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In the Privy Council.

No. 7 of 1954.

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

(APPELLATE JURISDICTION.)

BETWEEN

PORT OF SPAIN CORPORATION ... ... *Appellants*

AND

GORDON GRANT AND COMPANY LIMITED ... ... *Respondents.*

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal by Special Leave from two Orders of the Full Court of the Supreme Court of Trinidad and Tobago made respectively on the 30th April and 13th June, 1953. pp. 4–8, 14, 15

2.—The question arising on appeal from the first of the said orders is whether, in fixing the annual rateable value of a hereditament, on the same principles as apply in England, viz.: 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 actually used, or, in case it is not actually used or occupied, the purpose or purposes for which it is reasonably suitable," the rating authority must accept in the case of a hereditament subject for the time being to rent restriction legislation the "standard rent" as the assumed value, or whether it may fix the sum which a tenant would pay if the rent restriction legislation did not apply to the hereditament. pp. 4–8

3.—The question arising on appeal from the second of the said orders is an important question of construction as to the jurisdiction of the said Supreme Court to entertain applications for leave to appeal to Her Majesty in Council from judgments of the Supreme Court given on appeals from Summary Courts. pp. 14–15

4.—The Appellants are the rating authority for the City of Port of Spain, hereinafter called the City. The Respondents are the owners of certain premises in the City (known as 78 South Quay) which have been continuously let since 1924 by the Respondents to Archer Coal Depot, Inc., on a monthly tenancy the rent of which was $120 a month on the 1st January, 1940, that being the " prescribed date " within the meaning of Section 7 of the Rent Restriction Ordinance (Cap. 27 No. 18 of the Revised Ordinances of Trinidad and Tobago), hereafter referred to.

5.—The power of the Appellants to levy rates—which provide their principal source of revenue—is given by Part V, Sections 87–118, of the Port of Spain Corporation Ordinance (Cap. 39, No. 1, of the Revised Ordinances of Trinidad and Tobago).

The material sections of the said Ordinance run as follows :—

" PART V.

" HOUSE RATE.

" 87. In this Part of this Ordinance—

' Rateable hereditament ' means any dwelling-house, warehouse, store, shop, counting-house, and any other building whatsoever in the City . . .

' annual rateable value ' means the gross annual rental value, subject only to such deductions and allowances as the Corporation may make under this Part of this Ordinance.

" 88. (1) There shall be raised, levied, and collected by and paid to the Corporation upon and in respect of every rateable hereditament an annual rate or tax of seven and a half per centum of the annual rateable value of such hereditament . . .

" (2) It shall be lawful for the Corporation from time to time to prescribe that in respect of any specified year or years the rate or tax . . . shall be at a higher rate than seven and a half per centum : provided that the rate so leviable and payable shall in no case exceed ten per centum of the annual rateable value of any hereditament liable to such rate.

" 89. (1) In determining the annual rateable value . . . the Corporation shall, whether such hereditament be actually rented or not, consider in every case what amount of annual rent a tenant may be reasonably expected to pay for such hereditament, having regard to the purpose for which such hereditament is actually used or, in case it is not actually used or occupied, the purpose or purposes for which it is reasonably suitable.

" 93. In the year 1915, and in ever subsequent third year, the Corporation shall cause new valuations to be made of all rateable

hereditaments in the City in accordance with the provisions of this Part of this Ordinance . . .

" 101. The annual rate or tax to be paid in respect of every rateable hereditament under this Part of this Ordinance shall be borne and paid by the owner of such hereditament, but the amount of such rate may be collected from and paid by the tenant or occupier of such hereditament or any part thereof, and such tenant or occupier may deduct the amount so paid from the rent payable by him in respect of such hereditament. . . . Provided that nothing herein contained shall affect any contract between landlord and tenant with respect to the payment of such rate.

" 102. (1) The owner of any rateable hereditament who is dissatisfied with any valuation of his premises made by the Corporation may . . . give notice in writing to the Corporation of his objection thereto.

" 103. The Corporation shall consider every such objection, and may either confirm the valuation objected to, or may reduce or increase such valuation and make such other amendments in relation thereto as the Corporation may think proper . . .

" 104. (1) The decision of the Corporation on every objection to any valuation or alteration of valuation made by the Corporation shall be final and binding on all parties and for all purposes, unless the owner who has objected to such decision shall . . . lodge a notice of appeal against such decision with the Magistrate . . .

(3) On any such appeal the Magistrate . . . may either confirm such valuation or . . . alter or amend the same as he may think fit.

