

1942

*Present : Hearne J.*MUNICIPAL COUNCIL, KANDY, Appellant, and
SILVA, Respondent.

109—C. R. Kandy, 30,844

Assessment—action to reduce assessment—Failure of plaintiff to discharge his burden.

Where, in an action to reduce assessment the plaintiff failed to place data before the Commissioner which would have enabled him to hold that the assessment was in fact unreasonable, the assessment of the Municipal valuator should not be reduced.

A PPEAL from an order of the Commissioner of Requests, Kandy.

H. V. Perera, K.C. (with Cyril E. S. Perera), for the defendant, appellant.

No appearance for the plaintiff, respondent.

Cur. adv. vult.

July 24, 1942. HEARNE J.—

The plaintiff, to quote from the judgment of the Commissioner of Requests, filed this action against the Municipality of Kandy to have the annual assessment of premises No. 44, King street, reduced, complaining that the assessment and the rates recently fixed by the Municipality were unreasonable and too high. He asked that the assessment of Rs. 1,200 per year be reduced to Rs. 900 per year. The Commissioner reduced the assessment to Rs. 1,000 a year and the Municipality has appealed.

The plaintiff's claim that the assessment of Rs. 1,200 a year was unreasonable was based on the fact that he received only Rs. 90 per month as rent. The Commissioner held that the rent which the plaintiff was receiving for No. 44, King street, was not the proper basis of assessment. "It is I think reasonable to presume", he said, "that the plaintiff could have and would have got a bigger rent from his tenant if for instance the plaintiff had effected the improvements to the premises". And again, "It seems to me reasonable to presume that in fixing the rent from time to time the plaintiff did consider the fact that his tenant had effected the improvements". Clearly, therefore, the suggested basis of assessment namely, the bare rent, was in the finding of the Commissioner a misleading one. Recognizing this, the Commissioner then posed to himself the following question—I paraphrase his words—"By how much should the assessment be increased over and

above the monthly rental multiplied by ten by reason of the fact that the tenant and not the plaintiff landlord had improved the premises?”. “It is very difficult to say”, he said, “but I think Rs. 100 per year would be fair”. The simple fact as it appears to me is that it is impossible to say on the available material what would be fair, for as the Commissioner himself notes, there is hardly any evidence as to the cost or value of the improvements. In the result it appears that the plaintiff had not placed all the necessary *data* before the Commissioner which would have enabled him to determine whether the assessment was in fact unreasonable. *The bona fides* of the valuator were not questioned and I am unable to say that on the method of valuation adopted by him—the comparative method—his assessment was too high.

The appeal will be allowed with costs in this Court and before the Commissioner of Requests.

Appeal allowed.
