WEERASENA
v.
MATHUPALA

COURT OF APPEAL
W. N. D. PERERA, J.
ISMAIL, J. AND
EDUSSURIYA, J.
C.A. 506/79
D.C. COLOMBO 1284 RE
4, 10 AND 30 JUNE, 1992

Landlord and tenant – Reasonable requirement for purposes of landlord's profession – Duty of tenant to look for alternative accommodation – Assessment of reasonable requirement – Point of time at which reasonable requirement should be assessed – Rent Act, s. 22 (1) (b).

The premises in suit comprising a basement, ground floor and first floor were let in 1947 by the plaintiff's mother to the defendant who ran a tailoring and dry-cleaning business. The standard rent did not exceed Rs. 100/-. The plaintiff's mother gifted these premises to the plaintiff when he passed out as a doctor. The plaintiff gave one year's notice to the defendant on the ground that the premises were required for running a dispensary. The defendant who had been using the basement for the drying of clothes and the ground floor for tailoring surrendered these two sections to the plaintiff. The defendant used the first floor for ironing of clothes and maintaining an office. The plaintiff did extensive improvements and structural improvements to the basement and ground floor. The first floor used by the defendant was separately assessed as 372 1/1 in 1972 and its standard rent now exceeded Rs. 100/-. The plaintiff wanted these premises for use as a laboratory, observation room and drug store.

The plaintiff's practice had increased. He had an acupuncture clinic and a clinic for channelled consultation.

The defendant ran a dry cleaning business and although he had given up part of the premises, he had not made any serious attempts to find alternative accommodation, despite receiving a year's notice and having 12 years to look for other premises while the case was pending.

Held:

(1) In deciding the issue reasonable requirement, the court must take into account the position of the landlord as well as of the tenant, together with any other factor which is relevant to the decision of the case.

(2) (Edussuriya, J. dissenting) The efforts made by the tenant to find alternative accommodation must be taken into account. Where the tenant had not made serious attempts to find alternative accommodation although he had handed over the basement and ground floor, this would count as a factor against him.

(3) In weighing the comparative needs of the landlord and tenant, the court will act as follows:

(a) Where the hardship of the landlord is equally balanced with that of the tenant, the landlord's claim must prevail.

(b) Where the hardship to the landlord outweighs the hardship to the tenant the landlord's claim must prevail.

(c) Where the hardship to the tenant outweighs the hardship to the landlord, the landlord's action must be dismissed.

(4) The landlord is not expected to demonstrate a necessity. The words "reasonably required" connote something more than a desire but something much less than absolute necessity will suffice.

(5) (Edussuriya, J. dissenting) Reasonable requirement has to be determined not as at the date of the institution of the action, but at the conclusion of the trial.

Cases referred to:

1. *Abeywardene v. Nicolle* (1944) 45 NLR 350.
2. *Ramen v. Perera* (1944) 46 NLR 133.
3. *Mohamed v. Salahudeen* (1945) 46 NLR 166.
4. *Raheem v. Jayewardene* (1943) 45 NLR 313, 316.
5. *Fernando v. David* (1948) 49 NLR 210.
6. *Atukorale v. Navaratnam* (1948) 49, NLR 461, 469.
7. *Gunasena v. Sangaralingam Pillai & Co.* (1948) 49 NLR 437, 475.
8. *Andree v. de Fonseka* (1950) 51 NLR 213.

9. *Weerasinghe v. Candappa* (1950) 52 NLR 91.
10. *Hameedu Lebbe v. Adam Saibo* (1948) 50 NLR 181.
11. *Sabooriya Begum v. Hassen* CA 305/85 (F) CA minutes of 16.10.91.
12. *Abeysekere v. Carolis* SC 44/91 CA 540/88 minutes of 28.02.1992.
13. *Newman v. Biggs* (1945) EDL 51 at 54.
14. *Paterson v. Koonin* (1947) 2 SALR 337.
15. *Ismail v. Herft* (1948) 50 NLR 112.
16. *Swamy v. Gunawardene* (1958) 61 NLR 85.
17. *Abdul Rahim v. Gunasena* (1964) 66 NLR 419.
18. *Arnolis Appuhamy v. De Alwis* (1958) 60 NLR 141.
19. *Hilmi v. De Alwis*, CA (SC 280/79 F) SC minutes of 14.08.80.
20. *Abdeen v. Miller & Co. Ltd.* (1948) 50 NLR 43.
21. *Mendis v. Ferdinands* (1950) 51 NLR 527.
22. *De Mel v. Piyatissa* (1948) 39 CLW 63.
23. *John Appuhamy v. David* (1945) 47 NLR 36.
24. *Egginona v. David* (1946) 22 CL Rec 40.
25. *Abeysekera v. Koch* (1949) CLW 31.
26. *Britto Mutunayagam v. Hewavitarane* (1950) 51 NLR 237.
27. *Shrimpton v. Rabbits* 40 TLR 457.
28. *Allcroft v. Lord Bishop of London* (1891) AC 66.
29. *Neville v. Hardy* (1920) 124 LT 210.
30. *Kennealy v. Dunne* (1977) (1) QB 837, 844.