" 105. (1) In case the Corporation or any owner shall be dissatisfied with the decision of the Magistrate on any appeal to such Magistrate against the decision of the Corporation on such owner's objection to any assessment made by the Corporation, the Corporation or such owner may appeal from the decision of the Magistrate to the Full Court . . ."

6.—The history of the proceedings leading to the assessment and to the judgments against which the Appellants now appeal is as follows :—

(A) The Appellants in pursuance of the said Section 93 " caused a new valuation to be made " of the premises for the triennial period 1951–1953 in the amount of $6,600. p. 1, l. 14

(B) On the 12th March, 1951, the Respondents pursuant to the said Section 102 (1) gave notice of objection to the said valuation. p. 1, ll. 13–14

(C) On the 18th October 1951 the Appellants pursuant to the said Section 103 confirmed the said valuation. p. 1, ll. 12–17

p 1. (D) Pursuant to the said Section 104 the Respondents lodged Notice of Appeal to the Magistrate dated 24th October, 1951.

(E) At the hearing of the Appeal on the 7th May, 1952, the Respondents contended that the valuation should not exceed $132 per month ($1,584 per annum), that being the rent fixed by the Rent Board as the standard rent of the premises under the Rent Restriction Ordinance 1941.

p. 2, ll. 12–16

(F) The Respondents by their Secretary gave evidence at the said hearing that but for the Rent Restriction Legislation the premises could have been let for a sum between $400 and $480 per month (i.e. between $4,800 and $5,760 per annum), and that but for the last mentioned legislation the premises could have been let for such a sum on the prescribed date, namely the 1st January, 1940.

p. 2, ll. 6–9

(G) By Order of the 15th August, 1952, the Magistrate fixed the annual rateable value of the premises at $5,760, being the higher figure in the evidence given before him as the rent at which the premises could be expected to be let.

p. 3, ll. 17–28

(H) Pursuant to the said Section 105 (1) the Appellants lodged Notice of Appeal to the Supreme Court dated the 22nd August, 1952.

p. 4

7.—The position of the legislation of the Colony in relation to Rent Restriction should now be explained. Section 2 of the Rent Restriction Ordinance provided that the Ordinance was to remain in force for the period of the operation of the (Imperial) Emergency Powers (Defence) Act 1939 as amended, and it was accordingly due to expire on the 24th August, 1945. As appears from Government Notice No. 150 of 1945, dated the 19th July, 1945, the operation of the said Act in the Colony, and accordingly of the Rent Restriction Ordinance, was extended until the 24th February, 1946. Thereafter the operation of the Rent Restriction Ordinance was extended by successive periods of one year by Government Notices and Ordinances.

In the year 1950 the Rent Restriction Ordinance expired on the 24th February, 1950, but was re-enacted and made retrospective by Ordinance No. 11 of 1950, passed on the 3rd March, 1950. Thereafter Government Notices extending the operation of the said Rent Restriction Ordinance were No. 33 of 1951, No. 43 of 1952, and No. 52 of 1953.

8.—The following sections of the Rent Restriction Ordinance are material to this Appeal :—

" 2 (1) ' prescribed date ' means . . . the 1st January, 1940 . . .

" 3 (1) This Ordinance shall apply . . . to all dwelling houses and public or commercial buildings . . . whether let furnished or unfurnished . . .

" 5 (1) The Governor shall establish . . . Rent Assessment Boards . . .

"7. Until the standard rent of any premises . . . has been determined by the Board . . . the standard rent of the premises . . . shall be the rent at which they were let . . . on the prescribed date.

"8 (3) The Landlord or the tenant of any premises . . . may at any time apply to the Board to determine the standard rent thereof.

"9 (1) When the standard rent of any premises . . . is determined by the Board it shall be determined on the principles of Section 7 modified as follows :—

(A) Where the premises were not let in the same category of letting on or before the prescribed date, the standard rent shall be the rent which, in the opinion of the Board, might reasonably have been expected in respect of a similar letting of similar premises in the same locality on the prescribed date.

(B) Where the premises were let in the same category of letting on or before the prescribed date, and the standard rent ascertained in accordance with the provisions of Section 7 would, in the opinion of the Board, be substantially higher or lower than the standard rent ascertained on the principles of paragraph (A) of this section, the Board may determine the standard rent on the principles of that paragraph.

"10 (1) . . . where the rent of any premises . . . exceeds the standard rent . . . the amount of such excess shall . . . be irrecoverable from the tenant, and if it is paid by the tenant, shall be recoverable by him . . . from the person to whom it was paid.

(3) If a landlord knowingly receives, or a tenant knowingly pays, any rent which is by this Ordinance made irrecoverable he shall be guilty of an offence against this Ordinance . . .

