CHANDRASEKERA AND ANOTHER
v.
BARY

COURT OF APPEAL
RANASINGHE, J., (PRESIDENT, C/A) AND RODRIGO, J.
C.A. S.C. 297/75
D.C. GALLE 7923/L.
AUGUST 31 AND SEPTEMBER 1, 1982

Landlord and tenant – Excepted premises – Rent Restriction Act. Regulation 10 – Municipal Councils Ordinance, sections 234-239 – Annual value – Revision – Service of notice of revision – Revised value to be prospective only.

The plaintiff was the landlord of business premises No. 30, China Garden, Cross Street, Galle and sued the defendant for ejectment.

The annual value of the premises as on 1.1.68 was Rs. 3,287/- and was based on the Notice of Assessment served on the defendant on 13.2.68. In September 1968 the Municipal Council revised the assessment but did not serve notice on the occupier. According to this revision the annual value as at 1.1.68 was Rs. 4,250/-.

The question to be decided was whether the annual value assessed at Rs. 3,287/- or its revision in September 1968 was to be taken into account for purposes of the Rent Act.

Held –

(1) That the Municipal Council could revise the annual value but that such revision has prospective and not retrospective effect.

(2) That the Municipal Council is bound to serve Notice of Assessment on the occupier.

(3) That for purpose of regulation 10 of the Rent Restriction Act the annual value as at 1.1.68 was Rs. 3,287/-

Cases referred to:

(1) *Cooper v. Wandworth Board of Works (1863) 14 C.B.N.S. 180*

(2) *Ridge v. Baldwin (1963) 2 A.E.R. 66, 74*

(3) *Wiseman v. Borneman (1969) 3 A.E.R. 275, 279*

(4) *Ameradasa v. The L.R.C. at al (1977) 79 (1) N.L.R. 505*

(5) *N.S. Don Gerald v. W.M. Fonseka (1969) 71 N.L.R. 457*

(6) *G. H. A. Perera v. Chitra de Vos (1970) 73 N.L.R. 357*

(7) *C. Rajakaruna v. Laura de Silva (1970) 73 N.L.R. 274*

(8) *Durayappah v. Fernando (1966) 69 N.L.R. 269*

(9) *Hoffman-La Roche v. Secretary of State for Trade (1975) A.C. 295, 358*

APPEAL from judgment of the District Judge of Galle.

H.W. Jayewardene, Q.C., with *Miss P. Seneviratne* for substituted defendants-appellants.

N.R.M. Daluwatte for plaintiff-respondent.

October 11, 1982 *Cur. adv. vult.*

RANASINGHE, J. (President, C/A)

The main question which arises for consideration in this appeal is whether the premises in question – bearing No.30 China Gardens, Cross Street, Galle – which are, admittedly, business premises situate within the local limits of the Municipal Council of Galle and from which the plaintiff-respondent has sought to have the deceased-defendant ejected, were, at the times material to this action, excepted premises within the meaning of the Rent Restriction Act of 1948 (Chap. 274) and the relevant Regulations made thereunder.

A determination of this question calls for a consideration of the following matters raised by learned Queen's Counsel appearing for the substituted-defendants-appellants:

(1) Whether notice of the revision of an assessment in respect of any premises, under the provisions of the Municipal Councils Ordinance (Chap. 252) should be served on the person in occupation of the said premises?

(2) Whether such a revision once made could be brought into operation with retrospective effect?

(3) Even so, could such a revision, effected in the month of September 1968, operate to increase, as from 1.1.68, the annual value of any premises, which, by virtue of the assessment actually in force in January 1968, were covered by the provisions of the Rent Restriction Act then in force, so as to convert such premises into "excepted premises", as contemplated by the said Rent Act, and thereby take such premises out of the operation of the said Rent Act with effect from 1.1.68?

A few facts and circumstances relevant to the matter in dispute may be noted. D10 is the notice of assessment served on the deceased-defendant on 13.2.68 in which the annual value of the said

premises for the year 1968 was assessed at Rs.3287/- and the rates and taxes payable for the four quarters of 1968 were assessed on the basis of the said annual value: P4 is an extract from the Assessment Register according to which the annual value, in respect of the said premises, which had, as set out in D10, been fixed at Rs. 3287/- as on 1.1.68, has been revised and fixed at Rs. 4250/- with effect from 1.1.68: that the said revision embodied in P4 was made in September 1968: there is no evidence that notice of the revision embodied in P4 was served on the deceased-defendant: that, by P10, Regulation 2 of the Regulations in the Schedule to the Rent Restriction Act (Chap 274) was amended in regard to the date of the relevant assessment with reference to which the determination of "excepted premises" was to be made: that, after the said amendment, the date, with reference to which such determination had to be made, was 1.1.68.