APPEAL from judgment of the District Court of Colombo.

K. N. Choksy, P.C. with *N. B. S. Moraes* and *S. Mahenthiran*, for plaintiff-appellant.

P. A. D. Samarasekera, P.C. with *G. L. Geethananda* and *P. Keerthisinghe* for defendant-respondent.

Cur adv vult.

9th September, 1992.

W. N. D. PERERA, J.

The plaintiff-appellant, the landlord instituted this action on 13.11.1975 for the ejectment of the tenant, the defendant-respondent, from premises No. 372 1/1 Kollupitiya Road, Colombo 3, and for arrears of rent and damages. An amended plaint dated 8.12.1976 was filed to comply with the provisions of the Administration of Justice Law, No. 25 of 1975. The defendant-respondent filed answer on 30.8.1976 and the amended answer on 11.5.1977. The said premises are governed by the provisions of the Rent Act No. 7 of 1972. The plaintiff-appellant relied on the ground that the premises are 'reasonably required' within the meaning of section 22(2)(b) of the Rent Act for the purposes of his profession, that of a medical practitioner. The plaintiff-appellant, had given the defendant-respondent one year's notice on 26.8.1974 to quit the said premises on or before 31.08.1975. He pleaded that the defendant has had sufficient time to find alternative accommodation. The principal issue at the trial was whether the premises were reasonably required for the purposes of the practice of the plaintiff-appellant's medical profession. His action was dismissed with costs on 13.03.1979. The plaintiff-appellant now seeks to have the said judgment set aside and to have judgment entered in his favour to secure the ejectment of the tenant from the aforesaid premises.

The defendant was the tenant of the mother of the plaintiff from about 1947 of the entirety of the premises then bearing assessment No. 372 Galle Road, Kollupitiya, consisting of a basement, a ground floor and a first floor. The premises, the standard rent of which did not exceed Rs. 100/- were then rent controlled. The defendant was carrying on the business of a tailoring and dry cleaning establishment known as "Servall". In about 1970, the plaintiff's mother having gifted the premises to the plaintiff after he qualified as a medical practitioner, requested the defendant to give vacant possession of the entire premises to enable the plaintiff to run a dispensary. The defendant then surrendered the basement and the ground floor to enable the plaintiff to establish a dispensary. The defendant had till such time used the basement for the drying of clothes and the ground floor for tailoring. On the first floor a room was used for ironing of clothes while the balance space was utilized for

maintaining an office. The plaintiff having thus obtained possession of a part of this building did extensive improvements and structural alterations to it at a cost of Rs. 45,000/-. The first floor used by the defendant was then separately assessed as No. 372 1/1, while the basement, the ground floor and the terrace on the first floor, inclusive of the additions to the two floors, were separately assessed and continued to bear the assessment No. 372. Following the revision in the rates of assessment of the premises in 1972 the standard rent of the portion of the premises assessed under No. 372 1/1 occupied by the defendant exceeded Rs. 100/- and it thus became possible for the plaintiff to institute this action for ejectment on the ground of reasonable requirement.

The plaintiff having made structural alterations and improvements to the building commenced his practice there on 23rd December 1971. Having also taken up residence there he utilized the basement for the kitchen, and as a dining room, a sitting room and also for storing drugs. There were two bedrooms with a bathroom used by the family on the ground floor. The balance space on the ground floor was utilized as a consultation room, a room for dressing wounds, as a dispensary and as a waiting hall. The defendant used the entirety of the first floor, except for the terrace at the rear, and it consisted of two rooms, a fit-on room, a bathroom and another terrace, all of which was assessed as No. 371 1/1. These are the premises from which the plaintiff sought to have the defendant ejected. He had averred specifically that the said premises were required for use as a laboratory, as an observation room and for storing drugs presently stored in the basement.

The plaintiff sought to have the defendant ejected from the said premises, the first floor, on the basis that the said premises were reasonably required by him for the purposes of his profession as a medical practitioner. The approach of the trial judge was that in construing the provisions of section 22(2)(b) of the Rent Act the position of the tenant must also be taken into consideration in considering the reasonable requirement of the premises by the landlord.

The principal submission of President's Counsel for the appellant was that the trial judge had misdirected himself by taking into

consideration the requirement of the tenant, as the relevant consideration in terms of section 22(2)b of the Rent Act is only the reasonable requirement of the landlord. The relevant portions of section 22(2) provide as follows:

"Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of –

(i) any residential premises the standard rent . . . of which for a month exceeds one hundred rupees; . . . shall be instituted in or entertained by any Court, unless where

(b) the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purposes of trade, business, profession, vocation or employment of the landlord . . ."

