

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

Ceylon Electricity Board,
No. 50, Chittampalam A Gardiner
Mawatha,
Colombo 2

Plaintiff

CALA 209 / 2005
DC Colombo No. 3388 / SPL

Vs.

Colombo Municipal Council,
Town Hall,
Colombo 07.

Defendant

AND NOW BETWEEN

Colombo Municipal Council,
Town Hall,
Colombo 07.

Defendant -Petitioner

Vs.

Ceylon Electricity Board,
No. 50, Chittampalam A Gardiner
Mawatha,
Colombo 2

Plaintiff-Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Ranil Samarasooriya with Shayamali
Aththanayake for the Defendant-Petitioner

Anand Kasturiarachchi with Janath Ratnayake for
the Plaintiff-Respondent

ARGUED ON : 10.07.2012

DECIDED ON : 20.06.2013

UPALY ABEYRATHNE, J.

The Defendant-Petitioner (hereinafter referred to as the Petitioner) in this Appeal has sought leave to Appeal from an order of the learned Additional District Judge of Colombo dated 17.05.2005 and leave was granted by this Court. The facts of the case are briefly as follows;

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action against the Petitioner in terms of Section 236 of the Municipal Council's Ordinance challenging the assessment made by the Petitioner for the year 1991 in respect of premises No 50 Chittampalam A. Gardiner Mawatha, Colombo 2 belonging to the Respondent. The Respondent averred that the assessment was grossly excessive, unreasonable and unlawful. Prior to the filing of this action there had been an inquiry conducted by the Petitioner in which the Respondent had objected to the said assessment by letter dated 8th January 1991. After the said inquiry the Petitioner had rejected the objections of the Respondent and had affirmed the said assessment.

The Petitioner has filed answer denying the averments contained in the plaint and has pleaded that the said assessment for the year 1991 was lawful, reasonable and according to the accepted principles of law.

The case proceeded to trial on 14 issues. During the examination of evidence of his witnesses, the Respondent has tried to lead evidence with regard to the assessments in respect of the Peoples Bank, National Housing Authority and Bank of Ceylon buildings and to mark a document as P 8. The Petitioner has objected to the leading of such evidence under Section 236(2) of the Municipal Councils Ordinance. After hearing submission of both parties the learned District Judge by order dated 17.05.2005 has allowed producing and marking the said document as P 8.

It must be noted that prior to the arisen of the present matter in question when the Respondent's witness was giving evidence an objection was taken with regard to the type of evidence that should be led in court in view of the restrictions laid down under Section 236(2) of the Municipal Councils Ordinance. Upon these objections the learned District Judge had made order dated 27.08.1998 and the Respondent had sought leave to appeal from the said order and leave had been granted by this Court. After the hearing of said Appeal bearing No 1061/98 the Court of Appeal by order dated 18.06.1999 has set aside the order of the learned District Judge dated 27.08.1998 and has permitted the Respondent to lead evidence relating to the grounds set out in document A 1. It appears from the said order of this Court that the parties had admitted that the objection to the said assessment had been set out in A 1.

In the light of the said premise the matter of leading evidence and the admission of documents as evidence have to be considered within the framework of objections set out in document A 1. By the said document A 1 the Respondent has lodged an objection to the said assessment by informing the Municipal Assessor that the assessment is excessive and indicates a disproportionate increase over the assessment of Rs. 48,548.000/- for the years 1986 to 1990 and has requested to provide the basis on which the 1991 assessment and the assessments prior to 1991 were made.

Section 8 of the Rating and Valuation Ordinance No. 30 of 1946 stipulates that "Subject to the provisions of this Ordinance, every rate made by the rating authority for any rating area shall be a rate at a uniform amount per centum on the annual value of each rateable property in the area."

According to Section 327(1) Municipal Councils Ordinance "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;"

Although the Municipal Council, under the Municipal Councils Ordinance, has no legal obligation to give reasons for arriving at a particular assessment the rating authority cannot act arbitrary and unreasonably adopting a demonstrably incorrect method of rating. Therefore in determining the annual

value certain rating tests namely The Rental Test, the Contractor's Test and the Profits Test can be adopted by the rating authority.

In the case of Roland Dias Abeysinghe, Special Commissioner, Municipal Council, Galle and Others vs. Ceylon Cement Corporation (1986) 3 C.A.L.R. 117 at 120 Dheeraratne, J. observed that "in determining the annual value certain rating tests are applied. The first is 'Rental Test. Where there are comparable units in any area, the annual value of particular premises may be determined by a process of comparison of the annual value of other similar units. The 2nd tests is the 'Contractor's Test', which presupposes an estimate of the rent by reference to the interest which a national contractor would expect for the money he had expended in buying the land, erecting buildings, installing machinery in the premises. The 3rd test is the profits test which 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 for his business."

In the case of Weerasekare vs. Municipal Council, Colombo 40 NLR 418 Poyser SPJ observed that "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."

In the present case before me, the Appellant in his objections (A 1) has raised that the assessment is excessive and indicates a disproportionate increase over the assessment of Rs. 48,548.000/- for the years 1986 to 1990. The burden of proving that the assessment made by the rating authority is unreasonable for that a demonstrably incorrect method of rating had been adopted in arriving at the

assessment would lie with the Petitioner. Hence in the light of the said objections set out in A 1 the Petitioner should be given a fair opportunity to prove his case by a comparison to establish a disproportionate increase in the assessment. In the case of Marikar Bawa vs. Municipal Council, Colombo 30 NLR 71 it was held that the onus was on the plaintiff to show that the assessment was unreasonable.

In the case of Abeysekere vs. the Colombo Municipality 42 NLR 237 Howard CJ observed that “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.”

I have carefully considered the proceedings before the learned District Judge on 01st of March 2005 and the impugned order dated 17.05 2005. In the said circumstances I am of the view that the evidence sought to be led was not in violation of Section 236(2) of the Municipal Councils Ordinance.

Hence I see no reason to interfere with the order of the learned Additional District Judge dated 17.05.2005. Therefore I dismiss the Appeal of the Appellant with costs.

The Registrar of this Court is directed to send the main case record to the relevant District Court with the order made by this Court. The learned District Judge of Colombo is directed to hear and conclude this matter expeditiously according to law.

Appeal dismissed.

Judge of the Court of Appeal