Part (XII) of the Municipal Councils Ordinance (Chap 252) deals with the making and assessing of rates and taxes on the annual value of all houses and buildings situate within a Municipality. Sec. 234 empowers a Municipal Council to require the owner and occupier of any premises to furnish returns of the rent or annual value of such premises in order to enable the Municipal Council to assess the annual value of such premises. Sec. 235 deals with the entry of the annual value of a property in a book called the "Assessment Book", and the right of an owner or occupier of any premises to inspect the entry relating to his premises. Sub-sec. (3) of the said sec. 235 requires the Municipal Council to cause a notice of assessment, in all three languages, to be served on or left at the premises of every occupier whether such occupier be owner of such premises or not. Sub-sec. (4) thereof gives such occupier the right to submit written objections to such assessment within one month of the date of such service. Sub-secs.(5) and (6) provide for the holding of an inquiry into such objections in the presence of such objector. Sec.236 gives an objector, who is aggrieved by the order made upon his objections, the right to institute an action in Court. Sec.238 empowers a Municipal Council to adopt a previous valuation or an assessment made by it; but it can do so only after notice of such valuation and assessment is served on the occupier. Sec. 239 gives a Municipal Council the power and authority at any time to revise any assessment either by increasing or decreasing it. Although Sec.239 does not expressly require the service of notice of such revision on the occupier of the premises affected by such revision, it, however, seems to be clear, having regard to the procedure ordained in regard to the first valuation

and assessment and also in regard to the adoption of a previous assessment, that the Legislature did intend that notice be given to the occupier before any revision of an assessment is made. What applies in respect of a first valuation and an adoption should apply with equal force in respect of a revision as well. There is no good reason for any distinction to be made as between a first valuation and a subsequent adoption of it on the one hand, and a revision of it on the other. The revision of an assessment could operate to the detriment of the occupier; particularly where such occupant is a tenant in occupation of premises to which the provisions of the Rent Restriction Act applies. A subsequent change may be sought to be availed of, as in this case, to assert that the occupier is no longer entitled to a protection which he enjoyed previously. Looked at from this standpoint it seems to me that this too is a situation in which "the justice of the common law will supply the omission of the legislature" by requiring that at least the occupant of the premises, in respect of which such revision is being made, be given notice of such revision, before it is in fact made. Authority for such a construction being adopted will be found in the cases of: *Cooper vs. Wandsworth Board of Works* (1); *Ridge vs. Baldwin* (2); *Wiseman vs. Borneman;* (3); *Ameradasa vs. The L.R.C. et al* (4). The failure to serve such a notice would also, in view of the judgment of Sharvananda, J., in *Ameradasa's case* (4), operate to render any such revision a nullity and thus void.

In the case of *N.S. Don Gerald vs. W.M. Fonseka,* (1), the Supreme Court held that Sec. 235 of the Municipal Councils Ordinance imposes on the Council a duty to serve a notice of assessment at the premises assessed, and that the object of the said sec. 235 is to ensure that notices were received by occupiers. At page 458 (H.N.G.) Fernando, C.J. stressed the importance of such notice where the person in occupation is a tenant who is entitled to the protection of the rent laws.

Learned Counsel for the plaintiff-respondent relied on the judgments in the cases of – *G.H.A. Perera vs. Chitra de Vos* (6); and *C. Rajakaruna vs. Laura de Silva,* (7). Perera's case (6) is of no avail to the plaintiff-respondent for the reason that the questions which have been raised in this case viz. the necessity of notice, and the power to bring a revision into force with retrospective operation, were not considered in that case. In *Rajakaruna's case* (7) Samarawickrema, J. took the view that, even assuming that notice should be given to a tenant before an assessment of the annual value of the premises occupied by him is increased, yet, it was not open

to the defendant-appellant, who was the tenant, to have the assessment set aside or avoided in that case as the Municipal Council was not a party. In that case too the question of the retrospectivity of a revision of an assessment did not arise for consideration. Furthermore, in view of the subsequent judgment of the Supreme Court in *Ameradasa's case* (4), such an order has to be treated as being void. In regard to the decision in *Duraiyappa's case* (8) it must be noted that even in England it is now being looked upon as a "puzzling case" – vide the judgment of Lord Wilberforce in the case of *Hoffmann – La Roche vs. The Secretary of State for Trade, L.R.* (9).

If the said assessment made without notice is a nullity and is void, then the absence of the Municipal Council is not a bar to the said assessment being challenged in these proceedings. It is also in evidence that the Municipal Council has since, upon objection by the defendants, restored the original assessment as set out in D10.

