Privy Council Appeal No. 7 of 1954

Port of Spain Corporation - - - - - - - - *Appellants*

v.

Gordon, Grant and Company Limited - - - - - *Respondents*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH MARCH, 1955

Present at the Hearing:

LORD TUCKER
LORD COHEN
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* LORD SOMERVELL OF HARROW]

This is an appeal from a decision of the Supreme Court of Trinidad and Tobago sitting as a Full Court reversing an Order of a Magistrate in respect of the rateable value of 78, South Quay, Port of Spain.

There is a second appeal on a procedural issue.

The appellants are the Rating Authority for the city of Port of Spain. The respondents are the owners of 78, South Quay, which was at all material dates let to the Archer Coal Depot Co. Inc.

The question is whether the Rent Restriction legislation has any and if so what effect on the determination of the rateable value.

In *Poplar Assessment Committee* v. *Roberts* [1922] 2 A.C. 93 the House of Lords decided that the Rent Restriction Act of 1920 had no effect on valuations for rating under English law. The Magistrate in this case decided that the principle laid down in that case applied notwithstanding differences between both the rating and the rent restriction law in Trinidad and England. The Supreme Court held that the principle of the Poplar case did not apply and that the value of 78, South Quay, for the purposes of the rate was the amount of the "standard rent" which had been fixed in accordance with the provisions of the Rent Restriction Ordinance.

The Full Court based their decision on the differences between the two Rent Restriction codes and not on the differences between the two rating codes. The respondents before us relied in the first instance on the differences between the rating codes and it will be convenient to deal with that first.

The law as to the rating of 78, South Quay, is to be found in Revised Ordinances 1950 c. 39 No. 1 Port-of-Spain-Corporation.

> Section 87. In this part of this Ordinance—
>
> "rateable hereditament" means any dwelling-house, warehouse, store, shop, counting-house, manufactory, factory, workshop, stable, shed, and any other building whatsoever in the City, and the lands on which the same respectively are built, erected,

or standing, together with any other lands appurtenant to or occupied with the same respectively; and includes every vacant parcel of land in the City not appurtenant to or occupied with any house, warehouse, store, shop, counting-house, manufactory, factory, workshop, stable, shed, or any other buildings; but shall not include—

(*a*) buildings occupied solely as churches, chapels, and places of public worship of any religious denomination;

(*b*) school-houses, offices, and play-grounds of any elementary or intermediate school established under the Education Ordinance;

(*c*) hospitals, whether public or private, asylums, alms-houses, and institutions for the relief of the poor, whether occupied for such purposes by public officers or by private persons; or

(*d*) quarters occupied rent free by the members of the staff of any of the institutions referred to in the preceding paragraph and within the curtilage thereof;

"premises" means rateable hereditament as defined above;

"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.

Section 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 as determined by the Corporation in accordance with the provisions of this Part of this Ordinance.

Subsection (2) provides that the rate may be raised to ten per cent.

Section 89 (1). In determining the annual rateable value of any rateable hereditament for the purposes of this Ordinance, 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.

This section read with the definition is similar for present purposes to the provisions as to valuation in the Valuation (Metropolis) Act 1869 section 4 which was considered in the Poplar case. The application of either section requires the consideration of what a hypothetical tenant would pay.

Section 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.

There follow provisions for appeal to the Magistrate and from his decision to the Full Court.

Section 114. Any rates due under this Part of this Ordinance, together with any statutory increase which may have accrued under the provisions of this Ordinance, shall, until paid, be a charge on the rateable hereditament in respect whereof such rate is due and payable; and, without prejudice to such a charge, and to the power of sale conferred by the Rates and Charges Recovery Ordinance, the amount of such rates, together with the statutory

increase (if any), may be recovered from the owner for the time being of such rateable hereditament by action in any Court of competent jurisdiction or by distress on any goods and chattels (including any moveable tenement standing on land forming part of the rateable hereditament) which may be found in or upon such rateable hereditament:.

It will be seen that the basis of the tax differs from that of rating under English law. Under the latter the rate is imposed upon 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; it is exigible if there is no occupier.

