1954 *Present :* **Gratiaen J. and Gunasekara J.**

BANK OF CHETTINAD, Appellant, *and* MUNICIPAL COUNCIL OF COLOMBO, Respondent

S. C. 329—D. C. Colombo, 22,991

Municipal Councils Ordinance, No. 29 of 1947—Sections 236 (1) and 325 (1)—Annual value of premises—Scope of assessee's objection to assessment—Principles applicable in assessing annual value—Relevancy of economic factors of supply and demand—Rent Restriction Act, No. 29 of 1948.

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 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.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *G. T. Samarawickreme*, for the plaintiff appellant.

E. G. Wikramanayake, Q.C., with *N. Nadarasa*, for the defendant respondent.

Cur. adv. vult.

April 2, 1954. GRATIAEN J.—

The appellant Company owns four residential bungalows, precisely similar to one another in all respects, which were erected in Park Road, Havelock Town, Colombo, during the year 1949. After their completion, the respondent Council served a notice on the appellant under the Municipal Councils Ordinance, No. 29 of 1947, assessing the " annual value " of each bungalow for rating purposes at Rs. 1,245. The appellant objected to the assessments and instituted this action against the Council to have the annual value increased in each case to Rs. 2,100.

2——J. N. B 35520—1,590 (5/54)

An issue was raised at the trial as to whether the action was maintainable, the Council's argument being that the appellant could not properly claim to be " aggrieved " by the assessments within the meaning of section 236 (1) of the Ordinance. If (so it was contended) the assessments were in fact too low, the appellant stood to gain financially by the under-assessments. Under normal circumstances, this argument would no doubt have carried conviction. But in the present case, the foundation of the appellant's " grievance " was that the under-valuation complained of would have the consequence of bringing each bungalow within the scope of the Rent Restriction Act, No. 29 of 1948, whereas the correct assessments would have the opposite effect. It is therefore perfectly clear that the appellant had a pecuniary interest in securing assessments beyond the limit of statutory rent control. For these reasons, I agree with the learned Judge that this preliminary objection was without substance. It is interesting to note that in *R. v. Surrey (Mid-Eastern Area) Assessment Committee* [1] Lord Goddard C.J. explained that a " person aggrieved " for the purposes of the Rating & Valuation Act 1925 " must mean a person who considers that he is aggrieved ".

With regard to the merits of the dispute, the learned Judge took the view that the appellant had not discharged the burden of proving that the assessments were too low, and the action was accordingly dismissed with costs. The conclusion at which I have arrived is that the principle underlying the Council's assessments, as explained by its expert witness Mr. Ferdinands (a retired officer of the Assessor's Department), was erroneous, and that the undisputed evidence led at the trial justified the contention that the Council's valuations should be increased.

Section 325 of the Ordinance defines " the annual value " of rateable premises as " the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for (the premises) if the tenant undertakes to pay all public rates and taxes, and if the landlord undertakes to bear the cost of repairs, maintenance and upkeep, if any, necessary to maintain the (premises) in a state to command that rent ".

These words have been authoritatively interpreted in the English Courts in rating cases. For instance,

1. " The directions given by the Act are equivalent to saying that one must look to all possible tenants, and the phraseology does not exclude an owner who himself occupies the premises "—*per* Lord Esher in *R. v. School Board of London* [2].

2. " Although the tenant is imaginary, the conditions in which his rent is to be determined cannot be imaginary. They are the actual conditions affecting the hereditament at the time when the valuation is made "—*per* Lord Buckmaster in *Poplar Assessment Committee v. Roberts* [3].

[1] *(1948) 1 All E. R. 856 at 858.* [2] *(1886) 17 Q. B. D. 538 at 740.*

[3] *(1922) 2 A. C. 93 at 103.*

3. " The hypothetical rent which the (hypothetical) tenant would give is estimated with reference to the hereditament in its actual physical condition (*rebus hic stantibus*), and a continuation of the existing state of things is *prima facie* to be presumed "—*per* Lord Maugham in *Townley Mill Co. (1919) Ltd. v. Oldham Assessment Committee* [1].

The acute shortage of residential accommodation in the city of Colombo under post-war conditions is so notorious that very little evidence, if any, would have been necessary to bring it to the formal notice of a Court of law, and there was no justification for assuming in 1949 that the situation would improve within a measurable distance of time. In the case of uncontrolled premises in particular, the landlord could virtually dictate his terms, and hardly any limit (beyond the limits of his own conscience) was placed on his ability to exact a bargain which under normal circumstances would have been impossible. In this context, at any rate, Colombo was certainly not the capital of Utopia.

