

1972

Present: Wijayatilake, J.

T. V. SIRIWARDENA, Appellant, and Mrs. WIJENAIKE
and another, Respondents

S. C. 186/67—C. R. Kalutara, 5927

Landlord and tenant—Annual value of premises let—Method or methods for computation of it—Urban Councils Ordinance (Cap. 255), s. 66—Municipal Councils Ordinance (Cap. 252), ss. 233, 253–243, 327.

At a time when there was a phenomenal and temporary scarcity of premises as a result of the demolition of many buildings in an Urban Council area for road expansion, a tenant agreed to pay a sum of Rs. 300 as the monthly rental for certain premises in the locality for a period of three years commencing on 1st January, 1964. Admittedly the rent was exorbitant and the tenant was compelled to pay it owing to his dire need.

Held, that, in assessing for the year 1964 the annual value of the premises in terms of the definition of "annual value" in section 327 of the Municipal Councils Ordinance, the dire circumstances in which an imaginary tenant was placed could be taken into consideration. Accordingly the annual value should be assessed on the basis of the rental which an imaginary tenant would reasonably agree to pay. In the present case the rental of Rs. 300 per month was reasonable.

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

O. Ranganathan, Q.C., with *L. T. Andradi*, for the 2nd defendant-appellant.

H. W. Jayewardene, Q.C., with *L. C. Seneviratne* and *Ben Eliyatamby*, for the plaintiff-respondent.

1st defendant-respondent absent and unrepresented.

Cur. adv. vult.

February 9, 1972. WIJAYATILAKE, J.—

In this action the question arose with regard to the annual value of premises No. 593 Main Street, Kalutara, which had been finally fixed by the Urban Council at Rs. 1,858/- in the year 1964. The plaintiff avers that the Urban Council has under-assessed the annual value. The U. C. had in 1964 originally assessed the annual value at Rs. 2,123/- and the plaintiff had objected to this assessment on the grounds set out in P 4 dated 10.12.64 and prayed for an increase in the value to at least Rs. 3,300/-. The grounds set out are as follows:—

1. These premises constitute portion of a new building constructed at a very high cost.
2. Floor area nearly 1,000 square feet, provided with an arcade.

3. Provision of water service, drainage and shower baths. Well and electric motor.
4. Permanent fixtures at the instance of the 2nd defendant tenant—such as show cases, iron-leaf shutters.
5. Premises taken on rent by the 2nd defendant at Rs. 300/- per month.
6. Premises in the heart of the town, on the main Colombo-Galle Road opposite the bus stand and Court premises.

The 2nd defendant-appellant who is the tenant of these premises set out his objections in 2D1 of 2.12.64. He submits that the annual value of Rs. 2,123/- has been fixed on an estimated monthly rent of Rs. 200/- which is exorbitant and excessive when compared to the rents prevailing in the Kalutara Bazaar. Premises No. 595 which adjoins the shop has been assessed on an estimated rent of Rs. 135/- per month. The floor area of No. 593 is larger than No. 595 by only a few square feet. Both premises have the same amenities. In comparison a fair rental for No. 593 would be Rs. 150/- per month,—also taking into consideration other premises in the vicinity—such as Milton Bake House (No. 611/A), West End Shop (No. 632), Cigar boutique (Nos. 604 & 653), City Pharmacy (No. 764) all at Main Street. He accordingly prays that the estimated rental be reduced from Rs. 200/- to Rs. 150/- a month. The U. C. inquired into these objections and reduced the annual value to Rs. 1,858/-. The plaintiff filed the present action to have this order set aside and that an order he made that the annual value for 1964 should not in any event be less than Rs. 2,123/-. The learned Commissioner of Requests set aside the order of the U. C. and declared the assessment for the year 1964 to be Rs. 3,240/-. Only the 2nd defendant who is the tenant of these premises has presented the instant appeal.

Mr. Ranganathan Q.C., submits that the learned Commissioner has failed to appreciate the relevant methods of valuation and he has summarily rejected the expert findings of the valuers called by the appellant who are familiar with the area in question and conversant with the various methods of valuation adopted in situations such as this. The plaintiff has failed to call a single valuer in support. It may be noted that the U. C. has not called any evidence at all.

The burden of the appellant's theme is that the Commissioner has rejected as irrelevant the "dire need" of the appellant at a time when there was a phenomenal and temporary scarcity of premises as a result of the demolition of all the buildings abutting the entire Eastern side of the Colombo-Galle road. It is submitted that owing to his dire need the appellant was compelled to pay as much as Rs. 300/- rent per month when he got into occupation of these premises as all the buildings on the Eastern side of the road in this area were demolished; but he contends that this was only an unexpected and temporary scarcity as new buildings sprang up with equal speed after the road widening and at the time of this valuation in 1964 the rental of premises in this area had come down

to its normal level. He accordingly pleads that the exorbitant rent of Rs. 300/- paid by him when he took over the premises should not form the basis of the valuation—the dire need being of a temporary character.

