1974 *Present :* **Walgampaya, J., Ismail, J., and Walpita, J.**

MUNICIPAL COUNCIL OF COLOMBO, Appellant, *and*
Mrs. R. SUBRAMANIAM, Respondent

S. C. 256/67—D. C. Colombo, 62249/M

Municipal Councils Ordinance (Cap. 252)—Sections 230, 231, 232, 240, 242, 243, 252, 327—"Annual value"—Rent-controlled premises—Computation of their annual value—Relevancy of the controlled or authorised rent prescribed in the Rent Restriction Act—Rates—Primary liability of the landlord.

The term "annual value" is defined in section 327 of the Municipal Councils Ordinance as follows :—

> "'Annual value' means the annual rent which a tenant might be reasonably 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... "

Held, that when the annual value of rent-controlled premises is calculated, the provisions in the Rent Restriction Act determining the rent for the premises cannot be ignored or considered as irrelevant and must be taken into consideration in computing the rent which a tenant might reasonably be expected to pay.

Inasmuch as the Municipal Councils Ordinance imposes the primary liability for the rates of any premises on the owner or the landlord and not on the occupant, it is the value or benefit of the premises to the former that has to be considered, and it is obvious that the Rent Restriction Act places a limitation on that value or benefit.

APPEAL from a judgment of the District Court, Colombo.

M. Tiruchelvam, with *M. Sivarajasingham*, for the defendant-appellant.

C. Ranganathan, with *K. Shanmugam*, for the plaintiff respondent.

Cur. adv. vult.

July 31, 1974. WALPITA, J.—

The appellant council had assessed the annual value of the premises No. 2, Wolfendhal Street, Colombo, for the year 1963 at Rs. 5,500. The respondent filed this action challenging that assessment. On this, the learned District Judge reduced the assessment and fixed it at Rs. 1,500. This appeal is from that Order.

The decision in this case rests on the interpretation to be given to the term "Annual value". It is defined in Section 327 of the Municipal Council Ordinance, Chap. 252, Vol. IX of the Legislative Enactments as follows: "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:

Provided that in the computation and assessment of annual value no allowance or reduction shall be made for any period of non-tenancy whatsoever.

In determining the meaning of "annual value" have we to consider the effect the Rent Restriction Act has on the rent payable in respect of any premises? It is not denied that the Rent Restriction Act applies to these premises. The Municipal Council Assessor did not take it into consideration as he thought it irrelevant. The appellant contended that the Rent Restriction Act must be ignored and the hypothetical rent only calculated. The respondent's argument was, however, that the Rent Restriction Act must be taken into consideration in determining the rent which a tenant might reasonably be expected to pay.

The appellant has contended in this case that the "annual value" is based on the rent a hypothetical tenant pays, and the Rent Restriction Act which determines the rents for these premises should be ignored. It is the contention of the respondent that the rent determined or controlled by the Rent Restriction Act cannot be ignored and must be taken into consideration when determining what a tenant might reasonably be expected

to pay for a house and must be considered from that point of view.

The appellant submitted that the rent that is contemplated in the definition is a hypothetical rent, a rent that a hypothetical or imaginary tenant can reasonably be expected to pay. That in considering this question the Rating Authority must consider the reality of the case and not a rent artificially controlled by law. That is what the appellant has done in this case because according to the evidence of the Municipal Assessor he did not take into consideration the authorised rent as fixed by the Rent Act but what tenants were actually paying for similar premises in the area and these were very much higher. The question is whether he is entitled to do this in terms of the definition of annual value.

Under the Rent Restriction Act Section 3 (1) and Section 3 (2) declares it unlawful for a landlord to receive or recover any rent in excess of the authorised rent of any premises or for a tenant to pay or offer to pay any rent in excess of such authorised rent. Contravention of the provisions of Section 3 (1) and (2) is punishable as an offence—vide Section 23 of the said Act.

It is contended on behalf of the respondent that it would be unreasonable to expect a tenant in these circumstances to pay any rent in excess of the authorised rent nor can the landlord receive any such rent. There is much force in this argument. To use the words of Atkin, L.J.

> "To suggest that in the present time the mind of an intending tenant of a house to which the Rent (Restriction) Act applies would not be reasonably affected by the provisions of the Rent (Restriction) Act appears to me to border upon the ridiculous."

> "If no higher rent than the standard rent and the statutory increases is enforceable, as a matter of common sense that seems to be the limit of the rent a tenant can be reasonably expected to give."

The English Act did not prohibit a tenant paying a higher rent or the landlord from receiving such and therefore it was argued in the case Lord Atkin was considering that the Assessment Committee may consider the realities where tenants do pay excess rent willingly. To this argument Lord Atkin said:

> "I think that when the Valuation Act speaks of rent, it means rent, a sum legally enforceable; and is not contemplating a sum legally enforceable plus a voluntary gift, still less a voluntary gift which after payment can at any time be recovered back."

