1970 *Present :* Samerawickrame, J.

C. RAJAKARUNA, Appellant, *and* LAURA DE SILVA, Respondent

S. C. 112/67—C. R. Colombo, 88419/R.E.

Municipal Councils Ordinance, as amended by Act No. 4 of 1969—Sections 235, 236 (5), 327 (4)—Rent-controlled premises—Annual value—Increase of it without notice to tenant—Effect on action subsequently brought for ejectment of tenant.

The plaintiff-respondent, who was the owner of certain premises, sought to eject her tenant (the defendant) on the basis that the premises were excepted premises under the Rent Restriction Act. The assessment of the annual value of the premises had been raised from Rs. 964 to Rs. 1,607 on an objection made by the plaintiff to the assessment at Rs. 964. Notice was not given to the tenant about either the objection or the inquiry into the objection. In consequence of the raising of the assessment of the annual value, the premises became, for the first time, excepted premises.

Held, (i) that once the annual value of a house is entered in the " Assessment Book " in terms of section 235 (1) of the Municipal Councils Ordinance, the owner of the house may file objection to the assessed annual value at any time thereafter, even before notice of assessment of the annual value is served on the occupier.

(ii) that, even assuming that notice should be given to a tenant upon an objection by a landlord seeking to have the assessment of annual value of premises increased, it was not open to the defendant-appellant to have the assessment set aside or avoided in the present proceedings in which the Municipal Council was not a party.

APPEAL from a judgment of the Court of Requests, Colombo.

E. R. S. R. Coomaraswamy, with *L. W. Athulathmudali*, *C. Chakradaran*, *M. S. Aziz* and *S. C. B. Walgampaya*, for the defendant-appellant.

D. R. P. Goonetilleke, with *W. H. Perera*, for the substituted plaintiff-respondent.

Cur. adv. vult.

July 1, 1970. SAMERAWICKRAME, J.—

The plaintiff-respondent filed this action for ejectment on the basis that the premises in question were excepted premises. The premises are situated within the limits of the Municipal Council of Dehiwela-Mount Lavinia. The assessment of the annual value of the premises was raised from Rs. 964 to Rs. 1,607 on an objection to the assessment made by the owner of the premises, namely, the plaintiff-respondent.

Mr. E. R. S. R. Coomaraswamy appearing for the defendant-appellant submitted that the purported assessment of Rs. 1,607 was void. The plaintiff-respondent had applied to the Municipal Council to have the notice of assessment served on her and not on the occupier. The Municipal Council had declined to do so but had informed her that the assessed annual value had been fixed at Rs. 964. The plaintiff-respondent had thereupon filed objection to the assessed annual value by letter dated 23rd January, 1964. Notice of assessment was itself served on the occupier at a later date. Mr. Coomaraswamy contended that the objection to the assessment made before the service of notice was not in order and that all proceedings taken upon that objection and the order made at those proceedings were void. Section 235 of the Municipal Councils Ordinance provides that the annual value fixed should be entered in the "Assessment Book" and that thereafter notice of assessment of the annual value should be served on the occupier. Subsection 4 reads :—

> "Such notice shall further intimate that written objections to the assessment will be received at the Municipal office within one month from the date of service of notice."

I am unable to take the view that the effect of this provision is that objection raised before the service of notice is bad. In my view, it is open to any person entitled to take objection to an assessment to appraise himself of the assessment as entered in the Assessment Book at any time after that entry is made in that book and to take objection to such assessment, if he desires to do so.

Mr. Coomaraswamy further submitted that no notice of the objection made by the landlady seeking to have the assessment raised and, no notice of the inquiry into that objection was given to his client. He submitted that the order made which prejudiced his client was therefore void. At the time that s. 235 of the Municipal Councils Ordinance was enacted the objection contemplated was obviously that the assessment was too high. Subsection 5 of s. 236 provides for the return of any excess rates that may have been paid after a decision upon an appeal against an assessment. Objection to an assessment on the ground that the assessment was too low and seeking to have the assessment raised began to be made by landlords only after the Rent Restriction Act came into operation. The raising of the assessment of any premises governed by the Rent Restriction Act cannot but adversely affect the tenant of such premises. Under the provisions of the Ordinance, any excess rates

could be passed on to the tenant and it would be the tenant who would have to bear the burden of paying enhanced rates. If the assessment of the annual value is raised so that the premises became excepted premises then the landlord is at liberty to charge any rent from a tenant. The landlord is interested in having the assessment of the annual value increased. It is also in the interests of the Municipal Councils that the assessment of the annual value should be increased because rates that would be payable are thereby enhanced. At an inquiry therefore held by the council to which the landlord alone is a party, arguments in support of the position that the assessment should not be increased may not be advanced. *Prima facie*, it appears to me unfair that there should be an increase of the assessment of the annual value to the prejudice of a tenant without his being given an opportunity to put forward his position in regard to the matter. It is no doubt true that Local Authorities generally have acted with a sense of responsibility and have not raised the assessment of annual values unless they were satisfied that such assessments had to be raised upon the application of proper principles of rating.

