1981 November 14

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF AN APPLICATION BY KYRIAKOS PH. DROUSHIOTIS, FOR ORDERS OF PROHIBITION AND CERTIORARI,

and

IN THE MATTER OF RENT APPLICATION NO. 211/78 BEFORE THE DISTRICT COURT OF LIMASSOL.

(*Application No.* 28/79).

Certiorari—Rent tribunal—Certiorari lies to bring up and quash decision of rent tribunal if it has acted without jurisdiction—Consent judgment—Burden lies on applicant to persuade Court that certiorari lies for the purpose of quashing a consent judgment even if it has been given without jurisdiction.

Landlord and tenant—Statutory tenancy—Determination of rent—Section 7 of the Rent Control Law, 1975 (*Law* 36/75)*—Court not acting without jurisdiction in fixing rent with the consent of the parties and without conducting the enquiry envisaged by section 7—No certiorari or prohibition lies.*

This was an application for an order of certiorari to quash, and an order of prohibition in order to prevent the execution of, a judgment given by consent* by the District Court of Limassol in a rent application by means of which the rent of the premises, which have been in the possession of the applicant as a statutory tenant, was fixed at £160.—per month.

The proceedings in the Court below have been initiated by the landlord who sought an increase of the rent under section 7 of the Rent Control Law, 1975 (Law 36/75).

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* The relevant record of the Court is quoted at pp. 711–12 *post.*

Counsel for the applicant contended that under section 7* above, the rent of the premises concerned could not be increased by agreement of the parties, but only by a decision of the trial Court as regards what was the reasonable rent in the circumstances and that, in this connection, the trial Court had to carry out the necessary for this purpose inquiry..

Counsel for the respondents submitted that, in any event, even assuming, without conceding, that the trial Court could not have made the complained of order under section 7, above, the Supreme Court cannot quash by certiorari its judgment, because certiorari does not lie in respect of judgments of inferior Courts of civil jurisdiction, such as that of the trial Court in the present case.

Held, (1) that in the present instance the District Court acted as a tribunal set up under section 4(1) of the Rent Control Law, 1975 (Law 36/75); that certiorari lies to bring up and quash a decision of such tribunal which has acted without jurisdiction; and that, therefore, assuming that the trial Court in this case acted without jurisdiction in giving its complained of judgment, this Court would certainly have possessed competence to intervene by means of certiorari in order to quash such judgment; that this Court would not be prepared to grant an order of certiorari in this particular case, even if the trial Court had acted in excess of its jurisdiction because it is faced with a judgment which was given by consent and it has not been persuaded, in the present case, by the applicants, on whom the burden lay to do so, that certiorari lies for the purpose of quashing a judgment given by consent, even if it has been given without jurisdiction.

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* Section 7 reads as follows:

"7.-(1) No increase of rent of dwelling houses or business premises may be imposed on a statutory tenant save as in this law provided.

(2) It shall be lawful for the tenant or the landlord of any dwelling house or business premises, if he considers himself to be aggrieved, to apply to the Court to determine the rent payable in respect of such dwelling house or business premises.

(3) Where any such application is made to the Court, the Court shall consider it and, after making such enquiry as it may think fit, and giving to each party an opportunity of being heard, and taking into consideration all the circumstances, shall either approve the rent payable under the tenancy or increase or reduce it to such sum as the Court may think reasonable, and the sum so determined shall be deemed to be the rent payable by the tenant to the landlord".

On the question whether or not the consent judgment was given without jurisdiction:

