).
D.C. MT. LAVINIA 433 RE.
FEBRUARY 17 AND 19, 1988.

Landlord and tenant–Rent Act No. 7 of 1972–Excepted premises–Regulation No. 3 of the schedule–Assessment of the annual value for the first time–Municipal Councils Ordinance (Chapter 252), sections 233 (1) and 237 (1).

Two adjacent business premises Nos. 350 and 356, admittedly governed by the provisions of the Rent Act up to October 1975, were occupied by one tenant under the same landlord. The tenant had connected the two premises by an intercommunication door. At the request of the landlord, in October 1975, the Municipal Council gave one assessment number to both premises and fixed the annual value at Rs. 8310 by addition of the two previous annual values increased by Rs. 10. The landlord filed action against the tenant for ejectment on the basis that the premises were excepted premises. The question arose as to whether for the purpose of regulation No. 3 as to excepted premises, the annual value of January 1968 or the annual value fixed in October 1975, should be applied. If the annual value of October 1975 is applicable the premises become excepted premises.

Held–

That the nature of the physical alterations done to the premises is such that the assessment of October 1975 did not give birth to new premises, attracting an assessment for the first time and therefore the January 1968 annual value should be applied to determine whether the premises were excepted premises or not.

Cases referred to:

(1) *Chettinard Corporation Ltd. v. Gamage, (1961) 62 NLR 86.*
(2) *Sally Mohamed v. Seyed, (1963) 64 NLR 486.*
(3) *Premadasa v. Atapattu, (1970) 71 NLR 62.*
(4) *Ansar v. Hussain (1986) The Colombo Appellate Reports Vol. 1 Part III 365.*
(5) *Atapattu v. Wickramaratne S.C. 59/85, C.A. 365/79, D.C. Mount Lavinia 461 RE.*

APPEALS from judgment of D.C. Mt. Lavinia.

Dr. H. W. Jayewardene, Q.C. with *Harsha Soza, Miss T. Keenawinna* and *H. Amerasinghe* for defendant-appellant in CA 316/80 and defendant-respondent in CA 782/81 (F).

Eric Amarasinghe P.C. with *I. G. N. D. J. Seneviratne* and *Miss. D. Guniyangoda* for plaintiff-respondent in CA 316/80 and plaintiff-appellant CA 782/81 (F).

May 16, 1988.

DHEERARATNE, J. (President C/A)

The plaintiff instituted this action on 04.08.1977 against the defendant, her tenant, to have him ejected from premises bearing assessment No. 350, Galle Road, Bambalapitiya and to recover damages. Admittedly, the premises in question are business premises and the main question in dispute at the trial was, whether the premises are excepted premises or not within the meaning of regulation 3 of the schedule to the Rent Act No. 7 of 1972. The learned trial judge, having held in favour of the plaintiff that the premises are excepted premises, ordered ejectment of the defendant with damages. Both parties appealed; the defendant on the finding that the premises are excepted premises and the plaintiff on the quantum of damages awarded.

The facts leading to the filing of this action are briefly these: The defendant had been a tenant of the plaintiff in respect of two adjacent premises – No. 350 and 356, Galle Road, Bambalapitiya – which were admittedly governed by the provisions of the Rent Act up to October 1975. As at January 1968, the annual value of premises No. 350 was Rs. 1845, while that of premises No. 356 was Rs. 2,770. By letter dated 04.09.1975 (D1), the plaintiff wrote to the Assessor of the Municipal Council Colombo, to state that the two premises 350 and 356 "though bearing two numbers is one tenancy." D1 further read "it is one building with two entrances with an opening in the middle joining the two portions. Kindly give one number to the premises." The municipal authorities seem to have acted with commendable expedition. The premises were promptly inspected by a valuation officer whose report dated 17.09.1979 (D2) stated – "On inspection I found that the premises are now in one occupation with an intercommunication door between the two premises where two business concerns are run, (oilment store and eating house). At the owner's request, may we consolidate the assessment of the two premises as follows: –

350, Bambalapitiya Road – shop and eating house – area 3134 sq. feet – Annual Value Rs. 8310". The figure Rs. 8310 has been arrived at by the addition of annual values in respect of the two premises for the year 1974, increased by Rs. 5. The Assessor having approved the

report D2 on 22.09.1975, altered the assessment register in respect of the two premises (P3) with effect from 1.10.1975.

Regulation No. 3 as to excepted premises in the schedule to Rent Act No. 7 of 1972 reads as follows:

"Any business premises ..... situated in any area specified in column 1 hereunder shall be excepted premises for the purposes of this Act if the annual value thereof as specified in the assessment made as business premises for the purposes of any rates levied by any local authority under any written law and in force on the 1st day of January 1968, or, where the assessment of the annual value thereof as business premises is made for the first time after the first day of January 1968, the annual value as specified in such first assessment exceeds the amount specified in the corresponding entry in column II.