Section 235 contains provisions in regard to notice being given of the date of inquiry and of the person in whose presence the inquiry has to be held. This provision did not envisage notice being given to a tenant or his being heard but, as I have indicated earlier, when s. 235 was enacted it was not contemplated that there would be objections seeking to have assessment of annual values increased nor indeed on that date was there any question of possible prejudice to any person other than landlords themselves by reason of raising of the assessment of annual values. Mr. Coomaraswamy relied upon the principle first enunciated in *Bentley's* case that where a statute is silent in regard to notice being given to the interested party, the logic of the common law would supply the deficiency and require such notice to be given.

There is an amendment to s. 327 of the Municipal Councils Ordinance by Act No. 4 of 1969 made with retrospective effect from 1st January, 1949 which may be relevant. It is as follows :—

> "(4) In determining for the purposes of this Ordinance the annual value of any premises to which the Rent Restriction Act applies, and in assessing the annual rent of such premises for the purposes of such determination, a Municipal Council shall not have regard to the provisions of that Act."

This amendment has been enacted because of the view taken that it was not open to a Municipal Council to increase the annual value of premises to which the Rent Restriction Act applied in such a manner that the premises became excepted premises but the plain words of the subsection which enjoins all Municipal Councils not to have regard to the provisions of the Rent Restriction Act may have the effect of precluding any implied requirement that notice should be given to a tenant upon an objection by a landlord seeking to have the assessment of annual value of premises increased.

I have given careful consideration to the matter raised by learned counsel for the defendant-appellant and I should have referred this matter to My Lord the Chief Justice for his consideration as to whether it merited decision by a fuller Bench were it not for the matter which I refer to in the next paragraph.

In the case of *Duraiyappa v. Fernando* [1] it was held by the Privy Council that a decision made without notice to a party in breach of the principles of natural justice is not a nullity but is voidable at the instance of that party. It would appear to follow that in this case if the tenant was entitled to notice, the assessment made without notice and in his absence would not be a nullity but would be voidable. It would be necessary therefore that the assessment should be set aside or declared void by a court. It appears to me that it is not open to the defendant-appellant to have the assessment set aside or avoided in these proceedings in which the Municipal Council is not a party.

I desire however to state that whether there is a legal obligation on a Municipal Council to issue notice to a tenant or not the Council would be well advised, upon an objection made by a landlord seeking to have an assessment increased, to issue notice to the tenant of such premises and to hear him.

Mr. Coomaraswamy also contended that there was a sum of Rs. 3,000 in the hands of the plaintiff-respondent which should be set off against rent and damages. Paragraph 10 of the answer sets out the defendant's position in regard to this matter as follows :—

> "The defendant states that he has paid to the plaintiff a sum of Rs. 3,000 by way of excess rents and there is now in the hands of the plaintiff a sum of Rs. 3,000 paid in excess of rents by the defendant to the plaintiff within the last three years. In the premises aforesaid this defendant is entitled to remain in occupation of the said premises until the liquidation of the said sum. Consequently the defendant further states that this sum having been held by the plaintiff at the time of the notice to quit the said notice to quit is in any event bad in law."

At the trial the following issues were raised :—

> "(11) (*a*) Was there in the hands of the plaintiff a sum of Rs. 3,000 ?
> (*b*) Can this amount be set off against future rents ?
> (12) If so is the plaintiff by his conduct entitled to terminate the contract between the plaintiff and defendant ? "

The defendant stated in evidence that a sum of Rs. 3,000 was paid on his behalf by his brother to the landlady's agent before he entered into occupation in order to instal drainage and water pipes. The plaintiff denied that the sum of Rs. 3,000 was paid. The learned Commissioner of Requests held that a sum of Rs. 3,000 had been paid but he took the view that it had been paid as key money and therefore it was not recoverable. Mr. Coomaraswamy contended that the learned Commissioner was in error in considering the question whether this money was paid as key money which was the case neither of the plaintiff nor of the defendant.

[1] *(1966) 69 N. L. R. 269.*

It was conceded on behalf of the defendant that though the money was paid there was no arrangement that the money should be set off against rent. At the date of action there was no sum claimed as due either by way of rent or damages. In view of the fact that there was no arrangement that this money was to be set off against rent the defendant cannot claim ; even if he was entitled to a return of the money, that it should be set off against future rent and damages. It was open to the defendant to have put forward a claim in reconvention asking that he be declared entitled to a repayment of the sum of Rs. 3,000 and for a decree for that amount. If he succeeded, there would have been a set off between the sums decreed in favour of the plaintiff and the sums decreed in favour of the defendant in accordance with the rules of civil procedure. The defendant-appellant has however not put forward any claim in reconvention and even if he did put forward such a claim, it would have been beyond the jurisdiction of the Court of Requests. I am therefore of the view that upon the position of the defendant-appellant himself the claim for an order that the sum of Rs. 3,000 should be set off against rent and damages cannot succeed.

It was also contended that notice to quit had not been duly given. There is a finding of fact by the learned Commissioner that he is satisfied upon the evidence that the registered letter containing the notice was delivered to the defendant on the 30th of June 1964 and not on 1st July 1964 as contended for by the defendant. I see no reason to interfere with that finding. The appeal is accordingly dismissed with costs.

Appeal dismissed.