The Rent Restriction Ordinance (Revised Ordinances 1950 c. 27 No. 18 Rent Restriction) which will be considered in somewhat more detail later provides as did the Rent Act of 1920 for a standard rent with permitted increases which placed a limit on what the landlord could exact.

In the Poplar case the Divisional Court and the Court of Appeal by a majority had held that the gross value of a building for rating purposes could not be greater than the standard rent with permitted increases under the Rent Act of 1920 [1922] 1 K.B. 25.

That decision was reversed, by a majority, in the House of Lords who held that the Act was not to be taken into account. In the opinion of the Board the ratio of that decision is to be found in the English rating system namely that the rate is a tax on occupiers in respect of their occupation and is not concerned with the landlord or owner's interest. 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 less 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" [1922] 2 A.C. 93 at p. 103. Lord Sumner (p. 116) and Lord Parmoor (pp. 118 and 123) emphasise the distinction between occupier and owner for purposes of rating valuation under English law.

In *Rawlence* v. *Croydon Corporation* [1952] 2 A.E.R. 535 the Court of Appeal had to consider the ratio of the Poplar case and came to the same conclusion as stated above.

The Poplar decision therefore having no application the Board is clear that under Trinidad law, regard must be had to the Rent Restriction Ordinance which affects the annual rent payable to and exigible by the landlord.

There are references in the speeches in the Poplar case to the inequalities which would be produced as between hereditaments subject to the Rent Act and those not so subject if for rating purposes regard was had to the Rent Restriction Act. The contributions from the former would be based on their rents at the appointed day, the latter's would rise if the general level of rental values rose. These references will be found in the speeches of Lord Atkinson, Lord Sumner and Lord Parmoor. In the opinion of the Board these observations were by way of reinforcing the conclusion rather than its basis. If however they were a substantial ingredient in the conclusion they do not apply to the Trinidad Rent Restriction code (Revised Ordinances 1950 c. 27 No. 18). They were based as has been said on the fact that the Rent Act of 1920 applied to dwelling-houses whose standard rent or rateable value were below a certain amount. Other dwelling-houses were unaffected as were business premises.

Under section 3 (1) of the Trinidad Ordinance the restrictions apply to all building land, dwelling-houses and public or commercial buildings. Rent Assessment Boards are appointed to settle standard rents. *Prima facie* the standard rent is that at which the premises were let on the

prescribed day, or if not so let then at which they were last so let before or first so let after that day. This is similar to the definition in section 12 of the Act of 1920. The Trinidad system is however more flexible. If it can be shown that the actual rent was above or below the general level of rents for similar premises in the same locality on the prescribed day the Board can adjust the standard rent accordingly (section 9).

If premises had never been let the landlord was unrestricted under the Act of 1920 should he desire to let. Under the Ordinance it is his duty to apply to the Board to fix a provisional standard rent which will be done with reference to similar lettings of similar premises on the prescribed date (sections 8 and 9). It is not necessary to consider these provisions further. Their Lordships think the Full Court were justified in describing them as designed to secure a uniform standard of rents.

The Full Court attached importance to the provision (section 10 (3)) under which it is a criminal offence for a landlord knowingly to receive, or a tenant knowingly to pay rent in excess of the standard rent. Their Lordships think the position so far as the present issue is concerned would be the same if the sanctions were civil and not criminal.

A subsidiary submission was made on behalf of the appellants which makes it necessary to set out some dates and figures.

The rent of 78, South Quay, on the prescribed day was $120 per month, with a permitted increase as from July, 1947 of $12 a month. In the period 1948-50 the rateable value was $1,608 a year which represents $134 a month. No point was taken as to the difference of $2 a month. In the period 1951-53 the appellants caused a new valuation to be made of $6,600 a year. The respondents lodged notice of appeal to the Magistrate on 24th October, 1951. On 9th November, 1951, on the application of the respondents the Rent Assessment Board after hearing evidence determined the standard rent at $132 per month. On 7th May, 1952, the Magistrate heard the appeal and after hearing evidence and disregarding the Rent Restriction Ordinance fixed the annual rateable value at $5,760. At the hearing before the Magistrate the respondents' secretary in answer to a question in cross-examination said that the premises could have been let on the prescribed day, namely, 1st January, 1940, for $400 to $480 per month.