Held, that though when dealing with an application for the determination of rent, under section 7 of Law 36/75, the trial Court has to make such inquiry as it may deem fit, giving to each party an opportunity to be heard and taking into consideration all the circumstances of the case; and that though in the present instance the trial Court before giving the complained of consent judgment did not conduct an inquiry by hearing evidence, because it had before it the statements of counsel for the parties that they had reached an agreement by means of which the rent of the premises was fixed at C£160 per month as from January 1, 1979, this Court cannot accept that when the parties to a rent application under section 7 agree as regards what is in their view the reasonable rent of the premises concerned, the trial Court has, in any event, to conduct always an inquiry by hearing evidence on the issue of what is the reasonable rent; that the Court in such a case may decide to limit its inquiry to the extent of relying on the agreement of the parties as regards what is the reasonable rent; that, therefore, this is not a case in which the trial Court has acted without jurisdiction in fixing, under section 7 of Law 36/75, as it has done, with the consent of the parties before it, the reasonable rent of the premises concerned, or that there exists, in this respect, an error of law on the face of the record of the proceedings of the trial Court; accordingly this Court is not satisfied that there exists any ground entitling it to grant the order of prohibition applied for by the applicant and it would not, for the same reason, have granted an order of certiorari as applied for by the applicant, even assuming that it had been satisfied that certiorari lies in respect of a judgment given by consent (*Lambrianides* v. *Mavrides*, 23 C.L.R. 49 distinguished).

Application dismissed.

Cases referred to:

In the matter of an application by Yannis Vanezis, 19 C.L.R. 26;

R. v. *Fulham, Hammersmith and Kensington Rent Tribunal*, [1951] 1 All E.R. 482;

R. v. *Furnished Houses Rent Tribunal for Paddington and St.*

Marylebone, Ex parte Kendal Hotels Ltd. [1941] 1 All E.R. 448;

R. v. *Agricultural Land Tribunal for the South Eastern Area, Ex Parte Bracey* [1960] 2 All E.R. 518 at p. 520;

R. v. *His Honour Judge Sir Donald Hurst, Ex Parte Smith* [1960] 2 All E.R. 385;

R. v. *His Honour Judge Sir Shirley Worthington-Evans, Clerkenwell County Court, Ex Parte Madan and Another* [1959] 2 All E.R. 457;

R. v. *Bloomsbury and Marylebone County Court, ex parte Villerwest Ltd.* [1975] 2 All E.R. 562 and, on appeal [1976] 1 All E.R. 897;

Lambrianides v. *Mavrides*, 23 C.L.R. 49.

Application.

Application for an order of certiorari in order to quash and an order of prohibition in order to prevent the execution of a judgment given by consent in Limassol Rent Appl. No. 211/78.

A. Myrianthis, for the applicant.

Y. Potamitis, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of this application the applicant, who was the respondent in rent application No. 211/78 in the District Court of Limassol, seeks, in effect, an order of certiorari in order to quash, and an order of prohibition in order to prevent the execution of, a judgment given by consent in the said rent application on January 9, 1979.

The relevant record of the trial Court reads as follows:

"Both counsel state that parties have reached a settlement and the rent of the premises, the subject matter of this application, is fixed at £160.—per month as from 1.1.1979.

Parties will not be at liberty to apply for revision of rent till after the expiration of 2 years as from 1.1.1979.

COURT: In view of what has been stated the rent of the premises, the subject matter of this application, is fixed at £160.—per month as from 1.1.1979.

Parties will not be at liberty to apply for revision of rent till after the expiration of 2 years as from 1.1.1979.

Each party his own costs".

It has been contended by the applicant that the trial Court had no jurisdiction, on the strength of an agreement of the parties, to make the above order, by virtue of which the rent of the premises concerned, which are premises coming within the ambit of the Rent Control legislation, was increased to C£160 per month.

It is common ground that the increase of the rent of the premises, which were in the possession of the applicant in the present proceedings, as a statutory tenant, had been sought by his landlords, who are the respondents in the present case, under section 7 of the Rent Control Law, 1975 (Law 36/75), which reads as follows:

"7.–(1) Οὐδεμία αὔξησις ἐνοικίου κατοικιῶν ἢ καταστημάτων δύναται νὰ ἐπιβληθῇ ἐπὶ θεσμίου ἐνοικιαστοῦ πλὴν ὡς ἐν τῷ παρόντι Νόμῳ διαλαμβάνεται.

