

**WIJESURENDRA**  
v.  
**GUNAWARDENA AND OTHERS**

COURT OF APPEAL  
ATUKORALE, J. (PRESIDENT) AND T. D. G. DE ALWIS, J.  
C.A. No. 826/83.  
JANUARY 12 AND 13, 1984.

*Rent Act, No. 7 of 1972, as amended by Act No. 55 of 1980 – Application for determination of authorised rent – Jurisdiction of Rent Board and Board of Review to inquire into the validity of the assessment of the annual value by the local authority – Rules 12 and 13 of the Rules framed under section 52 (1) (c) of Village Councils Ordinance (Cap. 257).*

The respondent made an application to the Rent Board, under section 34 of the Rent Act, No. 7 of 1972, for a determination of the authorised rent of the premises of which he was the tenant. He produced before the Board a copy of the relevant assessment register maintained by the local authority showing the annual value of the premises as assessed by that local authority. The petitioner submitted that the assessment was illegal and void as there had been non-compliance with Rules made under section 52 (1) (c) of the Village Councils Ordinance which were mandatory. The Rent Board refused to allow the petitioner to canvass the assessment of the annual value on the ground that it had no jurisdiction to do so. The petitioner appealed to the Board of Review against the order of the Rent Board. The Board of Review affirmed the Order of the Rent Board and the petitioner then filed an application for a writ of certiorari to quash the Orders of the Rent Board and Board of Review.

**Held—**

Rules 12 and 13 of the Rules made under section 52 (1)(c) of the Village Councils Ordinance are mandatory provisions of law, non-compliance with which would vitiate the assessment made. The annual value defined in section 48 of the Rent Act is the annual value as is assessed according to the Rules made under section 52 (1) (c) of the Village Councils Ordinance.

The Rent Board and, in appeal, the Board of Review have jurisdiction, in determining the authorised rent, to inquire into the objections by a party adversely affected, that the assessment made by the local authority was illegal as there was non-compliance with mandatory Rules.

**Cases referred to**

- (1) *Loku Banda v. The Assistant Commissioner of Agrarian Services, Kandy*, (1963) 65 N.L.R. 401.
- (2) *Bastian Perera v. The Commissioner of National Housing*, (1974) 77 N.L.R. 361.

APPLICATION for writ of certiorari to quash orders made by Rent Board and Board of Review.

*Miss. Maureen Seneviratne, S. A. with Kithsiri Gunaratne* for petitioner.

*S. C. B. Walgampaya* for 1st respondent.

2nd to 4th respondents absent and unrepresented.

*Cur. adv. vult.*

April 5, 1984.

**ATUKORALE, J. (President)**

The petitioner who is the landlord of premises No. 59 A/12 A, Palatota, Kalutara, seeks, inter alia, to quash by way of certiorari the order of the Rent Board of Review contained in exhibit P 14. By this order the Board of Review, affirming the order of the Rent Board, refused to permit the petitioner to lead evidence to establish that the annual value of the premises specified in the first assessment for the year 1978 was not one determined according to law by the local authority and that therefore it was a nullity. The first respondent is the tenant of the premises and the second to the fourth respondents are the members of the Board of Review. The premises are residential premises governed by the provisions of the Rent Act, No. 7 of 1972. The 1st respondent made an application to the Rent Board for a determination of the authorised rent of the premises – vide P 3. At the hearing into this application the 1st respondent produced a certified extract of the assessment register relating to the premises. The petitioner submitted to the Rent Board that the assessment of the annual value was illegal and void for the reason that certain mandatory provisions of law had not been complied with by the local authority before the assessment was made. At the hearing before us it was submitted that there had been non-compliance, inter alia, with Rules 12 and 13 of the Rules framed under S. 52 (1) (c) of the Village Councils Ordinance (Chap. 257, Vol IX, L.E.). The Rules are contained in Vol. V of the Subsidiary Legislation (1956 Revised Edition). It was submitted that the petitioner sought to lead evidence before the Rent Board and the Board of Review to show that no inspection of the premises was carried out by any assessor of the local authority; that the assessment was made in complete ignorance of the structure of the building, its square area and the facilities provided therein and that no notice in Form K in the schedule to the Rules was ever served on anyone as a result of which the petitioner was deprived of the opportunity of objecting to the assessment. The Rent Board refused to hear any evidence on the ground that the certified extract of the assessment was conclusive proof that the premises had been correctly assessed

and that it had no power to inquire into the validity of the assessment. The petitioner appealed to the Rent Board of Review against this order. The Board of Review comprising the 2nd to the 4th respondents affirmed the order of the Rent Board and held that the Rent Board had no jurisdiction to question the legality or otherwise of the annual value as specified in the assessment made by the local authority in proceedings held for the determination of the authorised rent of premises – vide P 14.