P4, as set out earlier, though made only in September 1968, has been sought to be made operative as from 1.1.1968. Do the provisions of sec. 239 of the Municipal Councils Ordinance (Chap. 252), under which P4, it is contended, has been made, empower the Municipal Council to make it operative from a date anterior to the date on which it was actually made? It is a fundamental rule of construction – "that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction": "that the general rule of law undoubtedly being, that except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is not to receive a retrospective construction." – vide: *Craies: – On Statute Law (7 edt.) p.387-388, Maxwell: On Interpretation of Statutes (12 edt.) pp. 215-218.* "It is hardly necessary to point out that nothing is more finally established in all civilised systems of jurisprudence than the proposition that the Legislature is presumed to enact prospectively and not retrospectively." *Bindra Interpretation of Statutes (6 edt.) p.724.* Restrospective effect can only be given when the language or the intention of the Legislature is clear and unambiguous.

A consideration of the provisions of the said sec. 239 of the Municipal Councils Ordinance does, in my opinion, show that, whilst there is nothing in the language which would enable such a revision to be made with retrospective effect, there is clear indication that such a revision is to take effect only after the date on which it is actually made. An analysis of the provisions of the said sec. 239

indicates that, whilst the first part of the section states that the Municipal Council "shall have" power and authority, at any time to revise any assessment as it may seem meet by either increasing or decreasing it. The concluding part of it gives the Council the power and authority to fix the date upon which such revised assessment "shall come into force." The date which, in terms of the concluding part of this section, the Municipality is required to fix, is the date upon which such revised assessment "shall come into force." It is not a date upon which such revised assessment "shall have come into force." The date so contemplated is clearly a future date; and not a date which has already elapsed. The word "shall", appearing in the clause "the date upon.....shall come into force", is used as a tense sign. It, in this context, announces a future event. It expresses futurity. These words do, in my opinion, indicate quite clearly that the assessment so revised is to come into effect from a date after the date on which it is so revised. The provisions of the said section 239 far from lending themselves to a construction which would enable such a revision being brought into effect from a date which has already elapsed, do, in my opinion, quite clearly and unmistakably reveal an intention that such revision should come into effect only after it is so made; only from a date in the future. The provisions of the said section 239 are clearly prospective. They do not empower the Municipal Council to bring such a revision into operation with retrospective effect.

Regulation 2 of the Regulations in the Schedule to the Rent Restriction Act (Chap 274) provides that the annual value, which was to determine whether any premises are "excepted premises" or not, should be the annual value of such premises as assessed "for the purposes of any rates levied for the time being" by the relevant local authority. Thereafter this Regulation was amended as set out in P10. Since this amendment came into operation, the position is that the annual value to be taken into consideration for such determination is, in the case of premises, such as the premises which are the subject-matter of these proceedings, which had been assessed prior to 1.1.68, the annual-value specified in the assessment "..... in force on the first day of January 1968....." The operative annual value, therefore, is that which was in force on 1.1.68. The simple question then is: What was the annual value actually in force on the first day of January 1968? It contemplates a certain, fixed factor – the valuation made in respect of any premises to be effective on 1.1.68, and which was brought into operation, and was in fact

operative as from 1.1.68. The amendment has had a definite objective in contemplation. Thereafter the determination was not to be dependent on any factor which would not be constant and could vary from time to time. It was to be dependent on a factor which could easily be ascertained with certainty; and once ascertained it was to remain fixed and immutable, unaffected by any subsequent changes. The annual value was to be frozen. The moment the annual value is made and becomes operative, a certain state of facts comes into existence, and rights are acquired by persons in occupation of such premises. A right so acquired by a tenant in occupation, and which is protected by the Rent Act, is not to be made dependent upon any act done thereafter by a local authority in pursuance of any power lawfully vested in such authority. Any changes in such annual value, made lawfully by a local authority, would be valid and operative for the purpose of collecting rates and taxes in respect of any premises on the basis of such changed or revised annual value. For purposes of determining the question of "excepted premises", Regulation 2, as amended, has, however, frozen such annual value – as that which was in force on 1.1.68. In this view of the matter I am of opinion that, for the purposes of the said Regulation 2, as amended, the annual value of the premises, which are the subject-matter of these proceedings, which was in force on the 1st day of January 1968 is that which is set out in D10, and not the revised assessment as set out in P4.

For these reasons the submissions made by learned Queen's Counsel on behalf of the defendants-appellants that P4 is bad both for the reason that no notice of such revision was given to the deceased-defendant, the person in occupation of the said premises, before such revision was made, and also for the reason that the provisions of sec. 239 Municipal Councils Ordinance do not authorize the making of such a revision with retrospective effect that, in any event, the revised annual value, as set in P4, cannot supercede, for the purposes set out in the said Regulation 2 as amended, the annual value as set out in D10, are entitled to succeed.

The appeal of the 2nd – 8th substituted-defendants-appellants is allowed. The judgment and the decree of the District Court are set aside; and the plaintiff-respondent's action is dismissed with costs, both here and below.

RODRIGO J. — I agree.

Appeal allowed.