(2) Εἶναι νόμιμον διὰ τὸν ἐνοικιαστὴν ἢ τὸν ἰδιοκτήτην οἱασδήποτε κατοικίας ἢ καταστήματος, ἐὰν θεωρῇ ἑαυτὸν ἠδικημένον, νὰ ἀποτείνηται δι' αἰτήσεως εἰς τὸ Δικαστήριον διὰ τὸν καθορισμὸν τοῦ ἐνοικίου τοῦ πληρωτέου ἐν σχέσει πρὸς τὴν τοιαύτην κατοικίαν ἢ κατάστημα.

(3) Εἰς ἣν περίπτωσιν ὑποβάλλεται τοιαύτη αἴτησις εἰς τὸ Δικαστήριον, τὸ Δικαστήριον ἐξετάζει ταύτην καὶ, κατόπιν διεξαγωγῆς τοιαύτης ἐρεύνης οἵαν τοῦτο ἤθελε θεωρήσει κατάλληλον καὶ παροχῆς εἰς ἓν ἕκαστον τῶν διαδίκων τῆς εὐκαιρίας νὰ τύχῃ ἀκροάσεως, καὶ, λαμβανομένων ὑπ' ὄψιν ὅλων τῶν περιστάσεων, εἴτε ἐγκρίνει τὸ ἐνοίκιον τὸ πληρωτέον δυνάμει τῆς ἐνοικιάσεως, εἴτε αὐξάνει ἢ ἐλαττώνει τοῦτο εἰς τοιοῦτον ποσὸν οἷον τὸ Δικαστήριον ἤθελε θεωρήσει λογικὸν καὶ τὸ οὕτω καθορισθὲν ποσὸν θεωρεῖται ὡς τὸ ἐνοίκιον τὸ ὁποῖον ὁ ἐνοικιαστὴς ὑποχρεοῦται νὰ καταβάλλῃ εἰς τὸν ἰδιοκτήτην".

("7.–(1) No increase of rent of dwelling houses or business premises may be imposed on a statutory tenant save as in this Law provided.

(2) It shall be lawful for the tenant or the landlord of any dwelling house or business premises, if he considers himself to be aggrieved, to apply to the Court to determine the rent payable in respect of such dwelling house or business premises.

(3) Where any such application is made to the Court, the Court shall consider it and, after making such enquiry as it may think fit, and giving to each party an opportunity of being heard, and taking into consideration all the circumstances, shall either approve the rent payable under the tenancy or increase or reduce it to such sum as the Court may think reasonable, and the sum so determined shall be deemed to be the rent payable by the tenant to the landlord").

It is I think useful, for purposes of proper construction of the above section 7, to refer, also, to sections 8 and 9 of the same Law, which together with section 7 are to be found in such Law under the heading "Determination and Adjustment of Rents of Dwelling Houses and Business Premises in Controlled Areas".

The said sections 8 and 9 read as follows:

"8.–(1) Ὁ Πρωτοκολλητὴς τοῦ Ἐπαρχιακοῦ Δικαστηρίου εἰς τὴν δικαιοδοσίαν τοῦ ὁποίου ἀνήκει ἐλεγχομένη περιοχή, ἑτοιμάζει καὶ τηρεῖ ἐνημερωμένον μητρῷον διὰ τοὺς σκοποὺς τοῦ Παρόντος Νόμου καὶ ἔχει τὸ μητρῷον διαθέσιμον δι' ἐπιθεώρησιν ὑπὸ τοῦ κοινοῦ κατὰ τὰς ἐργασίμους ὥρας τοῦ γραφείου κατόπιν πληρωμῆς τῶν νενομισμένων δικαιωμάτων.

(2) Τὸ μητρῷον ἑτοιμάζεται οὕτω καὶ τηρεῖται ἐνημερωμένον οὕτως ὥστε νὰ περιέχῃ, ἀναφορικῶς πρὸς οἱασδήποτε κατοικίας ἢ καταστήματα ἐν σχέσει πρὸς τὰ ὁποῖα τὸ πληρωτέον ἐνοίκιον ἐνεκρίθη, ἠλαττώθη ἢ ηὐξήθη ὑπὸ τοῦ Δικαστηρίου δυνάμει τοῦ ἄρθρου 7 τοῦ παρόντος Νόμου, καταχωρίσεις–

(α) τῶν στοιχείων τῶν περὶ ὧν ὁ λόγος κατοικιῶν ἢ καταστημάτων τῶν ἀναγκαίων διὰ τὴν ἀναγνώρισιν τούτων καὶ τῶν ὀνομάτων τῶν διαδίκων τῶν ἀναφερομένων εἰς τὴν αἴτησιν·

(β) τοῦ ἐνοικίου ὡς τοῦτο ἐνεκρίθη, ἡλαττώθη ἢ ηὐξήθη ὑπὸ τοῦ Δικαστηρίου.