I	II
Area	*Annual Value*
Municipality of Colombo	Rs. 6000.....

It may well be remembered that the word "premises" is defined in section 48 of the Rent Act to mean "any building or part of a building together with the land appertaining thereto."

The crux of the problem then is whether for the purpose of regulation 3 quoted above, in respect of the premises in dispute, the annual value in force on the first day of January 1968 is applicable, or whether the annual value fixed in October 1975 is applicable on the basis that the latter is the first assessment. If the latter assessment is applicable, the premises in question become excepted premises.

Number of authorities were cited in the course of the argument of this appeal which have interpreted certain statutory provisions analogous to regulation 3, which authorities shed some light on the question as to when an assessment should be considered as the first assessment of any premises.

In the case of *Chettinard Corporation Ltd. v. Gamage,* (1), tenement No. 273/2 was assessed in November 1948 at an annual value of Rs. 850; while in 1951, the same tenement and the adjoining tenement No. 275 were consolidated and assessed at an annual value of

Rs. 425. The question arose as to whether the calculation of rent in respect of tenement No. 273/2 should be based on the annual value of 1948 or 1951, in terms of section 5(1) of the Rent Restriction Act (chapter 274).

Section 5(1) read as follows:–

"In the case of any premises the annual value of which was or is assessed for the purposes of any rates levied by any local authority under any written law, the standard rent per annum of the premises means–

(a) the amount of the annual value of such premises as specified in the assessment in force under such written law during the month of 1941 *or if such assessment of the annual value of such premises is made for the first time after that month, the assessment of such annual value as specified in such first assessment.*"

Basnayake, C.J., in rejecting the submission that the premises No. 273/2 ceased to bear the annual value of 1948 (Rs. 850) observed at page 89–

"Whatever may have been the result of the consolidated assessment and the alteration of the number of the premises, the annual value for the purposes of the Rent Restriction Act 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."

In the case of *Sally Mohamed v. Seyed* (2), again section 5(1) of the Rent Restriction Act came to be interpreted. The facts of that case are briefly these. In November 1941, premises No. 102 and No. 104 were assessed jointly with premises No. 100. In 1945, premises No. 102 and 104 were assessed together, but separately from premises No. 100. In 1955 separate assessments were made for each of the two premises Nos. 102 and 104. On the question as to what assessment should be taken into consideration in calculating the authorized rent, H. N. G. Fernando, J., observed:

"..... the standard rent of Nos. 102 and 104 was the amount of the assessment made for the premises jointly, with premises No. 100, in November 1941, and that will remain unchanged, despite the

separate assessments made in 1945 and 1955, unless the board in the exercise of the power given by the proviso introduces an alteration by fixing separate rents for the two numbers . . ."

In *Premadasa v. Atapattu* (3), (Sirimanne, J. and De Kretser, J.) too, section 5(1) of the Rent Restriction Act came to be interpreted. In that case a building was assessed prior to the first November 1941 which bore assessment No. 53 and in 1948 the building was assessed in separate entities as premises Nos. 53 and 55. The question which arose for determination was whether the standard rent in respect of premises No. 53 should be calculated on the basis of the 1941 assessment or on the 1948 assessment. Sirimanne, J., took the view that the premises in question were not in existence as a unit that has been assessed prior to 1948 and that they were assessed for the first time in that year and therefore the authorized rent should be calculated on the basis of the 1948 assessment. In a separate judgment De Kretser, J., agreed with the conclusion reached by Sirimanne, J., on the basis that new premises have taken the place of the old.

In the case of *Ansar v. Hussain* (4) Wanasundera, J., reviewed the above mentioned cases and certain other judgments. After a careful analysis of the relevant judgments Wanasundera, J., stated at pages 377 and 378 as follows:–

"It would be observed that all these judgments deal with varying factual situations and such situations can be multifarious. A single assessed unit may be subdivided into two or more units and each separately assessed; two or more separately assessed units may be consolidated into one. Separately assessed units may be joined to adjacent units already under assessments. Portions of such adjacent units may simultaneously undergo changes by division or other consolidations. There is no limit to the permutations and combinations that are possible in this regard. It would be extremely difficult to work out any kind of general theory to cover all situations some of which are known, but there may be others which may be beyond contemplation and arise in the future. This case does not present the necessary factual basis for any such ambitious venture even if it were feasible. However, it would be safest to deal with the case before us in relation to its own facts rather than complicate the matter by attempting to deal with diverse other situations."

