IN THE SUPREME COURT OF SEYCHELLES

Mohan Chetty
C/O Meena Fancy Store
Of Srinivasan Complex
Victoria, Mahé — Appellant

Vs

Srinivasan Chetty
Of Albert Street
Victoria, Mahé — Defendant

Civil Appeal No: 2 of 2004

Mr. D. Lucas for the appellant
Mr. F. Changsam for the respondent

JUDGMENT

D. Karunakaran, J

In this matter, the appellant - hereinafter called the "*tenant*" - has appealed to this Court against the judgment of the Rent Board in R. B case No. 41 of 2001, given on 3rd February 2004, in favour of the respondent - hereinafter called the "*lessor*", who had rented out a business premises hereinafter referred to as the "*demised premises*" to the tenant under a lease agreement. In the said judgement, the Board made an order for an increase of the monthly rent of the demised premises from Rs. 7,500/- to Rs. 10,675/- with retrospective effect from November 2001. Having

been aggrieved by the said order the tenant has now preferred this appeal to this Court seeking an order to set aside the said judgment.

The grounds as they appear in the memorandum of appeal read thus:

1. *The Board erred in law in finding that the respondent had locus standi to file and prosecute a case against the appellant in that*
    (a) a co-ownership is required under law to be represented by a fiduciary; and
    (b) the respondent, in his personal capacity, was not the appellant's lessor or the co-ownership's fiduciary;

2. *The Board on the evidence erred in finding that the respondent had locus standi in the case.*

3. *The Board erred in finding that the "Applicant had been appointed the fiduciary by virtue of article 818 of the Civil Code and therefore, he is legally speaking, allowed to administer the property".*
4. *The Board misdirected itself on the question as to whether the respondent was legally speaking, allowed to administer the property.*

5. *The Board erred in law applying the rent increase retrospectively in that it had no power to do so.*

6. *The Board, there being no evidence to support the same, erred in applying the rent increase retrospectively.*

7. *The Board erred in not, making a specific finding as to the veracity and credibility of the parties and witnesses in that such a finding was relevant both in respect of the Board's ruling vis-à-vis the rent increase and its retrospective application.*

8. *The Board erred in its finding that a rent increase was called for in that there was no evidence before the Board to justify such increase.*

9. *The Board erred both on the issue of rent increase and retrospective application of the same in that it based its consideration on speculations rather than the evidence present in the case and further did not provide any reason for its findings.*

10. *The Board erred in relying on the locus in quo in the circumstances, the matters raised in the locus in quo could not constitute evidence on which the Board could rely on.*

11. *The board erred in adopting the finding in another Rent Board case in coming to its decision to increase the rent to Rs. 10,675/-*

At the outset of the hearing, learned counsel for the appellant Mr. D. Lucas conceded that grounds 1, 2, 3, and 4 above are of similar nature. They all in pith and substance, relate to one and the same issue based on a point of law. That is, to determine whether the Board erred in law, when it held that the respondent had the *locus standi* to make the application before the Board for an order under the provisions of the Control of Rent and Tenancy Agreement Act, hereinafter called the "Act". Mr. D. Lucas further conceded that grounds 5, 6, 7, 8 and 9 also in combination constitute one and the same issue. That is, to determine whether the Board erred in law, when it gave retrospective effect to its order for the rent increase. Therefore, Mr. D. Lucas consolidated the respective grounds in his submission and invited the Court to determine the issues accordingly.

As regards the issue of locus standi, Mr. Lucas submitted in essence that since the demised premises is an immovable property and that the applicant Mr. Srinivasan Chetty is a co-owner thereof, he has been appointed as fiduciary in terms of Article 818 of the Civil Code of Seychelles. Hence, he cannot file the application in his personal capacity to institute any proceeding on behalf of all co-owners in respect of the said property. This Article reads thus:

"If the property subject to co-ownership is immovable, the rights of the co-owners shall be held on their behalf by a fiduciary through whom only they may act"

Therefore, Mr. Lucas contended that since Mr. Srinivasan Chetty was only a co-owner, he had no locus standi to make any application in his personal capacity, to the Board under the provisions of the Act. Learned counsel thus submitted that the Board erred in law, when it held that the applicant had the necessary locus standi to bring this case before it.

Moreover, Mr. Lucas submitted that if the applicant had intended to bring this application before the Board in a representative capacity on behalf of all the co-owners of the property, he should have at first place, pleaded so in the application as required by section 73 of the Seychelles Code of Civil Procedure. In the absence of any such pleadings, counsel argued, it was wrong for the Board to hold that the applicant had locus standi in this matter. In support of his submission in this respect, Mr. Lucas cited the case *Malbrook Vs Chiffon SLR 1969.*

As regards the issue of retrospective effect, it is the contention of the appellant's counsel that section 4 of the Act, though gives the Board power to make an order for an increase of rent, it does not give any power to order an increase with retrospective effect. According to counsel, in the absence of such power the Board has misconstrued the law and has wrongly ordered an increase with retrospective effect.

