

1938

*Present : Poyser S.P.J.***WEERASEKERA v. MUNICIPAL COUNCIL, COLOMBO.**95.—*C. R. Colombo, 34,924.*

*Annual value—Basis for determination—Rent paid by tenant a fair test—Municipal Councils Ordinance, No. 6 of 1910, s. 3.*

The actual rent paid by a tenant is not decisive in determining the annual value of premises as defined by section 3 of the Municipal Councils Ordinance, No. 6 of 1910, but it is generally a fair test to apply in the absence of bad faith on the part of the landlord or the tenant and provided the rent has not been fixed in view of special circumstances.

*Silva v. Colombo Municipal Council (3 Balasingham 163) followed.*

**A** PPEAL from an order of the Commissioner of Requests, Colombo.

*N. Nadarajah* (with him *H. W. Thambiah*), for plaintiff, appellant.

*L. A. Rajapakse* for defendant, respondent.

*Cur. adv. vult.*

December 1, 1938. POYSER S.P.J.—

In this case the appellant claimed that the annual value of his premises No. 88, Dean's road, be reduced for the year 1937, from Rs. 850 to Rs. 650. The Commissioner has dismissed his claim and the appeal is against that decision.

The material facts are not in dispute and are as follows:—The building in question, together with other adjacent buildings belonging to the plaintiff, were constructed in 1929 out of money paid to him by the Municipality in respect of the acquisition of some land. The premises in regard to which this claim is made were assessed in 1932 at Rs. 650 a year. There was a similar assessment for 1933 and although in 1934 it was assessed at a higher figure on objection it was reduced again to Rs. 650. In 1936 it was assessed at Rs. 1,000 and on objection it was reduced to Rs. 850. The appellant states that he was not satisfied with the assessment but was out of time for his appeal. For the year 1937, these premises were again assessed at Rs. 850 and it is against this assessment that the claim is made.

The appellant's evidence in addition to establishing the above facts was also to the effect that he had never been able to obtain a larger rent than Rs. 65 a month for these premises. He stated that he had asked his tenant to pay an increased rent but the latter refused to do so, he also stated that he had made no alteration to the buildings since 1934. The tenant was called as a witness. He confirmed the appellant's evidence that Rs. 65 a month rent was paid for more than the last three years and stated that the appellant had threatened to raise his rent, but he (the tenant) stated that if that was done he would leave and even now thought that he was paying too much. In that connexion he mentioned other premises belonging to the plaintiff, which are assessed at a lower figure, which he stated were preferable to the premises he occupied for the purposes of an eating-house. Later he qualified this by saying there was nothing to choose between them. This evidence of the appellant and his tenant in regard to the rent was not contradicted or questioned.

On behalf of the Municipality, Mr. Orr, the Municipal Assessor, gave evidence to the effect that he had inspected premises of a similar character in the locality and in consequence of such inspection he came to the conclusion, after taking into account the area in square feet of the basement, ground floor and first floor of each of the premises he inspected, that a fair annual value for the premises in question would be Rs. 850 a year.

The Commissioner has held that the burden was on the plaintiff to prove that this assessment was unreasonable and that this has not been proved. He consequently holds that the sum of Rs. 850 is fair and reasonable annual value of the premises in question.

It is never easy to decide what is the annual value of any premises as defined in section 3 of Ordinance No. 6 of 1910. It is necessary to decide what a hypothetical tenant would pay. What the actual tenant pays is not necessarily decisive of the annual value, although in deciding the question it may be of the utmost importance.

The most difficult cases arise in regard to premises which are occupied by the owner and such premises as schools. Certain principles, however, have been laid down in order to decide how the annual value is to be arrived at. Firstly, it has been decided, and such decision is binding on me, that when a person institutes an action under section 124 of the Municipal Councils Ordinance that the onus is on him to show that the assessment is unreasonable. (*Marikar Bawa v. Colombo Municipal Council*<sup>1</sup>.) Now, has the plaintiff satisfied this onus? There is the uncontradicted evidence that he can only obtain Rs. 65 a month as rent and that he has tried to obtain more. The tenant who pays this rent considers he is paying too much and states he would leave the premises if the rent was raised. As I stated before, the rent actually paid is by no means conclusive as to what a hypothetical tenant would pay, but it is *prima facie* evidence which, if uncontradicted, may become conclusive. It is, of course, open to either party to show that the rent agreed to be paid was a misconception. See *Ryde on Rating*, 5th ed., p. 207.

Local decisions are to the same effect. In *Silva v. Colombo Municipal Council*<sup>2</sup> Pereira J. held that the actual rent received by the landlord, in the absence of evidence of bad faith on the part of the landlord or tenant is, generally speaking, a fair test to go by in estimating the annual value, provided it has not been fixed in view of special circumstances applicable to any particular case. Similar opinions were expressed in *Sidoris Appuhamy v. Municipal Council of Colombo*<sup>3</sup>.

I do not think the case of *Poplar Assessment Committee v. Roberts*<sup>4</sup> in any way modifies the principles above enunciated. There is a passage in the judgment of Lord Buckmaster in which it is stated that "the tenant referred to is, by common consent, an imaginary person; the actual rent paid is no criterion, unless, indeed, it happens to be the rent that the imaginary tenant might be expected to pay in the circumstances mentioned in the section. But, although the tenant is imaginary, the conditions in which the rent is to be determined cannot be imaginary. They are the actual conditions affecting the hereditament at the time when the value is made".

Apart from the evidence to which I have already referred, the Municipal Assessor, who, no doubt, has examined all the premises in the immediate locality with the utmost care, has not stated that this locality in the last few years has improved either from a residential or business point of view or that the value of the premises in such locality has gone up. Nor has he given evidence of any other conditions such as good trade, increased population or increased prosperity which would lead to a greater demand for premises of this description and a consequential increase in their annual value. He has added to the assessment an amount of Rs. 100 per annum on account of the fact that these premises

<sup>1</sup> 30 N. L. R. 71.

<sup>2</sup> 3 Balasingham 163.

<sup>3</sup> 6 C. W. R. 335.

<sup>4</sup> (1922) 2 A. C. 98.

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have electric lights. That appears to me an excessive amount when electric light is available to all persons living in this locality and has been so for some time past. The fact that electricity has been brought to these premises could however be taken into account in fixing the assessment. (See the principles enunciated in *Kirby v. Hunslet Assessment Committee*.)

Taking all the facts into consideration, the uncontradicted nature of the appellant's evidence, the absence of any suggestion as to *mala fides*, collusion or special circumstances such as the tenancy of a relation, I think the appellant has satisfied the onus that was on him and has proved that Rs. 650 is a fair annual value for these premises.

The appeal will accordingly be allowed with costs and the annual value of these premises reduced to its former figure of Rs. 650.

*Appeal allowed.*

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