Learned Senior Attorney for the petitioner urged before us that the Board of Review erred in law in holding that the Rent Board had no such jurisdiction. She submitted that when a party makes an application to the Rent Board for a determination of the authorised rent on the basis of an annual value specified in the register of assessment prepared by a local authority, it is open to the party who is sought to be adversely affected by the same to challenge the validity of the assessment. She contended that the assessment of the annual value referred to in section 4 of the Rent Act must be a lawful and valid assessment made in compliance with the provisions of law under which it is purported to be made. In support of her contention that it is open to the Rent Board to inquire into the validity of the assessment she relied on the decisions in *Loku Banda v. The Assistant Commissioner of Agrarian Services* (1) and *Bastian Perera v. The Commissioner of National Housing* (2). In the former case Abeyesundera, J. after considering certain earlier decisions of the Supreme Court deduced the principle that " where an order that is not made by a Court is sought to be enforced by a Court under any written law, the Court must be satisfied that such order is valid and the party affected by such order is entitled to attack its validity. " Learned counsel for the 1st respondent submitted to us that neither the Rent Board nor the Board of Review had jurisdiction to question the legality or the validity of the assessment made by a local authority and that the proper remedy of the petitioner was to have canvassed the same at the proper time in appropriate proceedings such as by way of a writ against the local body or a regular action to have the assessment declared null and void. He maintained that it is not open to the petitioner to impeach the assessment in collateral proceedings before the Rent Board.

S. 34 of the Rent Act, No. 7 of 1972, as amended by S. 16 of Act No. 55 of 1980, authorises the Rent Board on an application made in that behalf by the landlord or tenant to determine by order the amount

of the authorised rent of premises. Such a determination is based on the annual value of the premises. S. 48 of the principal Act enacts that the annual value of any premises means, unless the context otherwise requires, "the annual value of such premises assessed as residential or business premises, as the case may be, for the purpose of any rates levied by any local authority under any written law and as specified in the assessment under such written law." Rules 5, 6 and 10 to 18 of the aforesaid Rules provide for and prescribe the method by which the annual value has to be assessed. They provide, inter alia, for the issue of notices of assessment on the occupiers of the premises in a prescribed form (Form K), for the filing of objections, for inquiry into the same by the Chairman of the local authority and for the filing of appeals by persons aggrieved by the decision of the Chairman. Rule 17 states that any assessment in respect of which no objection is made shall be final for that year. Rule 18 (3) enacts that the decision upon appeal by the Assistant Commissioner of Local Government shall be final and conclusive. The Rules are very comprehensive and contemplate the giving of notice of assessment and the filing and hearing of objections thereto. In my view Rules 12 and 13 are mandatory provisions of law, non-compliance with which would vitiate the assessment made. The annual value defined in S. 48 is the annual value as is assessed according to the aforesaid Rules. The Rent Board and the Board of Review were therefore wrong in holding that they had no jurisdiction to question the validity of the assessment of the local authority. The Rent Board is empowered to determine the authorised rent of any premises governed by the Rent Act. Such a determination will necessarily affect the rights of the parties before it. Where one party invites the Board to act on the annual value specified in the assessment register and its validity is challenged by the other party who is sought to be adversely affected by such assessment it is, in my opinion, incumbent on the Board to inquire into and decide upon its validity before determining the authorised rent. There is an error of law apparent on the face of the orders of the Rent Board and the Board of Review. I therefore make order quashing both orders and direct that a fresh inquiry be held by the Rent Board into the application of the 1st respondent. The 1st respondent will pay the petitioner a sum of Rs. 315 as costs of this application.

T. D. G. DE ALWIS, J. — I agree.

*Application allowed.*