Section 22(2)b is similar to the provisions of section 8c of the Rent Restriction Ordinance No. 60 of 1942 and section 13 of the Rent Restriction Act No. 29 of 1948 and these provisions have been considered in several earlier judgments.

It was held in *Abeywardene v. Nicolle*[1], in *Ramen v. Perera*[2] and in *Mohamed v. Salahudeen*[3] that in deciding whether under section 8c the requirement of the premises for the landlord's use is a reasonable one, the surrounding relevant facts must be considered and that lack of alternative accommodation for the tenant is one of such relevant facts. In *Raheem v. Jayewardene*[4], Howard, CJ. said, "The Court has to be satisfied after taking into consideration other matters such as . . . the position of the tenant, that the requirement is a reasonable one."

Subsequently, however, Basnayake, J. in *Fernando v. David*[5] and in *Atukorale v. Navaratnam*[6] objecting to the interpolation of specific provisions of foreign legislation into our Ordinance for its interpretation, took a view contrary to that expressed in the earlier judgments. In the former case Basnayake, J. stated:

> "Once the Court is satisfied that the premises are reasonably required by the landlord for any of the purposes mentioned in section 8c, the Court is not in my view entitled to take into account the tenant's difficulties in finding accommodation."

In *Atukorale v. Navaratnam*[6] Basnayake, J. again expressed a similar view:

> "Section 8c requires the Court to form an opinion whether the premises are reasonably required for the occupation as a residence for the landlord. The tenant's difficulties do not come into the matter at all. The only thing that matters is the reasonableness of the landlord's requirement."

The ensuing conflict in regard to the interpretation of the relevant provisions which prevailed was then resolved by a bench of two judges in *Gunasena v. Sangaralingam Pillai & Co.*[7] which favoured the earlier view holding that a Court must take into account not only the position of the landlord but also that of the tenant, together with any other factor that may be directly relevant to the acquisition of the premises by the landlord. This decision has been regarded as settling the law in this regard. In *Andree v. de Fonseka*[8], Gratiaen, J. referring to the issue of reasonableness said: "In determining this issue the Court must take into account the position of the landlord as well as of the tenant together with any other factor which is relevant to the decision of the case. Doubts which had at one time existed as to the proper interpretation of the words 'reasonably required' appearing in this section have now been set at rest by the ruling of this Court in *Gunasena v. Sangaralingam Pillai & Co.*". Again in *Weerasinghe v. Candappa*[9] Gratiaen, J. observed, "It is now settled law that in considering whether the premises are reasonably required for the occupation of the landlord, a Court must take into account, *inter alia*, the degree of hardship which an order for eviction would cause to the tenant." Similar observations were made by Nagalingam, J. in *Hameedu Lebbe v. Adam Saibo*[10].

In a recent decision in *Sabooriya Begum v. Hassen*[11], it was the view of the Court of Appeal, without reference to any of the decided cases in this regard, that the "reasonable requirement of the premises by the landlord only is relevant, as there is no provision in

the Rent Act to consider reasonable requirement of the premises by the tenant". The Supreme Court, however, in *Abeysekere v. Carolis* [12], having recognised that the view expressed in *Gunasena v. Sangaralingam Pillai & Co.*[7] has been consistently followed since then, observed that the foundation for that view was that "reasonableness is not one-sided". Windham J., in *Gunasena v. Sangaralingam Pillai & Co.*[7] had stated: "It is the negation of reasonableness to take a one-sided view to consider one factor only out of more than one; nor can any person be said to have reached a reasonable decision who, in reaching it, ignores any effect which it may have on his neighbours". The reasonableness of the requirement of the landlord cannot be assessed regardless of the difficulties that would be encountered by the tenant. The interests of the tenant in the premises is a pertinent consideration in the evaluation of the words "reasonable requirement" of the landlord. It is inherent in the criterion of reasonableness that the position of the tenant should be considered as a relevant factor. "The exclusion of the tenant's point of view puts it beyond the power of the Court to make a comprehensive appraisal of all factors by reference to which the reasonableness of the landlord's demand for possession has to be assessed" G. L. Peiris in *Landlord and Tenant* – page 604.

We are therefore of the view that the trial judge has adopted the correct approach in interpreting the provisions of section 22(2)b of the Rent Act in conformity with the settled law, approved and affirmed from time to time. No cogent reason has been adduced before us to hold that the interpretation of Windham, J. of the words "reasonably required" for the purposes of the landlord arrived at "unfettered by authority" in *Gunasena v. Sangaralingam Pillai & Co.*[7] need be now revised.