"11. The amounts by which the rent of any premises to which this Ordinance applies may exceed the standard rent shall be :—

(C) An amount proportionate to any increase in the amount of the rates and taxes payable by the landlord since the date by reference to which the standard rent of the premises is determinable."

9.—At the hearing of the said Appeal before the Full Court the now Respondents repeated their contention that the highest gross value to be placed upon the premises for the purpose of assessment was the said standard rent of $132 per month fixed by the said Rent Board in accordance with the said Rent Restriction Ordinance 1941. p. 6, l. 38

10.—The now Appellants' main contentions before the full Court were :—

(i) that the principles applicable to rating in the City were substantially the same as those applicable in England, viz. : that the p. 6, ll. 10–15

RECORD

net annual value should be based upon the amount of rent that a hypothetical tenant might reasonably be expected to pay having regard to the purposes for which the premises are actually used or are reasonably suitable; and that the fact that in the City the liability for rates is laid upon the owner and not upon the occupier makes no difference to the application of these principles.

(ii) that the Rent Restriction Ordinance did not operate to limit the amount which a hypothetical tenant might reasonably be expected to pay to the amount of the standard rent.

p. 6, ll. 42–44

(iii) that the decision of the House of Lords in *Metropolitan Borough of Poplar* v. *Roberts* (1922), 2 A.C. 93, which decided that the Rent and Mortgage Interest Restriction Act 1920 did not affect the rateable value of any hereditament falling within the said Act, was applicable to the present case.

pp. 4–8

11.—The Full Court (Mathieu-Perez, C.J. and Ward, J.) allowed the appeal of the Respondents and substituted the figure of $1,608 for the sum of $5,760 fixed by the Magistrate as the annual rateable value of the premises.

p. 6, ll. 10–32

12.—The Full Court accepted the Appellants' contention that the principles of law determining the assessment of the rateable values is essentially the same in the City as in England, and that the fact that rates in the City are levied on the owner and not on the occupier does not affect those principles.

p. 6, l. 38 to p. 7, l. 7; p. 7, ll. 13–32 and 39–41

The Court went on, however, to say :—

" The second point submitted on behalf of the Appellants " (i.e. the now Respondents) " is that the Rent Restriction Ordinance . . . by making it a statutory offence punishable on summary conviction for a landlord to receive or for a tenant to pay more than the permitted rent, has fixed the rent which a tenant may reasonably be expected to pay. Great reliance has been placed with respect to this submission on the decision in *Metropolitan Borough of Poplar* v. *Roberts* (1922), 2 A.C. 93. Stated shortly, the decision in that case was to the effect that the Mortgage and Rent Restriction Act, 1920, did not affect the rateable value of any hereditament falling within the Act. The Mortgage and Rent Restriction Act, 1920, limited the amount of rent recoverable by a landlord of a dwelling house of a certain rateable value to the standard rent as defined in Section 12, together with certain increases permitted by Section 2. In the course of their opinions the learned Lords of Appeal pointed out that this Act was of a temporary nature, limited in the range of its application, and had no effect on the occupational value but only limited the landlords' right to the recovery of the standard rent . . . If the Rent Restriction Ordinance, 1941, were in similar terms to the Mortgage and Rent

Restriction Act, 1920, this Court would be bound to follow that decision. But these two statutes appear to differ materially. The object of the Rent Restriction Ordinance, as stated in the full title, is to restrict the rents of the premises to which it is applicable. It applies to hereditaments of all kinds, except agricultural land, both furnished and unfurnished. It establishes a standard rent for all premises affected, and the methods for fixing rentals in different categories of letting are designed to secure a uniform and equitable standard of rents. Finally it introduces a penal sanction for enforcing its provisions . . . The Ordinance has now been in force for 12 years, and it would be erroneous and misleading to describe it, as Lord Atkinson described the Mortgage and Rent Restriction Act, as a temporary measure dealing with only one class of hereditament. The effect of these differences . . . is in our opinion to make the reasoning and the conclusion reached in the *Poplar* case inapplicable to the circumstances of this case . . . Hypothetical though he be, the tenant is not absolved from obedience to a statute which has as its object the restriction of rents and enforces this restriction by a penal sanction."

13.—It is submitted that no material distinction is to be drawn between *Metropolitan Borough of Poplar* v. *Roberts* (1922), 2 A.C. 93 and this case because :—

(1) As may be seen from paragraph 7 hereof the Rent Restriction Ordinance was less and not more permanent than the Increase of Rent and Mortgage Interest (Restrictions) Acts 1920–1939, inasmuch as the Ordinance was (by Section 1 (2)) to expire on the 23rd February, 1951, unless renewed by the Legislative Council.