Besides, on the issue as to assessment of rent, it is the submission of the learned counsel that the Board in the present case ignored the opinion-evidence given by two expert-witnesses, the valuers and fixed the rent wrongly based on its own assessment in a previous case. Hence, Mr. Lucas urged the Court to allow the appeal and set aside the said judgment of the Rent Board in this matter.

On the other side Mr. Chang Sam, learned counsel for the respondent submitted that the Board did not err in law or on facts in its judgment on the issue as to locus standi. It did not misdirect itself on any matter in the assessment of rent either. Hence, the judgment of the Board cannot be faulted on any ground as alleged by the appellant. On the issue of locus standi, he submitted that what is

required to constitute locus standi herein is the fact that the applicant, who files the application before the Board should be the lessor of the premises. Therefore, the question of co-ownership and fiduciary are immaterial. They are not necessary to constitute the locus standi of a person when he files the application before the Board in his capacity as the lessor of the premises. Hence, Mr. Chang Sam contended that the Board was right in holding in its judgment that Mr. Srinivasan Chetty had the necessary locus standi to prosecute the application.

On the issue of the Board's power to make orders with retrospective effect for rent increase, Mr. Chang Sam submitted that section 4(5) of the Act does empower the Board to make orders with retrospective effect. The Board according to him rightly made the retrospective order for the rent increase. On the issue of rental assessment, he contended that the Board properly took into account the expert-evidence given by the two quantity surveyors as well as the rental assessment it made in a previous case involving an identical premises situated in the same building. Only after a careful examination of the entire evidence, the board has finally come to the right conclusion by accepting and adopting its own assessment in that previous case. Therefore, Mr. Chang Sam urged the Court to dismiss the appeal.

I meticulously went through the entire evidence adduced by the parties before the Board. I gave diligent thought to the submissions of counsel on both sides. I will now proceed to examine the merits of the appeal.

Grounds 1, 2, 3, and 4

Firstly, as regards the issue of locus standi raised under grounds 1, 2, 3 and 4 above, the law is very clear. In fact, Section 4(1) of the Act reads thus:

> *"Any interested party may at any time apply to the Board for an order fixing, reducing or increasing the rent…"*

Section 2 of the Act reads as follows:

> *"Lessor" means any person who receives or entitled to receive rent in respect of the letting or sub-letting, as the case may be, of a dwelling house, and also*

> *includes any person who allows another person to enjoy the use and occupation of a dwelling-house for which an indemnity is payable or not, a sub-lessor and any person deriving title from the original lessor"*

In the present case, there is ample uncontroverted evidence on record to show that the applicant was the one who rented out the premises to the tenant - vide exhibit P4 - and has all along been receiving the rents from the tenant - vide exhibit P2. In any event, undisputedly the applicant Mr. Srinivasan Chetty was the one who allowed the tenant to enjoy the use and occupation of the premises. Therefore, the applicant is, as per the definition clause supra, the lessor of the demised premises and so I find. Obviously, no other party could have more interest than the lessor in making an application to the Board for the rent increase. Therefore, Mr. Chetty is not only an interested party but also the lessor of the demised premises and as such he has every right in law to apply to the Board for an order fixing, reducing or increasing the rent by virtue of Section 4 (1) of the Act. Hence, it goes without saying that the respondent Mr. Srinivasan Chetty in his capacity as the lessor and more so as an interested party had the locus standi to file and prosecute the case against the appellant in the Rent Board in this matter. With due respect, as I see it, the case of Malbrook (supra) cited by Mr. Lucas in support of his submission in this respect does not seem to be relevant to the case on hand. In the circumstances, I quite agree with the submission of Mr. Chang Sam that the finding of the Rent Board on the question of locus standi cannot be faulted on any grounds in this matter. Hence, I find that grounds 1, 2, 3, and 4 are devoid of merits and so fail.

Grounds 5, 6, 7, 8, and 9

As regards the issue whether the Board has the power to make an order increasing the rent with retrospective effect raised under grounds 5, 6, 7, 8, and 9 above, I note Section 4 (2) reads thus:

> *"The Board may increase the rent of any dwelling house and fix it at a figure which the Board considers reasonable when the rent is less than might reasonably be expected to be paid with respect to the particular house concerned"*

Section 4 (5) reads thus:

> *"Under the powers granted by this section the Board may make such orders as to it may seem just and may if it sees fit make a conditional order. In a case where*

rent has not been paid the Board may make an order reducing the rent with retrospective effect but not so as to exceed the period for which the rent is outstanding"

From the above section of law, it is evident that the Board has been conferred with an unfettered discretion to make any order as it seems just. The Board may even impose conditional orders as it seems fit in a particular case for the ends of justice. As regards the case on hand, although the lessor had been demanding the tenant to pay an increased rent at Rs 15,000/- per month as from 1st February 2001 vide exhibit P6, he has in fact, made the application to the Board only on 11th October 2001 requesting an order for such increase with retrospective effect from the date of his demand.