The next submission on behalf of the appellant was that in any event the hardship suffered by the landlord outweighs that which might ensue to the respondent. In his judgment the trial judge referred to the conduct of the respondent in surrendering, though strictly not obliged to do so, the basement and the ground floor of the premises that was occupied by him from 1947 to 1970 in its entirety; that having so obliged the appellant, the respondent was now not acting unreasonably in resisting his eviction from the first floor of the

premises; that the appellant's requirement of the first floor for the purposes envisaged in the amended plaint was satisfied with the space in the basement and the ground floor becoming available to him consequent to the shifting of his residence to a house constructed by him in 1987. The trial judge finally held that the respondent would be subject to more serious hardship, inconvenience and damage in the event of his being evicted from the premises.

The learned trial judge without making an appraisal of the reasonable requirement of the landlord has misdirected himself by considering whether it is reasonable in the circumstances to make an order for the ejectment of the tenant. The plaintiff-appellant averred in his amended plaint dated 8.12.1976 that the premises are required by him for the purposes of its use as a laboratory, for an observation room and for its use as a drug-store. His requirement for these purposes were pleaded in his amended plaint dated 8.12.1976 before he shifted his residence in September 1977. At the stage of the trial he produced sketches 'A' and 'A1' to demonstrate the uses to which he had put the space which became available consequent to the shifting of his residence. He had at this time used the basement to accommodate the drug-store, the E.C.G. room, an acupuncture clinic and a waiting room, while the two rooms on the ground floor were utilized as rooms for specialists for channelled consultation. He has explained how the interests of his patients were best served by making acupuncture treatment available to them and by having them examined by specialists in his presence. In his evidence he maintained that the location of the storeroom for drugs in the basement was not satisfactory and that the E.C.G. room could also be accommodated in the first floor besides having an examination room. The burden resting on the landlord in regard to showing reasonable requirement was adverted to as follows by Basnayake, J. in *Atukorale v. Navaratnam*[6].

"The extent of the onus resting on the landlord appears from the words of Pittman, J., in *Newman v. Biggs*,[13], quoted with approval by Searle, A.J. in the case of *Paterson v. Koonin*[14].

> It is difficult, says Pittman, J., "to see what more can ordinarily be required of a claimant than that he should assert

his good faith and bring some small measure of evidence to demonstrate the genuineness of his assertion. He can normally scarcely do more and it rests with the lessee resisting ejectment to bring forward circumstances casting doubt upon the genuineness of his claim".

The appellant having shown that he reasonably requires the premises for the purposes of his profession, need not be expected to demonstrate a "dire necessity". "The words "reasonably required" connote something more than a desire, although at the same time something much less than absolute necessity will do" – Megarry – *The Rent Acts,* Vol. 1, page 424, 11th edition. It is settled law that reasonable requirement has to be determined not as at the date of the institution of action but at the conclusion of the trial – *Ismail v. Herft*[15], *Andree v. de Fonseka*[8], *Swamy v. Gunawardene*[16], *Abdul Rahim v. Gunasena*[17]. The appellant has demonstrated that the nature and the extent of his practice had increased; the number of his patients had increased from 24 patients in December 1971 when he commenced practice to over 10,000 in 1976. Besides, utilizing the space which became available after he moved out, for an acupuncture clinic and for specialists channelled consultation for his patients, after specialists became entitled to engage in private practice in 1977, did not negative his *bona fides* but on the contrary showed that the appellant had made a genuine endeavour to further his professional purposes in the best interests of his patients. The circumstances which occurred after the institution of his action had thus strengthened his claim to possession; *Arnolis Appuhamy v. De Alwis*[18].

While the plaintiff-appellant has shown that he still reasonably required the premises for his professional purposes as a medical practitioner, the defendant-respondent has not made any serious attempt to find alternative accommodation. A period of over 12 years had lapsed since the respondent was given notice to quit as at the date of the trial. In his amended answer dated 11.5.1977, the defendant-respondent while admitting that he received one year's notice to quit on or before 31.08.1975 had stated that he will find it difficult to find alternative accommodation. Although it was shown that several new buildings had come up around the area, the

defendant-respondent said that he made enquiries from one establishment which demanded an advance and a hire rent. His position was that he would be unable to find alternative accommodation at the same rent he was paying the plaintiff appellant. He was unable to say when he would move out of the premises though it was not his desire to take possession of the same. The evidence was that he ran a dry cleaning business in the premises from 1947 and that he required the premises in suit for this purpose. He had voluntarily relinquished a part of the building to the appellant at the latter's request in 1971. He required the premises for the carrying on of the business of dry cleaning. He had been given one year's notice by the appellant before the action was filed. His evidence as to his efforts to secure alternative accommodation is as follows: "After the plaintiff asked for the surrender of the premises, there were a number of buildings constructed on Galle Road. I went and inquired from them. Their rents were excessive. They asked for a deposit. One place was Dadlani Building. They asked for Rs. 1,000/- as rent and for 5 years rent as deposit. Similarly I inquired regarding a number of buildings. I state that I have given a reasonable portion of the building for the plaintiff's needs". His evidence is therefore not that suitable alternative accommodation was unavailable nor that he could not afford their rents, but simply that their rents were 'excessive'. The defendant admitted in cross-examination that he was a man of means possessing property both in and out of Colombo. His position seems to have been that he was not prepared to pay a rent higher than that he was already paying the appellant.

