1969 *Present :* Sirimane, J.

K. PADMANABA, Appellant, *and* M. K. JAYASEKERA, Respondent

S. C. 38/68—C. R. Colombo, 94354

Lease of a grass field—Subsequent erection of houses on the land by the lessee—Renewal of lease thereafter in December 1962—Whether the lessee is entitled to protection under the Rent Restriction Act—Meaning of word "premises"—Rent Restriction (Amendment) Act No. 10 of 1961, s. 13.

The defendant obtained from the plaintiff in 1952 the lease of a grass field, 1 rood and 38·81 perches in extent and situated within the U. C. limits of Moratuwa. By 1961 the defendant had constructed four houses on the land, which then ceased to be a grass field. The houses were tenanted by about 15 persons. When the lease was renewed on 23rd December 1962 for a period of 3 years, it made no special reference to the buildings and referred only to "the premises fully described in the Schedule". The Schedule set out the entire allotment of land of 1 rood 38·81 perches.

Held, that, according to the definition of the term "premises" in section 13 of the Rent Restriction (Amendment) Act No. 10 of 1961, the defendant was entitled to protection under the Rent Restriction Act in respect of the leased premises, after the period of the lease of 23rd December 1962 had expired. The Rent Restriction Act applied to each one of the buildings constructed on the land.

APPEAL from a judgment of the Court of Requests, Colombo.

W. D. Gunasekera, with *Raja Bandaranayake*, for the defendant-appellant.

B. J. Fernando, with *Gamini Dissanayake*, for the plaintiff-respondent.

Cur. adv. vult.

March 14, 1969. SIRIMANE, J.—

On lease P2 of 1952, the plaintiff had leased to the defendant an allotment of land, 1 rood 38·81 perches in extent situated within the U. C. limits of Moratuwa. The learned Commissioner has taken the view that it was a piece of bare land or a grass field with a hut *at that time*, and one may assume that this view is correct.

Thereafter the defendant had constructed certain buildings on the land. These buildings consisted of four houses, each containing a verandah, a room and a kitchen. They were constructed about 10 feet apart, and are tenanted by about 15 persons. It was conceded at the argument that the defendant's evidence correctly sets out the factual position in regard to the buildings, as the plaintiff apparently knew very little about this land. According to the defendant he had come on this land under the plaintiff's husband even long before P2. By 1961 these buildings were on the land, and it was not used as a grass field thereafter. The evidence of the Assessment Clerk of the Moratuwa Urban Council shows that the five buildings were separately assessed. They had been so assessed for the first time in 1958.

On 23rd December 1962, the plaintiff once again on P1 leased to the defendant for a period of 3 years " the premises fully described in the Schedule together with all and singular the rights, privileges, servitudes and appurtenances whatsoever to the said premises.....". The Schedule sets out the entire allotment of land of 1 rood 38·81 perches.

This action was brought by the plaintiff to eject the defendant from the leased premises, as the period of the lease had expired. She averred in the plaint that the subject matter of this action was not governed by the Rent Restriction Act.

The main question for decision was whether these were premises to which the Rent Restriction Act applied.

Section 13 of the Rent Restriction (Amendment) Act No. 10 of 1961 enacts that " Premises mean any building or a part of a building together with the land appertaining thereto ". There can be little doubt, in my view, that the Act applies to each one of the buildings constructed on the land.

Before the definition of " premises " in the amending Act, Gunasekara J., in a case where the facts were somewhat similar—*Paul v. Geverappa Reddiar* [1]—said (at page 404) that the question was whether the property leased consisted of a building with appurtenant land or a land with appurtenant building.

Sinnetamby J. in *Nallathamby v. Leitan* [2] expressed the view at page 61 that the only rational test was to ascertain whether it was a house that was let with a garden as an adjunct or whether it was a garder that was let with a house as an adjunct.

[1] *(1958) 59 N. L. R. 402.*

[2] *(1956) 58 N. L. R. 56.*

Even by these tests it would appear that at the time of the lease P1, the premises consisted of buildings in the occupation of tenants with the land appertaining thereto.

In this view of the matter it is unnecessary to express an opinion on the further point raised by Mr. Gunasekera for the appellant, viz., that after the definition in the amending act, the provisions of the Rent Restriction Act applied to every building or a part thereof situated in an area where the Act is in operation, and that the tests in the cases referred to above are no longer applicable. He contended that *Fernando v. Vadivelu* [1] was wrongly decided.

The learned Commissioner held in favour of the plaintiff on the ground that the lease P1 made no special reference to buildings and that the defendant could not claim that the buildings were also included in that lease.

It is elementary that when an allotment of land which is leased is described by metes and bounds, everything standing within those boundaries (unless expressly excluded) are also leased to the lessee.

In my view the defendant is entitled to protection under the Rent Restriction Act.

The appeal is allowed, and the plaintiff's action is dismissed with costs both here and below.

Appeal allowed.