However, the Board in its judgment did not make the order for the increase, giving retrospective effect from the date of the demand as requested by the lessor, but it has made the order giving effect only from the date of the application. Therefore, having regard to all the circumstances of the case, I find that the Board's decision to grant the claim/relief to the lessor as from the date of filing his application seems just, reasonable and fit. In the circumstances, I hold that the Board was right in ordering the rent increase as from November 2001, the month following the filing of the application. Hence, I conclude that grounds 5, 6, 7, 8 and 9 are too, devoid of merits and so fail.

Ground No. 10

Regarding the issue as to evidential value of the observations made by the Board on locus in quo, as raised by the appellant's counsel under ground 10 above, I note that it touches the very fundamental principles of evidence. In fact, evidence may be presented to a court or tribunal in various forms. It may be oral evidence given under oath by a witness in court or the equivalent presented in an affidavit or hearsay statement when permitted or documentary evidence, in which contents of a document are admitted as evidence in their own right, or it may be presented in the form of "*real evidence*". Real evidence means any material from which the court can draw conclusions by using its own senses, such as the appearance of an object, the demeanour of witnesses, or photographs, tape recording or film, or a view of a locus in quo and the like. In this case, it is evident from record that on 14th October 2003 at the request of the tenant, the Board has

effected a visit - locus in quo - and has made certain observations as to the age, character, condition and state of repair of the demised premises. These observations obviously are relevant. Any reasonable tribunal would and should consider them in determining what rent is or would be a fair rent of the demised premises. Therefore, the Board has rightly relied and acted upon its observations in the locus in quo attaching proper evidential value to it and so I find. Hence ground No.10 also fails.

Ground No. 11

Coming back to the issue as to assessment of rent in respect of the demised premises, it is evident that the rental value opined and proposed by the two experts - the Quantity Surveyors - Ms. Cecil Bastille and Mr. Hubert Alton are at great variance with each other. Ms. Bastille has assessed the rental value at the rate of Rs250/- per square meter for the shop area and at Rs150/- per square meter for the office or store at the upper floor of the premises whereas Mr. Alton has assessed at the rate of Rs150/- and Rs40/- per square meter respectively. In the circumstances, it has obviously been impossible for the Board to reconcile these two figures on account of their great variance. Therefore, the Board has rightly declined to accept any of their rental valuation and proceeded to fix a fair rent based on assessment of comparable rents which had already been determined or approved by the Board in Rent Board Case No. 39 of 2002 in respect of a similar premises situated in the same building. In my judgment, the Board was perfectly entitled to do so what it did. Without criticising the opinion evidence adduced by the said two experts, it seems to me the Board was perfectly entitled to reject it and apply its own assessment relying and acting upon its own judgment in another case.

Indeed, the method that should generally be adopted in assessing the fair rent involves a threefold approach, viz

(I) *To look at comparables: The Rent Board has over the years in a number of cases, determined and assessed rents for different types of premises in various localities in Victoria and elsewhere. These rents should be taken as a guide, subject to any necessary adjustment due to change of circumstances which have occurred since the rents were determined.*

(II) To look at market rents recently agreed upon by parties for properties in respect of which there is no scarcity: This method of approach is favoured by professional valuers, which at times require a good deal of adjustment or extrapolation in the assessment of a fair rent.

(III) To calculate what would be a reasonable rent on the basis of various conventional valuation criteria: e. g fair return on capital value, economic cost, and gross value. The fair rent seems to be an amalgam of the results produced by these lines of approach. Where there is a scarcity element in the market rent, the fair rent thus arrived at will be less than the market rent. The difference represents the scarcity element.

Undoubtedly, the Board in the present case has adopted the first approach hereinbefore mentioned and has looked at comparables and fixed the rent based on its own assessment in a previous case taking that rent as a guide. Obviously, the Board has not made any adjustment to the figure determined in the previous case, presumably, as no change of circumstances has occurred since the rent was fixed in the said case.

Therefore, I find that the Board in the present case has rejected the opinion-evidence given by two valuers undoubtedly for a valid reason and proceeded to fix a fair rent rightly based on its own assessment in a previous case.

In view of all the above, I dismiss the appeal with costs.

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D. Karunakaran

Judge

Dated this 17th of March 2005