In the case of *Hilmi v. De Alwis*[19], Victor Perera, J. stated, "The defendant-appellant having received this notice has made no endeavour whatsoever to look out for alternative premises. His evidence on this point is at the tail-end of his re-examination, 'I have no other house to shift. I have tried to get a house but I am finding it difficult. After this action was filed I just inquired for a few houses. I find it difficult. I do not have an ancestral house. In view of this new provision in the law and in keeping with the criteria established under the Rent Restriction Act in the numerous decided cases, where a landlord wants the premises for his own occupation and the tenant has made no serious effort to secure other accommodation or to retain other accommodation which might have or had been available,

a Court called upon to form an opinion as to the reasonableness will be justified in granting a landlord a decree for ejectment. In my view, the requirement of one year's notice thus provided relieved to some extent a burden that may have laid on a landlord".

In the instant case all that the respondent has done is to make a few inquiries as to other premises which according to him were available at the time. It is only in respect of one such premises that he had given evidence as to the rent demanded. As to what rent was demanded of him in respect of the other unnamed premises that he has referred to, he has remained silent. We do not consider that the evidence shows that he had made any serious effort to obtain suitable alternative premises. We are in agreement with the view expressed by Victor Perera, J. in the case of *Hilmi v. de Alwis*[19] that such failure could justify a Court, in granting a landlord a decree for ejectment under the provisions of section 22 of the Rent Act. Once the landlord has shown that he reasonably requires the premises, the failure of the tenant to search for alternative accommodation will or may negative the plea that the tenant, too, reasonably requires the premises for himself – *Abdeen v. Miller & Co. Ltd.*[20]. We are therefore of the view that on the evidence in this case the defendant-respondent had failed to show that he has made a genuine effort to secure other accommodation and in the circumstances the landlord is entitled to judgment in his favour.

As regards the question of hardship, Dias, S.P.J. in *Mendis v. Ferdinands*[21] set out three categories of comparative needs as between landlord and tenant, as the case may be, would be entitled to judgment in his favour:–

01. Where the hardship of the landlord is equally balanced with that of the tenant, the landlord's claim must prevail; *De Mel v. Piyatissa*[22], *Ramen v. Perera*[2].

02. Where the hardship to the landlord outweighs the hardship to the tenant, the landlord's claim must prevail; *John Appuhamy v. David*[23], *Egginona v. David*[24].

03. Where the hardship to the tenant outweighs the hardship to the landlord, the landlord's action must be dismissed, *Abeysekera v. Koch*[25], *Britto Mutunayagam v. Hewavitarane*[26].

The appellant has established not only that his requirement is reasonable but that it is equal to that of the respondent. Nagalingam, J. said in *Hameedu Lebbe v. Adam Saibo*[10]; "Where the hardship is equally great viewed from either the landlord's point of view or that of the tenant, in determining the question of reasonableness of the landlord's requirement, the pendulum must be regarded as swinging in the landlord's favour inasmuch as he is the owner of the premises". Further, in view of the respondent's failure to make a serious effort to find alternative accommodation, we are of the view that the appellant is entitled to a decree for ejectment. The first two issues must be answered in the affirmative. We therefore set aside the judgment of the District Judge and allow the appeal and direct that judgment be entered in favour of the plaintiff-appellant for ejectment of the defendant-respondent from the premises in suit. Although the appellant is entitled to arrears of rent and damages we make no order as to the quantum in this regard as the rent has not been finally determined by the Rent Control Board. The defendant-respondent will pay the appellant Rs. 525/- as costs of this appeal and the costs incurred in the District Court.

ISMAIL, J. – *I agree.*

EDUSSURIYA, J.

The Plaintiff/Appellant the landlord, of the premises which is the subject-matter of this action, the standard rent of which exceeds Rs. 100/- per mensem has instituted this action to evict the Defendant/Respondent therefrom and recover the possession thereof on the ground that it is reasonably required for the purpose of his medical practice.

After trial, the learned District Judge had dismissed the Plaintiff/Appellant's action and this appeal is from that judgment.

Briefly the facts are as follows:

The Defendant/Respondent had first gone into occupation in 1947 of the entire building made up of the basement, ground floor and the 1st floor bearing assessment No. 372. At present, the basement and the ground floor bear assessment No. 372 whilst the 1st floor which is alone occupied by the Defendant/Respondent bears assessment No. 372 1/1.