The Council's expert disregarded the prevalence of these regrettable conditions, although he admitted that " if a house falls vacant, there are hundreds of prospective tenants to outbid one another. Because tenants are prepared to pay large sums in respect of premises, there is competition ". He further conceded that, but for the provisions of the Rent Restriction Act, controlled premises would also have been able to command far higher rents than they were doing in 1949. The evidence established that, by way of contrast, there had been no housing shortage in Colombo, and no such competition between prospective tenants bidding against one another for vacant bungalows before the year 1941.

This witness very candidly explained the formula which he had adopted for computing the annual value of the appellant's bungalows in November 1949 ; he took as his " yardstick " the annual value of *a* (*structurally*) *comparable pre-war bungalow which was subject to rent control legislation*, and merely added to that figure an allowance for the circumstance that a new bungalow (because it was new) could generally command a slightly higher rental than an older one. He was asked why no further allowance was made for the fundamental change which had taken place in the conditions of the market during the intervening period. To this question he succintly replied :

" I am not concerned whether a (tenant) is willing to pay or not. I never assess the value on (that) basis. What I consider is whether it is *a fair rental*."

Far be it from me to condemn the philosophy which underlies this method of approach. But, in disposing of rating cases, a Judge or a Municipal Assessor must not be influenced by his individual predilections for " social engineering ". His duty is to administer the law as it has been enacted, and not the law which, in his private opinion, ought to be in force.

The proper test of " annual value " as defined in 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

[1] *(1937) A. C. 419 at 436, 437.*

the relevant time, would offer to pay as rental for the premises concerned *rather than fail to obtain the tenancy.* This formula is adapted from that laid down by the Privy Council for estimating the " value " of property in compulsory acquisition cases—*Pastoral Finance Association Ltd. v. The Minister* [1]. If the prevailing conditions lend themselves to the exploitation of prospective tenants by landlords, they cannot be excluded from consideration of the problem unless Parliament has stepped in to extend its protection to the hypothetical tenant. 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 unfortunately irrelevant.

The evidence of another witness who was called by the Council revealed the true picture. Mr. A. O. Weerasinghe, a member of the Ceylon Civil Service, was appointed in June 1948 to assume duties in the office of the Ministry of Commerce, and from that time he had tried in vain to find suitable accommodation for himself and his family in Colombo. He applied for the tenancy of a Government bungalow, but failed. He advertised in the local press, but there was no response. In the result, he was put to the inconvenience and expense of living in Gampaha and travelling daily from there to his office in Colombo. Ultimately, he came to learn that the construction of the appellant's bungalows (to which these assessments relate) were nearing completion. Negotiations with the appellant Company followed, and on 7th September, 1949, he secured the tenancy of one of the bungalows in question at a monthly rental of Rs. 225, the terms of the contract providing that the landlord should pay the rates and taxes and meet the cost of all except minor repairs. At the time when Mr. Weerasinghe gave evidence on 13th January, 1951, he was still in occupation of the bungalow under this agreement. He explained that he was " almost compelled " to accept the situation because he was unable to find other suitable accommodation at a lower rental. He further complained that he did so " more or less under duress ", but such " duress " was in truth created only by the circumstances of the market, and was certainly not of a kind which would have entitled him to claim legal relief from the onerous terms of a contract of tenancy into which he had reluctantly but *voluntarily* entered.

Mr. Weerasinghe's experience was obviously characteristic of the difficulties encountered by innumerable other prospective tenants placed in a similar situation, and this transaction demonstrates that the rental which he had agreed to pay represented what the " hypothetical tenant " of rating law would " reasonably be expected " to be willing to pay for the bungalow rather than lose the tenancy. He was the victim of the ordinary laws of supply and demand, and the Ordinance gives us no option but to assess " annual value " by reference to those economic factors. We cannot ignore the realities of the situation prevailing at the time without also ignoring the requirements of the statute which it is our duty to obey.