The Ordinance has remained of the same transitory character throughout, despite successive yearly renewals thereof. The suggested permanence would have been completely lacking had the Full Court had to decide this matter in 1941 ; yet the wording of the Ordinance upon which the Court would at that time have had to adjudicate was the same as that upon which the Full Court pronounced on 30th April, 1953.

(2) The fact that in the City a penal sanction obtains to enforce rent restriction legislation does not make any difference in principle ; the aim of both enactments is to prevent landlords from obtaining more than the standard rent in respect of a controlled letting, and to enable the tenant to recover the value of any overpayment. An overpayment is equally invalid in either case.

(3) The governing consideration, both in the City and in England, is the amount of rent which an hypothetical tenant might reasonably be expected to pay, and there is no distinction to be drawn between the reaction of the hypothetical tenant in the two jurisdictions.

p. 8

14.—On the 11th May, 1953, the Appellants applied under Section 2 of the Order in Council of the 2nd April, 1909, as amended by the Order in Council of the 30th March, 1914, to the Full Court for leave to appeal against the said judgment given on the 30th day of April, 1953.

15.—Section 2 of the said Order in Council provides that leave to appeal to Her Majesty in Council may be granted by the Supreme Court

(A) as of right, from any final judgment of the Court, where the matter in dispute on the Appeal amounts to or is of the value of £300 sterling or upwards;

(B) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court the question involved in the Appeal is one which by reason of its great general or public importance or otherwise ought to be submitted to Her Majesty in Council for decision.

pp. 12–15

16.—The Full Court dismissed the Appellants' said application on the 13th June, 1953, holding that it had no jurisdiction to entertain applications for leave to appeal from a decision of the Full Court given on an appeal from a Court of Summary Jurisdiction.

p. 13, ll. 29 and top 14, l. 11

17.—The Full Court considered itself bound on this point by a previous decision of the Court in *Griffith* v. *Pillai*, reported in Vol. XII 1951–2 of "Judgments delivered in the Supreme Court of Trinidad and Tobago," p. 39.

In that case, the Full Court gave judgment as follows:—

"The rule says an appeal shall lie as of right from a final judgment of the Court, etc. and 'Court' is defined" (scil: in the said Order in Council) "as meaning:

'Either the Full Court or a single Judge of the Supreme Court of Trinidad and Tobago according as the matter in question is one which, under the Rules and Practice of the Supreme Court, properly appertains to the Full Court or to a single Judge.' An appeal from a Court of Summary Jurisdiction or as it is better known, a Magistrates Court, is governed wholly by statute, and consequently this matter is not one which 'under the Rules and Practice of the Supreme Court, properly appertains to the Full Court'."

18.—It is submitted that the definition of "Court" in the said Order in Council is not intended to and does not limit the application of the right of appeal given in Section 2 thereof but merely distinguishes between the Full Court and the Supreme Court sitting by one Judge, and determines which of them—as between themselves—is to deal with matters coming before the Court; and that the Full Court has jurisdiction to entertain applications for leave to Appeal to Her Majesty in Council under

Section 2 (b) of the said Order, even when the judgment sought to be appealed against is given on an appeal from a Court of Summary jurisdiction.

19.—Accordingly the Appellants humbly submit that both of the Judgments of the Full Court given respectively on the 30th April and the 13th June, 1953, are wrong and should be reversed, for the following amongst other

REASONS

(A) 1. THAT the annual rateable value should be based upon the amount of rent that a tenant might reasonably be expected to pay having regard to the purpose for which the premises are actually used or are reasonably suitable.

2. THAT there is no real distinction between the instant case and the case of *Metropolitan Borough of Poplar* v. *Roberts*, nor between the legislation applicable in the two cases.

3. THAT the Rent Restriction Ordinance does not alter the " purpose for which hereditament is used " or the " purpose for which it is reasonably suitable."

4. THAT the Rent Restrictions Ordinance does not limit the amount which a tenant might reasonably be expected to pay to the amount of the Standard Rent.

5. THAT the Rent Restriction Ordinance does not affect the rateable value of any hereditament falling within the said Ordinance.

(B) 6. THAT the Full Court has jurisdiction to entertain applications for leave to appeal to Her Majesty in Council from decisions of the Supreme Court given on appeals from Courts of Summary Jurisdiction.

D. N. PRITT.
JOHN PLATTS MILLS.

In the Privy Council.

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BETWEEN

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CASE FOR THE APPELLANTS

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