It is common ground that a number of buildings situated on the Eastern side of the Colombo-Galle road at Kalutara bazaar area were demolished for road expansion and in consequence a number of people got dehousing. The appellant is a trader in motor spare parts, iron ware, etc. He had started his business in 1941 on the Eastern side of the Colombo-Galle road in the Bazaar area. These premises were acquired for road widening and had to be demolished. He had to vacate the premises in 1961. He had no suitable alternative accommodation and he had to find shelter in an unauthorised temporary shed of galvanised sheet at Adams Street. The Chairman U. C. had threatened to prosecute him. He had his stores partly at home and partly in this shed. At this stage the plaintiff was putting up the premises No. 593 in question. He was in such dire need for accommodation that he was prepared to pay any rent as he had no place to go to. He had accordingly arranged with the plaintiff to rent her premises for Rs. 300/- per month and went into occupation of the same. He even entered into an agreement P2, 28.11.63 by which he has rented out the premises on these terms for a period of 3 years commencing 1.1.64. According to P2 a sum of Rs. 900/- being 3 months' rent had been paid at the execution of P2. Although this agreement provides for the tenancy to commence on 1.1.64 the appellant had got into occupation as soon as the plaintiff had approved of the arrangement. He has also stated that he paid one year's rent in advance as he was in such a desperate position.

The appellant is a man who has fared well in business and admittedly in affluent circumstances, being the owner of a number of houses at Kalutara. He has said that any place in Kalutara town would have been suitable for his business! If so it is difficult to understand why he had made such a big sacrifice to the advantage of the plaintiff. There is nothing to show that he was seeking to confer a favour on the plaintiff. Being a seasoned business man he was seeking his own advantage and obviously he had persuaded the plaintiff to rent out these premises as they were in a prominent business area.

Mr. Ranganathan has very strenuously submitted that the shortage of premises in this area was for a brief period and it being of a temporary character the "dire need" of this tenant is a relevant factor, the quantum of the rent paid by him being occasioned by this extraordinary situation he had got into. He accordingly submits that the rental of Rs. 300/- cannot form a standard for computation of the annual value and therefore the valuers were correct in availing themselves of other methods of computation in the peculiar circumstances of this case.

At this stage it would be appropriate to examine the statutory provision under our Law to ascertain whether any method or methods for the computation of the annual value have been set out. My attention has

been drawn to section 166 of the Urban Councils Ordinance Vol. 9 Chapter 255 which provides that the assessment of rates shall, with the necessary modification be made in manner prescribed by section 235 of the Municipal Councils Ordinance (Chapter 252) read with sections 233 and 236 to 243 of the said Ordinance. In the latter Ordinance at section 327 "Annual value" has been defined as follows :—

" In this Ordinance, unless the context otherwise requires—

"annual value" means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for any house, building, land, or tenement if the tenant undertook to pay all public rates and taxes and if the landlord undertook to bear the cost of repairs, maintenance and upkeep, if any, necessary to maintain the house, building, land, or tenement in a state to command that rent."

In the light of the above provision the question does arise whether we could adopt any other standard for the computation of the annual value. Mr. Jayewardene, Q.C., submits that the learned Commissioner of Requests was quite correct when he held that the valuers had erred in adopting methods not contemplated in section 327. I am inclined to agree with this view. However, I might state that in applying the standard set out here one has to visualise what "*a* tenant might reasonably be expected, *taking one year with another*, to pay for any house, etc." and the U. C. is not precluded from taking into consideration any other methods which may appear reasonable, in the circumstances, to ascertain what an imaginary tenant is likely to pay. But I entirely agree that the principal basis is the "annual rent". Mr. Jayewardene further submits that it is the annual rental which "*a* tenant" might reasonably be expected to pay and not what *the* particular tenant has in fact paid ; so that the dire circumstances of *the* tenant in occupation would not be relevant. I am inclined to agree with this submission as the definition in section 327 clearly speaks of an imaginary tenant. Otherwise, taxing authorities will have to launch on voyages of discovery as to the respective circumstances of the tenants in occupation. This can lead to chaos not to speak of corruption. The further question arises whether the dire circumstances in which an imaginary tenant seeks to rent out premises are relevant. For instance, as in the instant case where a whole row of buildings had been demolished and several traders dehousing and perhaps driven to seek shelter on the pavements. I have given my anxious consideration to this vital question and I am of the view that such dire circumstances could be taken into consideration in assessing the annual rental an imaginary tenant would reasonably agree to pay.

However, in the instant case although the buildings had been demolished new buildings had sprung up with equal speed and there is nothing to show that there was such a surplus of buildings that the demand had in any way lessened. Far from it, with the widening of the road in this bazaar area one could visualise even a greater demand by traders for

premises. I am not at all satisfied that the demand for the new buildings was only for a short period. Evidence has been led with regard to some of the other new buildings in the vicinity but as the learned Commissioner has correctly pointed out those are all except No. 595 occupied by the owners themselves and therefore of little relevance as the owners could have set out a fictitious rental with a view to mitigating the rates. As for No. 595 the question of annual rent is in suit and pending adjudication.