9.(1) Ὁσάκις τὸ ἐνοίκιον τὸ πληρωτέον δι' οἱανδήποτε κατοικίαν ἢ κατάστημα καταχωρίζηται εἰς μητρῷον τηρούμενον δυνάμει τῶν διατάξεων τοῦ ἄρθρου 8, δὲν εἶναι νόμιμον διὰ τὸν ἰδιοκτήτην, πλὴν κατόπιν συμφωνίας μεταξὺ αὐτοῦ καὶ οἱουδήποτε ἐνοικιαστοῦ τῆς κατοικίας ἢ καταστήματος νὰ λαμβάνῃ–

(α) ἔναντι τοῦ ἐνοικίου τῆς κατοικίας ἢ τοῦ καταστήματος, ἐν σχέσει πρὸς οἱανδήποτε περίοδον ἥτις ἔπεται τῆς ἡμερομηνίας τῆς τοιαύτης καταχωρίσεως, πληρωμὴν οἱουδήποτε ποσοῦ καθ' ὑπέρβασιν τοῦ οὕτω καταχωρισθέντος ἐνοικίου·

(β) ὡς ὅρον τῆς παραχωρήσεως, ἀνανεώσεως ἢ συνεχίσεως τῆς ἐνοικιάσεως τῆς κατοικίας ἢ καταστήματος, πληρωμὴν οἱουδήποτε προστίμου, ἀμοιβῆς ἢ ἄλλου παρομοίου ποσοῦ, ἐπιπροσθέτως πρὸς τὸ ἐνοίκιον.

(2) Εἰς ἣν περίπτωσιν οἱαδήποτε πληρωμὴ ἐγένετο ἢ ἐλήφθη κατὰ παράβασιν τοῦ ἐδαφίου (1), τὸ ποσὸν ταύτης δύναται νὰ ἀνακτᾶται ὑπὸ τοῦ προσώπου ὑπὸ τοῦ ὁποίου αὕτη ἐγένετο".

("8.–(1) The Registrar of the District Court, within whose jurisdiction a controlled area falls, shall prepare and keep up to date a register for the purposes of this Law, and shall make the register available for inspection by the public during office hours on payment of the prescribed fees.

(2) The register shall be so prepared and kept up to date as to contain, with regard to any dwelling houses or business premises in respect of which the rent payable has been approved, reduced or increased by the Court under section 7 of this Law, entries of—

(a) the particulars with regard to the dwelling houses or business premises in question necessary for the identification thereof and the names of the parties mentioned in the application;

(b) the rent as approved, reduced or increased by the Court.

9. Where the rent payable for any dwelling house or business premises is entered in a register maintained under the provisions of section 8, it shall not be lawful for the landlord, save by agreement between him and any tenant of the dwelling house or business premises, to receive—

(a) on account of rent for the dwelling house or business premises in respect of any period subsequent to the date of such entry, payment of any sum in excess of the rent so entered;

(b) as a condition of the grant, renewal or continuance of the tenancy of the dwelling house or business premises, payment of any fine, premium or other like sum, in addition to the rent.

(2) When any payment had been made or received in contravention of sub-section (1), the amount thereof may be recovered by the person by whom it was made").

It has been argued by counsel for the applicant that under section 7, above, the rent of the premises concerned could not be increased by agreement of the parties, but only by a decision of the trial Court as regards what was the reasonable rent in the circumstances and that, in this connection, the trial Court had to carry out the necessary for this purpose inquiry.