I readily accept the proposition that " the actual rent paid is no criterion unless, indeed, it happens to be the rent that the imaginary tenant might reasonably be expected to pay in the circumstances

[1] *(1914) A. C. 1083.*

mentioned in the section (which defines 'annual value ') "—*Poplar Assessment Committee v. Roberts* (*supra*). The reason is obvious. In one case, the rent which a landlord actually receives might be only nominal, because the tenant is a friend, a relative or an employee ; in another case, it might well exceed the true annual value because it " includes the price paid for the goodwill of the business previously carried on there "—*Ryde on Rating* (8th Ed.), p. 231. But where, as happened in the case of Mr. Weerasinghe, the rental agreed upon was referable solely to " the higgling of the market ", it affords very valuable material from which the true annual value can be assessed. Mr. Ferdinands himself conceded, during the closing stages of his cross-examination, the force and relevancy of the following observations in *Witton Booth's Valuations for Rating* (1947 Ed.), p. 125 :

> " To be proper evidence of value, a rent should be determined exclusively by those economic factors which would influence the hypothetical tenant in his negotiations with the hypothetical landlord. One of the principal factors governing all rental values is the ordinary law of supply and demand. This scarcely needs emphasis at a time like the present, when post-war conditions have so materially increased the letting value of houses, *and particularly those not under the control of the Rent Restriction Acts*."

The error into which the learned judge has fallen in upholding the assessments made by the Council was that he attached too much weight to the circumstance that the maximum rental of certain bungalows in the city (no doubt comparable to the appellant's bungalows in respect of accommodation and attractiveness) happened to be controlled by the provisions of the Rent Restriction Act. He therefore decided that the appellant's buildings should be similarly controlled. Hence the confusion between (1) the sum which an unprotected hypothetical tenant would reasonably be expected to pay *in fact* for a bungalow which was not rent-controlled, and (2) the maximum " fair rental " whch the landlord *ought to be compelled to accept* for such a bungalow.

In England, Bankes L.J., whose minority judgment in the Court of Appeal in the *Poplar Assessment Committee's case* (*supra*) was expressly approved by the House of Lords, pointed out that, *even in the case of rent-controlled houses :*

> " Although the Rent (restrictions) Act 1920 may *affect* the rateable value, it does not *fix* the rateable value "—*(1922) 1 K.B. 25 at 44.*

It is unnecessary for the purposes of this appeal to decide whether, (and if so, to what extent) the annual value of rent-controlled premises in Ceylon can ever be assessed at more than the authorised rent. Suffice it to point out that, in the present state of the law, no artificial restrictions are permissible in the case of premises which, *at the time of assessment,* are not rent-controlled.

In the present case, there was also evidence of the rental paid in the immediate locality by tenants for comparable bungalows which were not rent-controlled. In 1948 another landlord had constructed four

bungalows in Park Terrace, Havelock Town, each of which Mr. Ferdinands (in his official capacity) had originally assessed, by the application of his "fair rental" method of valuation, at Rs. 1,385 *per annum* (as against Rs. 1,245 *per annum* for the appellant's bungalows). In consequence of an appeal by the landlord concerned, the (then) Municipal Commissioner increased the annual value of those bungalows to Rs. 2,250 and according to the evidence, the actual monthly rental subsequently paid for each of them varied between Rs. 240 and Rs. 300—i.e., a little more than Mr. Weerasinghe had agreed in 1949 to pay for one of the bungalows with which this action is concerned.

The learned Judge rejected the argument that these four bungalows in Park Terrace were suitable standards for comparison because he felt that there seemed to be "a certain amount of suspicion" attaching to those particular assessments. There is no evidence on the record to justify any such vague suspicion. Admittedly, the bungalows themselves were structurally and in other respects comparable to those with which this action is concerned, and the correctness of the (then) Municipal Commissioner's final assessments was confirmed by the rents which the landlord concerned actually received in a "landlord's market". The Council had not thought fit since 1948 to revise the assessments of these bungalows under section 239 of the Ordinance.

In my opinion the concrete evidence of the rents paid by the tenants of comparable bungalows which are not rent-controlled and by the tenant of one of the appellant's bungalows under assessment made it quite unnecessary to seek a solution by reference to the controversial and less reliable calculations suggested by the experts who applied the "contractor's test" or the "square foot method". The Council's assessments must be rejected because they were based on a principle of computation which ignored the realities of the prevailing market for vacant bungalows. The definition of "annual value" in the Municipal Councils Ordinance of 1947 has not been subjected to statutory modification by the provisions of the Rent Restriction Act, 1948.

I would allow the appeal with costs in both Courts, and direct that the annual value of each bungalow to which the action relates should be assessed at Rs. 2,100. These bungalows, according to the admitted evidence, could reasonably have been expected to command only a slightly lower rental than those paid during the relevant period for the bungalows in Park Terrace, Havelock Town, whose assessments still stand at Rs. 2,250 *per annum* per bungalow.

The present state of the law is no doubt calculated in many cases to expose prospective tenants of uncontrolled premises to exploitation. Whether the law should be amended is for Parliament, and not the Courts, to decide.

GUNASEKARA J.—I agree.

Appeal allowed.