One has to keep in mind the conspicuous fact that this is a commercial area in a principal town in the Island and with the ever increasing population the demand for business premises has shot up very high. In the circumstances, the appellant should consider himself fortunate to have been able to persuade the plaintiff to select him as her first tenant. Moreover, having come into occupation on a certain basis his conduct in questioning the quantum of the rent seems to me lacking in good faith and his evidence has to be assessed in this light. Furthermore, here is a wealthy trader with a number of houses in Kalutara and he has admitted that he could very well carry on this particular business of selling motor car spare parts and iron ware in any other part of Kalutara. In the circumstances, I entirely agree with the Commissioner in his assessment of the annual value on the basis of the monthly rental at Rs. 300 per month which appears to me to be quite reasonable considering all the amenities provided by the landlady at considerable expense to her, particularly in these times when the cost of building construction is so high. The fact that the appellant entered into a 3 year agreement is very pertinent in this context. Surely, if it was only a temporary predicament a businessman of the appellant's experience would hardly have been a party to this agreement.

In coming to the above conclusions I have been mindful of the principles set out in the following cases relied on by learned counsel:—

Bank of Chettinad v. Municipal Council of Colombo, 55 N.L.R. 361 ;

Abeysekera v. The Colombo Municipality, 42 N.L.R. 237 ;

Kundanmals Ltd. v. The Municipal Council of Colombo, 71 N.L.R. 313 ;

Robinson Brothers (Brewers) Ltd. v. Houghton and Chester-le-Street Assessment Committee, 2 A.E.R. (H.L.) (1938) 79 ; 2 A.E.R. (C.A.) 298 ;

Consett Iron Co. Ltd. v. Durham (North-Western Area) Assessment Committee, A.E.R. (1931 reprint) (H.L.) 62 ;

The Metropolitan Board of Works v. The Overseers of Westham, L.R. (Q.B.D.) Vol. VI (1870-71) 193 ;

Shell-Mex & B. P. Ltd. v. Langley (Valuation officer), A.E.R. Vol. 3 (1962) C.A. 433 ;

and Halsbury's Laws of England (Simonds), Vol. 32, page 67.

The relevant passages in Halsbury are at paragraphs 94 : "Although the tenant is assumed to take the hereditament only from year to year, he is supposed to have a reasonable prospect of continuing in occupation". and 96 : "The hypothetical tenant includes all persons who might possibly

take the hereditament, including the person actually in occupation, even though he happens to be the owner of the hereditament. The rent is that which he will pay in the "higgling of the market", taking into account all existing circumstances and relevant future needs. If the hereditament affords the opportunity for the carrying on of a gainful trade, that fact must be taken into account. If the occupier is the only hypothetical tenant, his ability to pay is a relevant consideration."

In *Bank of Chettinad v. Municipal Council of Colombo* (supra) Gratiaen J. and Gunasekara J. held that, "when the annual value of a house is assessed for rating purposes, the owner may, under section 236 (1) of the Municipal Councils Ordinance, institute an action against the Municipal Council to have the annual value increased so that the premises may be taken outside the scope of the Rent Restriction Act." In the instant case too the object of the plaintiff landlady is obviously to take the premises outside the Act and the object of the 2nd defendant-tenant to bring the premises within the Act. Therefore in assessing the evidence in this case one has to keep this constantly in mind.

Gratiaen J. and Gunasekara J. in the above case further held that, "in assessing the annual value of premises which, at the time of assessment, are not rent-controlled, the proper test of 'annual value' as defined in section 325 (1) of the Municipal Councils Ordinance is what a man of ordinary prudence and foresight, who has duly advised himself as to the state of the market existing at the relevant time, would offer to pay as rental for the premises rather than fail to obtain the tenancy. The test prescribed is concerned only with the reasonableness of the expectation that a certain rent would be obtained in a commercial transaction; the 'fairness' of the bargain is irrelevant."

In *Abeysekera v. The Colombo Municipality* (supra) Howard C.J. held that, "the value of property for purposes of assessment, where the owner and occupier are one, must be ascertained by determining the rent a *hypothetical tenant* would give for the property. The burden is on the owner by the application of the 'profits' or contractor's basis of assessment or by a comparison of his property with properties of a like nature to establish the annual value he claims to put upon the property. The 'profits' basis of assessment presupposes a calculation of the rent which would commend itself to a tenant upon an estimate of the profits resulting from the occupation of the premises. The 'contractor's' basis of assessment presupposes an estimate of the rent by references to the interest which a contractor would expect for the money he had expended in buying this land and erecting the buildings of which the premises consist."

I approve of the assessment of the annual value on the basis of the rental at Rs. 300 per month. Therefore, as the Commissioner has held, the annual value for 1964 should have been Rs. 300×12 less 10% for taxes which will amount to Rs. 3,240.

I dismiss the Appeal with costs in favour of the plaintiff-respondent.

Appeal dismissed.