Counsel for the respondents has submitted that, in any event, even assuming, without conceding, that the trial Court could not have made the complained of order under section 7, above, our Supreme Court cannot quash by certiorari its judgment, because certiorari does not lie in respect of judgments of inferior Courts of civil jurisdiction, such as that of the trial Court in the present case.

I cannot accept as correct the sweeping proposition that certiorari never lies in respect of judgments of inferior Courts of civil jurisdiction.

In Halsbury's Laws of England, 4th ed., vol. 11, p. 805, para. 1528, it is stated that certiorari lies to bring up and quash an order of a county Court where the judge of that Court has acted without jurisdiction; and, in note 1, at p. 806, it is stated expressly that certiorari does lie to quash orders of inferior Courts of civil jurisdiction which have acted without jurisdiction.

In any event in the present instance the District Court acted as a tribunal set up under section 4(1) of Law 36/75 and I shall, therefore, deal, in particular, with the jurisdiction of the Supreme Court to control by means of a prerogative order, such as certiorari or prohibition, the exercise of the jurisdiction of such a tribunal.

In the case of *In the matter of an application by Yannis Vanezis*, 19 C.L.R. 26, there was, as a matter of fact, entertained and determined on the merits an application for an order of certiorari against the decision of a Rent Assessment Board by means of which there was ordered a reduction of rent, and in the *Vanezis*, case, *supra*, there was referred to, with approval (at p. 33) the case of *R.* v. *Fulham, Hammersmith and Kensington Rent Tribunal*, [1951] 1 All E.R. 482, from which there appears clearly that the remedy of certiorari is available in respect of a decision of a rent tribunal.

In the case of *R.* v. *Furnished Houses Rent Tribunal for Paddington and St. Marylebone, Ex parte Kendal Hotels Ltd.*, [1941] 1 All E.R. 448, there was held that certiorari does not lie to bring up and quash a decision of a tribunal constituted under the Furnished Houses (Rent Control) Act, 1946, when the decision is good on its face and not outside the jurisdiction of that tribunal. In delivering his judgment in that case Lord Goddard C. J. said (at p. 449):

> "Certiorari is a very special remedy, and when it is sought in order to bring up the order of a judicial tribunal the question which has to be considered is whether or not the tribunal were acting within their jurisdiction. 'Acting within their jurisdiction' is an expression which has been applied to more than one set of circumstances. It is, for instance, applied to a case where it is said that a Court is not properly constituted. It may be that justices or other members of a Court are alleged to be disqualified or to have a bias in the matter which should have resulted in their not sitting and in those circumstances this Court has never hesitated to grant the writ to bring up the order to be quashed because the members of a tribunal had no jurisdiction to give a decision in the case, but it is very old and definite law that certiorari to quash proceedings only lies for want of jurisdiction or where the order is

bad on its face. It may be bad on its face because, on looking at it, the Court can see that the tribunal, in making it, acted outside their jurisdiction, or it may be shown that they decided some question which was not before them. Certiorari will lie for other purposes, such as removing cases for trial to the High Court, but to-day, we have only to consider whether or not this order is good on its face and whether it purports to decide a question which it was within the jurisdiction of the tribunal to decide".

The *Rent Tribunal for Paddington* case, *supra*, was followed later on in *R.* v. *Agricultural Land Tribunal for the South Eastern Area, Ex Parte Bracey*, [1960] 2 All E.R. 518. In delivering his judgment in that case Lord Parker C. J. said the following (at p. 520):

"There is a clear distinction between a tribunal that acts without jurisdiction and one which goes wrong in law while acting within its jurisdiction, e.g., in acting on no evidence or in acting on evidence which ought to have been rejected or in failing to take into consideration evidence which ought to have been considered. Those are all matters of law, and unless the error appears on the record, no order for certiorari can be obtained".

Furthermore, useful reference may be made, in this connection, to the cases of *R.* v. *His Honour Judge Sir Donald Hurst, Ex Parte Smith*, [1960] 2 All 385 and *R.* v. *His Honour Judge Sir Shirley Worthington-Evans, Clerkenwell County Court, Ex Parte Madan and Another*, [1959] 2 All E.R. 457, *R.* v. *Bloomsbury and Marylebone County Court, ex parte Villerwest Ltd.*, [1975] 2 All E.R. 562 and, on appeal [1976] 1 All E.R. 897.