Under our Rent Act, however, payment of rent in excess of the authorised rent or receipt of such by the landlord is besides a punishable offence and a tenant cannot therefore reasonably be expected to pay anything more than controlled or authorised rent. The Rent Restriction Act must therefore be taken into consideration in determining such rent and from it the annual value of the premises calculated.

This would really dispose of this question but it has been contended by the appellant here, that what is contemplated in the assessment of property (Sec. 230, Municipal Councils Ordinance, Chap. 252) is an estimate of the value of the beneficial occupancy of a hypothetical tenant. In support of this the appellant relied on the decision of the House of Lords in Assessment Committee of *Poplar v. Roberts*[1] (1922) 2 A. C. page 93 (referred to hereinafter as the *Poplar case*). In this case the principal question which had to be decided was whether the Rent (Restriction) Act 1920 in its application to a hereditament had to be taken into account in arriving at the valuation of the said hereditament for the purposes of the Valuation (Metropolis) Act 1869. Under Section 4 of the Valuation (Metropolis) Act, 1869 " gross value " is defined as the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes and the landlord undertook to bear the cost of the repairs and insurance ". This is similar to the definition of annual value in our Municipal Councils Ordinance, Sec. 327. The House of Lords held that it is the benefit to the tenant that has to be considered. Lord Buckmaster said :

> " So far as the occupier is concerned the provisions of the Rent Restriction Act have not in any way made his occupation beneficial. It is the landlord who is affected and he as landlord is not the subject of assessment nor can his interest in the property be considered for the purpose of determining what that assessment should be. If, however, the rent which has to be ascertained under the Section is the real rent, then the fact that that cannot be increased will have a material effect on the valuation. "

> " From the earliest time it is the inhabitant who has to be taxed. It is in respect of his occupation that the rate is levied, and the standard in the Act is nothing but a means of finding out what the value of that occupation is for the

[1] *(1929) 2 A. C. 93.*

> purposes of assessment. In my opinion, the rent that the tenant might reasonably be expected to pay is the rent which, apart from all conditions affecting or limiting its receipt in the hands of the landlord, would be regarded as a reasonable rent for the tenant who occupied under the conditions which the Statute of 1869 imposes."

The House of Lords decision was, therefore, that in arriving at the valuation for purposes of the Valuation Act of 1869 of a hereditament to which the Rent Restriction Act, 1920, applies, the maximum gross value to be assigned to that hereditament is not limited to the standard rent of the hereditament together with the additions thereto permitted by the latter Act.

The value to an occupier is not affected or controlled by the fact that a landlord cannot enforce as against a tenant, rent higher than the statutory standard rent in operation at the time. The House of Lords disagreed with the view of Atkin, L. J. which I have quoted earlier, as they were of the view that he was considering the effect on the landlord. In the *Poplar case*—Lord Carson disagreed with the majority view and agreed with the view taken by Atkin L.J. and added—

> "I am of opinion that the only rent we have to consider is a rent *de jure* recoverable and not a voluntary promise which cannot be enforced."

The question we have to consider in this case is whether it is in respect of the occupation that the rate is levied or whether the landlord is the subject of assessment and his interest or benefit considered for purposes of determining what that assessment should be.

The respondent contended that the *Poplar case* had no application to the situation here. He relied on a decision of the Privy Council in the case of *Port of Spain Corporation v. Gordon & Co. Ltd.*[1] (1952) 2 Weekly Law Reports, page 723. There too the question was whether the rent restriction law had any, and if so what effect, on the determination of the rateable value. Lord Somervell in that case said that the *Poplar decision* had no application, that under Trinidad law, regard must be had to the Rent Restriction Ordinance which affects the annual rent payable and exigible by the landlord. In Trinidad according to the relevant legislation the annual rateable value had to be determined, whether the hereditament be actually rented or not by considering in every case what amount of annual rent a tenant may be reasonably expected to pay for such hereditament, having regard to the purposes for which such hereditament is

[1] *(1952) 2 W. L. R, 723.*

actually used. This is somewhat similar though not the same as the definition of annual value in our Ordinance. Further the Trinidad Ordinance provided that the annual rate or tax had to be borne or paid by the owner of such hereditament though if the tenant or occupier pay such rate, it may be deducted by him from the rent payable. There was further provision for the recovery of rates by action in Court against the owner. The Privy Council held in the circumstances that the basis of tax differs from that of rating under English Law. Lord Somervell said :

> "Under the latter the rate is imposed on the occupier. There must be an occupier or there is no rate. Not only is it not imposed on the owner but it is not a charge on the land. If the rate is not paid the authority's remedy is by distress and sale of the goods of the occupier. In Trinidad the rate is borne by the owner ; it is a charge on the rateable hereditament. This is exigible if there is no occupier."

In determining the rateable value of such premises therefore the Privy Council held that regard must be had to the Trinidad Rent Restriction Ordinance, 1941, which affects the annual rent payable to and exigible by the landlord, and the value of the hereditament for rating purposes is the amount of the "standard rent" which has been fixed in accordance with the Rent Restriction Ordinance.