In 1970 or thereabout, when the Plaintiff/Appellant's mother, the then landlord requested the release of the ground floor, the Defendant/Respondent had vacated the ground floor, and although even the basement had been temporarily vacated by the Defendant/Respondent at that time to enable the Plaintiff/Appellant to effect certain structural alterations, it is the Defendant/Respondent's evidence that the basement was not handed back to him by the Plaintiff/Appellant. In 1970 the standard rent of the premises had been less than Rs. 100/-. Then, on 26.8.1974 just four years later the Plaintiff/Appellant had noticed the Defendant/Respondent to vacate the 1st floor bearing 372 1/1 on the ground that it was reasonably required by him for the purpose of his profession. By that date the standard rent of the premises in question had been increased to over Rs. 100/-.

The learned District Judge having held that in his view more hardship and inconvenience will be caused to the Defendant/Respondent than to the Plaintiff/Appellant if judgment was entered in favour of the Plaintiff/Appellant, dismissed the Plaintiff/Appellant's action. In other words, it appears that the Plaintiff/Appellant has satisfied the learned District Judge that he has a genuine present need for these premises for the purpose of his profession and dismissed the Plaintiff/Appellant's action, because the Defendant/Respondent would be faced with more hardship by being ejected than the Plaintiff/Appellant being without the premises.

Mr. Choksy, P.C. appearing on behalf of the Plaintiff/Appellant sought to attack this judgment on two grounds namely; (1) that the statute does not require the Courts to consider the tenant's

requirements and to read into the provisions of a statute words which are not there will be doing violence to the rules of interpretation. (2) that in any event the Plaintiff's requirements outweigh the tenant's requirements.

Both Mr. Choksy for the Appellant and Mr. Samarasekara for the Respondent in the course of their submissions stated that even though the Rent Restriction Ordinance of No. 60 of 1942 was replaced by Act No. 29 of 1948 as amended by No. 10 of 1961, No. 2 of 1964 and No. 12 of 1966 and then replaced by Act No 7 of 1972, the section corresponding to S 8(c) in the Rent Restriction Ordinance No. 60 of 1942 is similar. They also referred to the decisions of the Supreme Court and the Court of Appeal up to date, on this question.

Mr. Choksy also submitted that the early decisions of our Supreme Court were influenced by the English decisions which interpreted the relevant provision in the English statute which was different to the provision in our Ordinance.

I will now proceed to examine these decisions.

In *Abeywardene v. Nicolle* [1] Soertsz, J. held that alternative accommodation is a relevant fact to be taken into account along with other facts in considering the question of reasonableness. In that case the Plaintiff/Appellant's counsel sought to attack the judgment in the lower Court on two grounds, the first of which was that there was logical inconsistency in the finding that the Plaintiff's action was in good faith and yet unreasonable and secondly that the Commissioner of Requests misdirected himself in taking into account the matter of alternative accommodation.

In regard to the first Soertsz, J. held that "there was no logical inconsistency, even ordinarily in stating that something has been done in good faith or with the best of motives but yet unreasonably. Much less is there such inconsistency in a case in which we were concerned not with reasonableness at large but with what may be described as relative reasonableness", and went on to cite a passage in Justice Acton's judgment in *Shrimpton v. Rabbits* [27] that

"because the landlord's wish for possession was reasonable it does not follow that it was reasonable for the Court to gratify it". It must be remembered that the provision of the English statute which came up for interpretation in that case, cast on the Courts the further duty of ascertaining whether it was reasonable to grant the relief claimed by the landlord even if the Court was satisfied that the premises in question are reasonably required by the landlord.

On the 2nd question of alternative accommodation it is seen that Soertsz, J. whilst stating that the English Act requires the availability of alternative accommodation to be considered, goes on to state that it is a relevant fact in considering the question of reasonableness.

Though our Acts do not have such additional provisions Soertsz, J. follows up by saying that what is laid down in *Shrimpton v. Rabbits* (*supra*) is that in making an order the Judge must consider the circumstances of the tenant as well as those of the landlord.

So that it appears that Soertsz, J. was influenced by the decision in *Shrimpton v. Rabbits* (*supra*).

It is seen that Chief Justice Howard, in *Raheem v. Jayewardene* [4] was of the view that the words "in the opinion of the Court" found in our section cast upon the Court a duty to satisfy itself after taking into consideration other matters such as alternative accommodation at the disposal of the landlord and the position of the tenant, that the requirement is a reasonable one and went on to state that our section 8(c) seems to combine the first part of S. 5(1) (d) of the English section together with the words "and, in any such case as aforesaid the Court considers it reasonable to make such an order or give such judgment which appears after paragraph (g) of section 5(1)".

Thus it is clear that Howard, C.J. was of the view that a landlord who seeks to eject a tenant on the ground that the premises are reasonably required by him must first satisfy Court that he has a genuine and *bona fide* need of the premises and secondly that it is reasonable to make such an order granting him relief and on that latter burden cast on the landlord, he must satisfy Court on such matters as alternative accommodation at the disposal of the tenant and the requirements of the tenant.