"In essence the appellant's case is that two lots 100 and 102 have now undergone transformation as to constitute two entirely new units of assessments. The assessment numbers remain as they were. When we inquired about the factual aspect of this change neither counsel was in a position to enlighten us about the extent and significance of the change involved. Undoubtedly, some kind of change has taken place. The change appears to be of a minute nature not affecting the character of the previous two units of asseessment in any substantial way. There is no material also to show that these newer changes had any direct bearing on the new assessment made in 1966 by way of values. Undoubtedly, there could well be cases where changes in the nature and character of a unit of assessment are such that they could be regarded as truly giving rise to new assessment or a separate assessment. But, this is not the case here. What happened here were some very minor adjustments in the boundaries. Lot 100 remained substantially the same with a marginal alteration making it a little less in size than before and lot No. 102 also remained substantially the same with a correspondingly slight accretion to its extent . . . . . Here we find neither a totally new assessment being made nor a separate assessment coming into being, but the previous position enduring with only marginal and insignificant changes in the two lots concerned. There is also nothing to indicate that these minor changes had any impact on the valuations and assessment. This case does not call for a wider ruling than is warranted by its special facts."

Although Wanasundera, J., did not profess to lay down a general theory, the passages quoted above appear to me as eloquent of what Wanasundera J., was looking for to treat a new assessment of an old premises as an assessment made for the first time. Mr. Eric Amerasinghe P.C. for the appellant, placed strong reliance on the judgment of Wanasundera J., and invited us to examine the provisions of the Municipal Councils Ordinance dealing with assessment for rating in order to determine whether the new assessment of 1975 of the premises in question should be treated as bringing into existence a new unit, the assessment of which is made for the first time. Mr. Amerasinghe submitted further that the new assessment of 1975 in respect of the premises in question was a result of an "amalgamation" as opposed to a "consolidation", the effect of the former being to give

birth to new premises. This approach was met with the criticism of Dr. Jayewardene that one cannot have recourse to the provisions of another enactment in an attempt to interpret the provisions of the Rent Act. This criticism was countered by Mr. Amerasinghe by referring us to the unreported judgment of Sharvananda C.J., in *Atapattu v. Wickramaratne*, decided on 16.07.1986–S.C. 59/85; C.A. 635/79; D.C. Mt. Lavinia 461 RE. In the case Sharvananda C.J. (with Colin Thome, J. and Atukorala,J. agreeing)having considered certain sections of the Municipal Councils Ordinance expressed the opinion that the words "business premises" appearing in regulation 3 of the schedule, other than in the first line and the same words appearing in the definition of the "annual value" in section 48 of the Rent Act, should be "struck out as senseless". In any event it appears to me that the words "for the purpose of any rates levied by any local authority under any written law" appearing in regulation 3 give ample justification for having recourse to the provisions of the Municipal Councils Ordinance in interpreting regulation 3. Mr. Amerasinghe draws our attention to section 233(1) and 237(1) of the Municipal Councils Ordinance (chapter 252) in terms of which assessments are made for the purpose of levying rates. These two sections read as follows:

> Section 233(1) "The Council may, from time to time, as often as it may think necessary for the purpose of assessment, divide any house, building, land, or tenement, and consolidate any separate houses, 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 several houses, buildings, lands or tenements of which such premises are composed."
>
> Section 237(1) "Where physical alterations affecting the annual value of any house, building, land, or tenement are made after the assessment in respect thereof for any year has become final by virtue of the preceding sections, a Municipal Council may, notwithstanding anything to the contrary contained in the said sections, at any time prepare a new assessment for such premises."

Mr. Amerasinghe submits that *consolidation* of different premises, for the purpose of assessment, is done in terms of section 233(1). While *amalgamation* of premises is done under section 237(1) although the latter section does not use the word "amalgamation". It is submitted that in the present case, what has been done is an *amalgamation* of premises which necessarily gives birth to new premises which acquires an assessment for the first time.

But what do the facts of the present case reveal? The only physical alteration is a communication door between two old premises. No doubt such an alteration would make the premises more useful as business premises for the tenant in occupation. But from the evidence led at the trial, it appears that the Municipal authorities considered it as a consolidation in terms of section 233(1) and made the assessment of the premises by taking the aggregate annual values of the two existing premises increasing it by five rupees for mere convenience. The facts of the present case do not warrant me to conclude that the assessment was made in terms of section 237(1). An assessment made under section 237(1) may perhaps, in certain circumstances, give birth to entirely new premises, attracting such assessment as its first.

For these reasons I am of the opinion that the 1968 assessment is applicable to the premises in question for the purposes of Regulation 3 and it does not become excepted premises as a result of the assessment made in 1975.

The appeal in C.A. 316/80 is allowed, and the judgment of the learned trial judge is set aside. The defendant appellant will be entitled to costs below and the costs of this appeal fixed at Rs. 525. In view of above findings appeal CA 782/81 is dismissed without costs.

WIJETUNGA, J.—I agree.

Appeal in CA 316/80 allowed.

Appeal in CA 782/81 dismissed.