

1968 Present : H. N. G. Fernando, C.J., and de Kretser, J.

KUNDANMALS LIMITED, Appellant, and THE MUNICIPAL
COUNCIL OF COLOMBO, Respondent

S. C. 180 (Inty.)/1966—D. C. Colombo, 1197

Municipal Council—Valuation of property—Procedure in case of objection to assessment—“Ground of objection”—Municipal Councils Ordinance (Cap. 252), ss. 235, 236 (2), 327—Rent Restriction Act.

Where an action is filed under section 236 of the Municipal Councils Ordinance for the reduction of the assessment of the annual value of certain premises, section 236 (2) is not a bar to the plaintiff adducing evidence and arguing at the trial that, having regard to the provisions of the Rent Restriction Act, the hypothetical tenant contemplated in the definition of “annual value” in section 327 of the Municipal Councils Ordinance cannot be reasonably expected to pay for the premises a higher rent than that which the landlord is permitted by the Rent Restriction Act to receive. It is not necessary that this particular ground of objection should have been stated in the written objection to the assessment, which the plaintiff made to the Council under section 235 of the Ordinance.

APPPEAL from an order of the District Court, Colombo.

S. Sharvananda, with *K. Kanthasamy*, for the Plaintiff-Appellant.

H. Wanigatunga, for the Defendant-Respondent.

Cur. adv. vult.

June 25, 1968. H. N. G. FERNANDO, C.J.—

This was an action filed under section 236 of the Municipal Councils Ordinance for the reduction of the assessment of the annual value of certain premises. The plaint alleged in paragraph 9 that the plaintiff brings this action “objecting to the decision (of the Council) on the ground that the annual value of Rs. 6,690 is excessive and unreasonable”.

When the case was taken up for trial Counsel for the plaintiff stated his intention to argue that, having regard to the provisions of the Rent Restriction Act, the hypothetical tenant contemplated in the definition of “annual value” in section 327 of the Municipal Councils Ordinance cannot be reasonably expected to pay for any premises a higher rent than that which the landlord is permitted by the Rent Restriction Act to receive. Upon an objection taken on behalf of the Municipal Council, the learned District Judge made order that the plaintiff would not be

allowed to adduce evidence of facts upon which he could base the argument which I have just mentioned. The Judge relied on s. 236 (2) of the Municipal Councils Ordinance which provides that :—

“ Upon the trial of any action under this section, the plaintiff shall not be allowed to adduce evidence of any ground of objection which is not stated in his written objection to the assessment ”.

In the appeal also, it was argued for the Council that since this particular ground of objection was not stated in the written objection to the assessment, which the plaintiff had made to the Council under s. 235 of the Ordinance, the plaintiff could not be permitted at the trial to adduce evidence on that ground.

In *Ceylon Turf Club v. Colombo Municipal Council*¹ Macdonell, C.J., considered the meaning of the expression “ ground of objection ” in s. 236 (2) (formerly s. 124), and held that the statement in a written objection to the Council “ that the assessment of annual value is excessive ” is susceptible of a single and precise meaning, namely that the assessment is excessive in relation to the annual value specified in it. In other words, such a statement means that the assessment is excessive because it is greater than the proper assessment which the definition of “ annual value ” requires the assessor to make.

By reason of the definition, the assessment of the annual value of premises must be an estimate of the amount of rent which a tenant might reasonably be expected to pay. If it is the position of an objector that a particular assessment is excessive because a tenant cannot be reasonably expected to pay a higher rent than that permitted by the Rent Restriction Act, his objection is purely and simply that the assessment is excessive. In such a case, the objector relies on a legal argument based on the impact of the Rent Restriction Act only as a reason for his plea of excessiveness : but the ground of objection is that, for that reason, the assessment is excessive. Thus the ground or matter which calls for decision by the Court is whether or not the assessment is excessive ; and an assessment can be excessive, not only because of circumstances which are purely actual, but also because the circumstances are such that provisions of law render the assessment excessive.

I hold therefore that the plaintiff is entitled to raise at the trial the question of law which was outlined before the trial Judge, and to adduce evidence relevant to that question.

The order made by the learned District Judge on 19th September 1966 is set aside. The plaintiff will be entitled to the costs of this appeal.

DE KRETZER, J.—I agree.

Order set aside.

¹ (1934) 37 N. L. R. 393.