So that the decision in *Nicolle v. Abeywardene* (*supra*) was influenced by the decision in *Shrimpton v. Rabbits* (*supra*) which interpreted a provision in the English statute which cast upon the English Courts the duty of ascertaining whether granting relief is reasonable even if the Court is satisfied that the landlord has a genuine need for the premises. Whilst in *Raheem v. Jayewardene* [4] Howard, C.J. was of the view that the words in the "opinion of the Court" required Court to look into the position of the tenant.

In *Ramen v. Perera* [2] Cannon, J. in arriving at his decision having discussed the two cases referred to, by me above, went on to state that the words "reasonably required" would at first sight appear to require no explanation to a reasonable person but that guiding principles are however desirable. Cannon, J. went on to cite a reference made by Soertsz, J. in *Nicolle v. Abeywardene* (*supra*) and by Acton, J. in *Shrimpton v. Rabbits* (*supra*) that "because the landlord's wish for possession was reasonable it does not follow that it was reasonable for the Court to gratify it". This passage only becomes relevant in view of the latter part of the relevant provision in the English statute which requires the Court to satisfy itself whether granting relief to the landlord is reasonable in the opinion of the Court even after the landlord has established that the premises are reasonably required by him. So once again we see the influence of the English decision in *Shrimpton v. Rabbits* (*supra*).

Then in *Mohammed v. Salahudeen* [3] Rose, J. has made mention of a submission made by the landlord's Counsel. "Now Counsel for the Plaintiff says that having regard to the wording of this particular subsection, which it is to be noted, is different from the English Act of 1920 from which most of these Colonial Ordinances derive, the only element that the Court need take into consideration is the landlord's aspect of the matter. There is much to be said for that contention as a legal argument but it seems to me that as far as this question is concerned the matter is covered by authority". In this connection, I may state that it is unimaginable to think that in 1942 whilst we were still under British rule the legal draftsman would not have had before him the English statute.

Therefore it may be said that it is reasonable to infer that having referred the English statute, the additional provisions found therein,

such as the need to consider the questions of alternative accommodation and whether it is reasonable to grant relief to the landlord, were deliberately left out since the intention of the legislature was that only the requirement of the landlord should be considered. However, on a careful study of our Rent Restriction Ordinance of 1942 it is seen that the scheme of the English Act has not been followed.

The Supreme Court decisions thereafter were on these lines until Basnayake, J. in his judgment in the case of *Atukorale v. Navaratnam* [6] looked into the decisions in this country, England and South Africa in detail in order to ascertain whether S. 8(c) of our Rent Restriction Ordinance No. 60 of 1942 requires a Court to take into consideration the question of the availability of alternative accommodation and also the interests of the tenant.

Basnayake, J. dealt with the effect of the words "in the opinion of the Court" found in S. 8(c) of our Rent Restriction Ordinance and was of the view that they only mean according to the judgment of the court or tribunal or person who has to form the opinion and in this connection Basnayake, J. went on to refer to the words of Lord Bromwell in the case of *Allcroft v. Lord Bishop of London* [28]. "If a man is to form an opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him" and went on to state that the word "reasonably" make the Court the arbiter and not the landlord, and that the landlord's *ipse dixit* that the premises are reasonably required for his residence would have little value unless his request is supported by evidence sufficient to persuade the Court of the reasonability of his requirement. Basnayake, J. was of the view that S. 8(c) required the Court to form an opinion whether premises are reasonably required for occupation as a residence for the landlord and that the tenant's difficulties do not come into the picture.

In arriving at this decision Basnayake, J. appears to have been persuaded by the decisions of South African Courts where S. 14(1)(c) of the Rent Act 1942 read "that the premises are reasonably required by the lessor for his personal occupation or for that of his major or married child or children or any person in his employ and therefore very much akin to our S. 8(c), which had repeatedly been of

the view that what the Courts have to decide is simply whether the applicant has shown that he reasonably requires the premises for his use and not the question of who will suffer the greater hardship, the applicant if the Respondent is not ejected or the Respondent if he is ejected.

It was at this stage that this question came up for decision in the case of *Gunasena v. Sangaralingam Pillai & Co.*[7], and Windham, J. in the course of his judgment stated that he agreed with Basnayake, J. in his judgment in *Atukorale v. Navaratnam* (*supra*) in that the words "in the opinion of the Court" appearing in S. 8(c) do not affect to any extent the interpretation to be placed on the word "reasonably" and that these words mean that the landlord's *ipse dixit* that his requirement of the premises is reasonable is not enough and that it is the Court which has to decide whether the requirement is reasonable.

Therefore it is clear that the earlier decisions that the words "in the opinion of Court" requires Court to take into consideration other matters such as alternative accommodation and the position of the tenant has not been followed. In fact Windham, J. had gone on to ascertain the meaning of the words "reasonably required for occupation of the landlord" independently of the words "in the opinion of the Court".