It was suggested that if this evidence had been before the Assessment Board and accepted, a higher rent should have been fixed in accordance with the provisions of the Ordinance. No sort of *mala fides* was suggested. It would of course have been in the interest of the respondents to get the rent fixed higher. This point was not taken below and the Board are clear it cannot be taken here. It was not suggested that a party could go back to the Assessment Board merely because he had failed to call relevant evidence which might have assisted him. This appeal proceeds on the basis of a proper determination by the Assessment Board of a standard rent and their Lordships are of opinion that the Full Court were right in reducing the figure as they did.

Their Lordships were invited to give guidance as to how in different cases regard should be had to the Rent Restriction code. In cases where the standard rent with any permitted increases has been, as here, fixed by a Board the question is simple. If there has been no determination by the Board or if it is submitted that a further application could be made to the Board there would appear to be no great difficulty once it is clear as it is that the hypothetical tenant is subject to the restrictions. There may be cases where the Court dealing with a valuation might think it right to adjourn pending an application to the Board. That would depend on circumstances and would be a matter for the Court. There will be other cases in which the Court dealing with the rateable value will have itself to make an estimate of the figure which the Board would fix. A simple example is that of premises which the owner has never let and does not intend to let.

The procedural issue arose on the construction of Rule 2 of the Order in Council of 2nd April, 1909, dealing with appeals to their Lordships' Board.

Rule 2 is as follows—"Subject to the provisions of these Rules an appeal shall lie :—

(*a*) as of right from any final judgment of the Court, where the matter in dispute on appeal amounts to or is of the value of £300 sterling or upwards or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or 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."

The appellants having lost before the Full Court applied under Rule 2 (*a*). The Full Court decided that it was bound by its previous decision in *Griffith* v. *Pillai* (Vol. XII 1951-52 of Judgments delivered in the Supreme Court of Trinidad and Tobago, p. 39), to hold that Rule 2 (*a*) did not apply. The appellants therefore petitioned for special leave which was not opposed and was granted on 28th October, 1953.

Pillai's case was also an appeal from a magistrate. The appeal was one which under the Judicature Act section 32 (3) (*a*) went to the Full Court. In the present case the appeal was to the Full Court under section 105 (1) of the Port-of-Spain Corporation Ordinance. The decision in the Pillai case was based on the construction of the definition of "Court" in the Rules. The reason is set out in the following paragraph :—

The rule says an appeal shall lie as of right from a final judgment of the Court etc., and "Court" is defined 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 Magistrate's 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". For these reasons the petition is dismissed with costs.

It would seem a curious result if Rule 2 (*a*) applied when the question of Full Court or single Judge was determined by Rule or Practice and not when it was determined by a statute. While appreciating the grammatical basis of the decision the Board cannot accept it. The words relied on would seem to have been inserted in the definition by way of exposition rather than of limiting the scope of Rule 2 (*a*). The fact that the exposition is incomplete does not justify construing it as limiting the right of appeal. The Full Court in the present case clearly had doubts as to the correctness of the decision in Pillai's case but felt themselves bound by the principle of *stare decisis*.

For the reasons already given the Board will humbly advise Her Majesty that the main appeal be dismissed and the procedural appeal be allowed.

On the question of costs the respondents below opposed the application for leave as of right under Rule 2 (*a*). They took no part in the argument on that point before the Board. The order as to costs made below on the procedural issue will be set aside and there will be no order for costs in respect of the Order of 13th June, 1953. The costs of the proceedings before the Board will be borne by the appellants.

(39293) Wt. 8082—47 100 3/55 D.L.

In the Privy Council

PORT OF SPAIN CORPORATION

v.

GORDON, GRANT AND COMPANY LIMITED

DELIVERED BY
LORD SOMERVELL OF HARROW

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