The respondent's counsel maintained that the position is the same here as it is the landlord who is liable for the rates. The respondent also referred us to the decision in (1952)2 A. E. R. 535 *Rawlence v. Croydon Corporation.*[1] There, the Court of Appeal considered the meaning of the term "The full net annual value" under the Housing Act of 1936, Lord Denning stated that the *Poplar case* had no application.

> "Rating concerns the value to the occupier, whereas we are here concerned with the value to the landlord."

> "The 'full net annual value' of the house is not to be calculated as if the Rent Acts do not exist. It is the full amount which a landlord can reasonably be expected to get from a tenant. He cannot reasonably be expected to get more than the Rent Acts permit."

In the case of *Rangoon Municipality v. Surati Co.*[2] A.I.R. 1924 Rangoon p. 194 the Court distinguished the *Poplar case* on the ground that the House of Lords in that case (i.e. the *Poplar case*)

[1] *(1952) 2 A. E. R. 535.* [2] *A. I. R. 1924 Rangoon 194.*

was dealing only with the beneficial occupation of the occupier and also because the Rent Restriction Act they had before them did not make it an offence as the Rangoon Rent Restriction Act does, to take more than the standard rent. Robinson, C.J. said :

> "It is no doubt the case that the Rangoon Rent Act was not intended to affect assessment. It was not passed for that purpose, but with an entirely distinct and settled object. But it is the law of the land at present, and it cannot be treated as non-existent if it does affect the question that has to be decided in these cases. In all ordinary cases it will be necessary to consider what rent the landlord could reasonably expect to get for the premises. The landlord, the standard rent having been fixed by the Controller, could not reasonably expect to get any higher rent for the premises. Did he attempt to do so, he would be guilty of an offence for which he would be liable to a heavy fine."

Therefore we have to see here, whether under our law, the rate is imposed on the occupier or whether it is borne by the owner. To determine who is under liability to pay the rates an examination of the relevant Sections of the Municipal Councils Ordinance is necessary. Under Section 242 movable property of the occupier can be seized for the payment of arrears of rates up to two quarters unless such movable property belongs to the owner or joint owner of the premises. Under Section 243 the occupier or tenant of such premises whose movable property has been seized can pay such rates and deduct the sum from the rent due to the landlord. Under Section 240 there is a provision for a remission of a proportionate part of the rates when the premises remain untenanted. Under Section 252 in the case of non-payment of rates the Municipal Council can seize the movable or immovable property of the proprietor or joint proprietor of the premises.

From these Sections it seems clear that the liability for the rates is on the owner of the premises. Even if the Municipal Council has the right to seize the property of the occupier, who is not the owner, for arrears of rates up to two quarters, these arrears if paid in the first instance by the occupier could be deducted by him from the rent payable to the landlord. It is clear that the ultimate liability remains with the landlord or the owner of the premises occupied. Liability being on the owner or proprietor and not on the occupier, who is not the owner, it is therefore the benefit that accrues to the owner or landlord that counts and not that of the occupier or tenant. In

Frewin & Co. Ltd. v. Municipality[1] 59 N.L.R. page 355 there is an observation by Fernando, C.J. as follows :—

> "This contention would be reasonable if the Ordinance imposed on tenants the liability or the responsibility for the payment of rates, but the provisions of the Ordinance are to the contrary effect. For instance Section 243 gives to an occupier who is not an owner the right to deduct from the rent any amount which he pays as rates or the value of any of his movables which may be seized for non-payment, and even in regard to the seizure of movables, Section 242 protects the movables of a tenant from seizure for arrears of rates beyond the two quarters next preceding the seizure. The principal sanction for the levy of rates is that contained in Section 252 which confers on the Council the right to sell property of an owner who is in default."

The decision in *Ceylon Turf Club v. Municipal Council*[2] 37 N. L. R. 393 has no application here because there the owner of the premises was the Crown and the Ceylon Turf Club was the lessee from the Crown and under Sections 231 and 232 the Crown is not liable for rates and the Crown property cannot be sold for the recovery of rates. Liability for rates in that case was on the lessee. That case can therefore be distinguished. Under the Municipal Councils Ordinance, therefore the primary liability for the rates is on the owner and the benefit to the occupier cannot be taken into consideration.

The liability for the rates being therefore on the owner or the landlord, it is the value or benefit to him of the premises that has to be considered and it is obvious that the Rent Restriction Act places a limitation on that value or benefit. In determining the " annual value " under Sec. 327 of the Municipal Councils Ordinance, therefore, the Rent Restriction Act cannot be ignored or considered as irrelevant ; it must be taken into consideration.

We are of the view therefore that the learned District Judge was correct in the view he took in this case. The appeal must therefore be dismissed. The respondent is entitled to costs of appeal.

WALGAMPAYA, J.—I agree.

ISMAIL, J.—I agree.

Appeal dismissed.

[1] *59 N. L. R. 355.*

[2] *37 N. L. R. 393.*