Assuming, therefore, that the trial Court in this case acted without jurisdiction in giving its complained of judgment, I would certainly have possessed competence to intervene by means of certiorari in order to quash such judgment.

There is a reason, however, for which I would not be prepared to grant an order of certiorari in this particular case, even if the trial Court had acted in excess of its jurisdiction; such reason is the fact that I am faced with a judgment which was given by consent and I have not been persuaded, in the present case,

by the applicants, on whom the burden lay to do so, that certiorari lies for the purpose of quashing a judgment given by consent, even if it has been given without jurisdiction.

In any event, however, on the strength of the case of *Lambrianides* v. *Mavrides*, 23 C.L.R. 49, I do think that I possess competence to grant an order prohibiting the execution of the consent judgment involved in the present proceedings, if such consent judgment was given without jurisdiction. I shall proceed, therefore, to consider now whether or not the said judgment was in fact given without jurisdiction:

It is true that when dealing with an application for the determination of rent, under section 7 of Law 36/75, the trial Court has to make such inquiry as it may deem fit, giving to each party an opportunity to be heard and taking into consideration all the circumstances of the case.

In the present instance the trial Court before giving the complained of consent judgment did not conduct an inquiry by hearing evidence, because it had before it the statements of counsel for the parties that they had reached an agreement by means of which the rent of the premises was fixed at C£160 per month as from January 1, 1979.

I cannot accept that when the parties to a rent application under section 7 agree as regards what is in their view the reasonable rent of the premises concerned, the trial Court has, in any event, to conduct always an inquiry by hearing evidence on the issue of what is the reasonable rent. In my opinion, the Court in such a case may decide to limit its inquiry to the extent of relying on the agreement of the parties as regards what is the reasonable rent.

It must not be lost sight of, in this connection, that the Legislature has attributed great importance to an agreement between a landlord and a tenant as regards the rent payable for premises coming within the ambit of Law 36/75, because under section 9 of such Law it is rendered lawful for the landlord to receive by agreement with the tenant a sum even in excess of the rent fixed as reasonable rent by the Court.

I am, therefore, not at all satisfied that this is a case in which the trial Court has acted without jurisdiction in fixing, under

section 7 of Law 36/75, as it has done, with the consent of the parties before it, the reasonable rent of the premises concerned, or that there exists, in this respect, an error of law on the face of the record of the proceedings of the trial Court.

The present case is clearly distinguishable from the *Lambrianides* case, *supra*, where it was held by the Supreme Court that the trial Court had acted without jurisdiction in ordering the eviction of a statutory tenant, because in that case there was no admission on the part of the tenant that there existed any ground entitling the trial Court to make an order of possession by exercising its relevant statutory jurisdiction.

I am, therefore, not satisfied that there exists any ground entitling me to grant the order of prohibition applied for by the applicant and I would not, for the same reason, have granted an order of certiorari as applied for by the applicant, even assuming that I had been satisfied that certiorari lies in respect of a judgment given by consent.

Before concluding this judgment I should point out that the parties have, in this case, agreed that they would not be at liberty to apply for a revision of the rent agreed upon by them till after the expiration of a period of two years and that this agreement of theirs was incorporated in the consent judgment of the trial Court.

I have serious doubts, especially in the light of the provisions of sections 8 and 9 of Law 36/75, as to whether such a limitation of the jurisdiction of the trial Court under section 7 of Law 36/75 could have been made a part of the judgment given by it by consent; but, as I have not been asked to quash on this ground the relevant part of the consent judgment in question, I leave this issue entirely open. In any event, even if that part of the consent judgment was to be found to be beyond the jurisdiction of the trial Court such a finding would not have affected the validity of fixing by consent the reasonable rent of the premises concerned at C£160 per month.

For all the foregoing reasons this application fails and is dismissed, but in the light of the circumstances of this case I am not prepared to make an order as regards its costs.

Application dismissed. No order as to costs.