Windham, J. has in the course of his judgment stated that, although Basnayake, J. has in the course of his judgment in *Atukorale v. Navaratnam* (*supra)* pointed out that the English Courts in the cases of *Shrimpton v. Rabbits* (*supra*) and *Neville v. Hardy*[29] made it clear that, if those additional provisions (namely those regarding availability of alternative accommodation and whether the Court considers it reasonable to make such an order or give such judgment) had not been present in the English Acts, the English Courts would have interpreted the words "reasonably required" to mean "reasonably" from the point of view of the landlord exclusively, but since those additional provisions were included in the English Acts he (Windham, J.) does not think those opinions of the English Judges can be held to be other than *obiter*; and that they might well have considered the meaning of the words "reasonably required" with more deliberation had not the additional words relieved them of

the necessity of doing so. In this connection I may also mention that twenty eight years later Lord Justice Stephenson in the course of his judgment in the case of *Kennealy v. Dunne* [30] has expressed the same view when he stated that "Those words reasonably required in the Rent Act, in case 8 and its predecessor in earlier Acts have been given a less than completely objective meaning. The words have been limited to meaning reasonably required from the landlord's point of view, and not in all the circumstances including the tenant's. That limited interpretation of the words "reasonably required" has no doubt come about because the tenant is protected by the provisions of what is now S. 10(1) – that the Court – must consider the making of an order for possession reasonable – and by the further safeguard that the balance of hardship must be in the landlord's favour for him to get possession under what is now Part III of schedule 3".

Windham, J. in the case of *Gunasena v. Sangaralingam Pillai* (*supra*) has in interpreting the words "reasonably required" held that it is a negation of reasonableness to take a one-sided view but that alternative accommodation was a relevant factor, no more and no less in determining whether the requirement of the premises for the landlord's purposes is reasonable.

Windham, J. in *Gunasena v. Sangaralingam Pillai* (*supra*) has interpreted the words "reasonably required", "unfettered by authority" and I see no reason whatsoever to justify my taking a different view.

The Supreme Court and the Court of Appeal since then, have followed the decision in *Gunasena v. Sangaralingam Pillai* (*supra*) except in a few cases in which this question was not dealt with in detail with reference to decided cases.

However in view of the requirement that one year's notice of termination of tenancy be given to the tenant under the Rent Act in force today, the position is different to what it was at the time the case of *Gunasena v. Sangaralingam Pillai* (*supra*) was decided.

It is obvious that the sole purpose of requiring the landlord to give the tenant one year's notice of termination of tenancy is to enable the tenant to secure alternative accommodation. Therefore the Courts will

no longer, in my view be required to look into the questions of alternative accommodation and comparative hardships caused to parties if alternative accommodation is not available.

In view of what I have stated above and also in view of the Defendant/Respondent's Counsel, Mr. Samarasekara's submission that when the Plaintiff/Appellant shifted his residence the requirement on which he came to Court was satisfied, the next question to be decided in this case is whether the Plaintiff/Appellant reasonably required these premises and if so did such requirement exist at the date of institution of action and continue to exist at the time of the trial.

Gratiean, J. in *Andree v. De Fonseka*[8] expressed the view that according to S.8(c) of the Ordinance No. 60 of 1942 the reasonableness of the landlord's demand for possession must exist at institution of action and must continue to exist at the time of the trial.

In *Ismail v. Herft*[15] the view was expressed that the time at which the conditions set out in S. 8(c) of the Rent Restriction Ordinance of No. 60 of 1942 must be shown to exist by a landlord is, the time when the Court is required to make the ejectment order, but, in a case where there is an appeal from such an order, the landlord who brought the action has died before writ of ejectment has issued and before he has entered into possession of the premises, that **the Appeal Court should likewise satisfy itself that the premises are reasonably required for the purpose set out in the plaint.**

The Plaintiff/Appellant admitted in evidence that in the summary of evidence he proposed to lead which was annexed to his amended plaint he had set out that he required the 1st floor bearing assessment number 372 1/1, to accommodate a laboratory, an observation room for children, and a drug-store and when in September, 1977 he shifted his residence, five rooms in the basement and ground floor became available to him for the purpose of his profession. This had happened whilst this action was pending in the District Court. However, of those five rooms he had made two rooms available to specialists for consultation practice. It was also

admitted that consultation practice to specialists was permitted by the Government after the institution of this action. Although the Plaintiff/Appellant has said in evidence that the drugs cannot be stored in the basement due to dampness, drugs could certainly have been stored on the ground floor but for his using two rooms for the specialists. Therefore, on the Plaintiff/Appellant's evidence, with the availability of the five rooms in the basement and the ground floor the requirement of the 1st floor for the purpose set out in his plaint, namely, to accommodate a laboratory, an observation room for children and a drug-store was satisfied.

If due to consultation practice being permitted after he came to Court, he required further space to render a better service to his patients then that would be a completely new purpose for which space is required which had arisen after he came to Court and that purpose would if at all have given rise to another cause of action of reasonable requirement.

In view of the reasons given above I dismiss this appeal with costs.

Appeal allowed.