

**ABEYSEKERA**  
**v.**  
**CAROLIS**

SUPREME COURT  
BANDARANAYAKE, J.  
AMERASINGHE, J. AND  
DHEERARATNE, J.  
S.C. NO. 44/91  
C.A. NO. 540/88 (F)  
D.C. MT. LAVINIA 2540/RE  
05 FEBRUARY 1992.

*Landlord and tenant – Reasonable requirement: – Sections 22(1) (bb) and (1C) of the Rent Act No. 7 of 1972 as amended by Law No. 10 of 1977 and Act No. 55 of 1980 – Provision of alternative accommodation by the Commissioner of National Housing.*

**Held :**

The certainty of providing alternative accommodation by the Commissioner of National Housing to the tenant, is a factor that the court should take into consideration in determining the reasonableness of a landlord's requirement. This is not a decisive factor. The other relevant facts accepted by the District Judge in this case, however militate against the reasonableness of the landlord's requirement.

**Cases referred to:**

- (1) *Mawjood v. Pussadeniya* (1987) 2 Sri LR 287, 289.
- (2) *Abeyewardene v. Nicolle* (1944) 45 NLR 350.
- (3) *Mohamed v. Salahudeen* (1945) 46 NLR 166.
- (4) *Raheem v. Jayawardene* (1944) 45 NLR 313.
- (5) *Wijemanne & Co. Ltd. v. Fernando* (1946) 47 NLR 62.
- (6) *Fernando v. David* (1948) 49 NLR 210.
- (7) *Atukorale v. Navaratnam* (1948) 49 NLR 461.
- (8) *Gunasena v. Sangaralingam Pillai & Co.* (1948) 49 NLR 473.
- (9) *Ismail v. Herft* (1948) 50 NLR 112, 116.

- (10) *Andree v. de Fonseka* (1950) 51 NLR 213, 214.  
(11) *Arnolis Appuhamy v. de Alwis* (1958) 60 NLR 141, 142.  
(12) *Abdul Rahim v. Gunasena Corporation Ltd.* (1964) 66 NLR 419, 421.

**APPEAL** from judgment of the Court of Appeal.

*R. K. S. Suresh Chandra* for plaintiff-appellant.

*K. S. Tillakaratne* for defendant-respondent.

*Cur adv vult.*

28th February, 1992.

**DHEERARATNE, J.**

Plaintiff sued defendant his tenant to have him ejected from the rented premises, the standard rent per month of which did not exceed Rs. 100, on the ground that the premises '**were reasonably required for occupation as a residence for the landlord**' in terms of section 22(1) (bb) of the Rent Act No. 7 of 1972 as amended by Law No. 10 of 1977 and Act No. 55 of 1980. The original court dismissed the plaintiff's action and that judgment was affirmed by the Court of Appeal.

The only point of law taken up by the appellant before us, a point not covered by authority so far, is whether the duty of the Commissioner of National Housing to provide alternative accommodation to the tenant before he is ejected, is a factor to be taken into consideration by a court in coming to a decision under section 22(1) (bb) that the premises are reasonably required for occupation as a residence for the landlord.

Section 22 (1C) reads; 'Where a decree for ejection of the tenant of any premises referred to in paragraph (bb) of subsection (1) is entered by any court on the ground that such premises are reasonably required for occupation as a residence for the landlord or any member of the family of such landlord, no writ in execution of such decree shall be issued by such court until after the Commissioner of National Housing has notified to such court that he

is able to provide alternate (sic) accommodation for such tenant'. ('Alternate' has been erroneously used for 'alternative' – see *Mawjood v. Pussadeniya* <sup>(1)</sup>.)

The view that in reaching a determination under section 8(C) of the Rent Restriction Ordinance No. 60 of 1942 (a section comparable with section 22(1) (bb) of the Rent Act No. 7 of 1972 as amended) the requirement of premises for landlord's use is reasonable, the surrounding relevant facts must be considered and the lack of alternative accommodation for the tenant is one such relevant fact, was taken in the cases of *Abeyewardene v. Nicolle* <sup>(2)</sup> and *Mohamed v. Salahudeen* <sup>(3)</sup> and as *obiter dicta* in *Raheem v. Jayawardene* <sup>(4)</sup> and *Wijemanne & Co., Ltd. v. Fernando* <sup>(5)</sup>. The contrary view was expressed in *Fernando v. David* <sup>(6)</sup> and *Atukorale v. Navaratnam* <sup>(7)</sup>, that the requirement under section 8(c) shall be construed from the landlord's point of view exclusively and all outside factors, including the tenant's difficulties, are irrelevant and ought not to be taken into account. This conflict was resolved by the decision in *Gunasena v. Sangaralingam Pillai & Co.* <sup>(8)</sup>, which favoured the former view and since then that view has been consistently followed by courts. The foundation for that view appears to be that 'reasonableness' is not one-sided.

If non-availability of alternative accommodation for the tenant is a relevant factor in assessing the reasonableness of a landlord's requirement, so should be the availability of alternative accommodation for the tenant, as reasonableness demands consideration by court of competing interests. However, that is only one relevant factor and not a decisive factor. As observed by Windham, J. in *Gunasena v. Sangaralingam Pillai* (*supra*) 'And so far as concerns the question of alternative accommodation, I would guard against saying that the court must satisfy itself (as it must under the English Acts) that there is alternative accommodation for the tenant before eviction under section 8(c). That is not the position. A case might well occur where, after duly considering the facts of alternative accommodation the court might still consider that the landlord's requirement was reasonable. This point was made clear by Soertsz, J. in *Abeyewardene v. Nicolle* (*supra*). Alternative

accommodation is a relevant factor no more and no less, in determining whether the requirement of the premises for the landlord's purposes is reasonable.

Had the plaintiff obtained judgment in his favour, the eviction of the tenant could be effected only after the Commissioner of National Housing notifies court that he is able to provide alternative accommodation. The date at which the reasonable requirement of the landlord should be shown to exist is the date when the court makes the ejection order and not the date of the institution of the action. See *Ismail v. Herft* <sup>(9)</sup>; *Andree v. de Fonseka* <sup>(10)</sup>; *Arnolis Appuhamy v. de Alwis* <sup>(11)</sup> and *Abdul Rahim v. Gunasena Corporation Ltd* <sup>(12)</sup>

Applying the principles emerging from the authorities referred to above, it seems to me that learned counsel for the appellant is correct in his submission that the certainty of providing alternative accommodation to the tenant by the Commissioner of National Housing was a factor that the court should have taken into consideration in determining the reasonableness of the landlord's requirement. But what do other relevant facts as accepted by the learned judge reveal?

(1) The plaintiff's wife, daughter and son reside in a house gifted to the daughter by his wife. No estrangement with the wife and children was alleged.

(2) The plaintiff resides in another house which is not a temporary residence as he unsuccessfully attempted to picture in court.

(3) That the plaintiff had gifted to his son an upstairs house consisting of two units each bearing a separate assessment number. In respect of the upper apartment, the plaintiff holds a decree of ejection against its tenant, entered by court of consent between the parties; the apartment on the ground floor had been kept closed for a period of about two and a half years at the time the plaintiff gave evidence.

These relevant facts militate against the reasonableness of the landlord's requirement so much, that even if the certainty of providing

alternative accommodation for the tenant by the Commissioner of National Housing was taken into consideration, no court could possibly have with justification arrived at a finding different from what was reached by the original court.

The judgment of the Court of Appeal is affirmed and the appeal is dismissed with costs.

*Appeal dismissed.*

**BANDARANAYAKE, J.** – *I agree.*

**AMERASINGHE, J.** – *I agree.*

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