

SAFFEEYA

v.

JAMAD

COURT OF APPEAL.

EDUSSURIYA, J. (P/CA)

C.A. Rev. 183/99

D.C. COLOMBO 6596/RE

28TH SEPTEMBER, 1999

Rent Act - S. 22(1)(bb), - S.22(1c) and S. 36 - reasonable requirement - Commissioner to find alternative accommodation for 'Such tenant' - Death of tenant when decree is entered-Rights of Tenancy ceases.

The Plaintiff - Petitioner (landlord) instituted action under Section 22(1)(bb) of the Rent Act on the ground that he reasonably required the premises, and obtained Judgment. However in terms of S. 22(1c) Writ of Execution was not to issue until the Commissioner of National Housing notified Court that he is able to provide alternative accommodation for "such tenant."

After the death of the Tenant the Petitioner made an application for Writ, which was refused.

Held

- (1) On decree being entered in favour of the Plaintiff, tenancy was terminated.
- (2) 'Tenant' Judgment Debtor had no right of tenancy thereafter to which his heirs could succeed.
- (3) The word 'Tenant' is used in S. 22(1c) to identify the person to whom the Commissioner of National Housing should provide alternate accommodation.
- (4) Commissioner has to provide accommodation to such tenant only - that is the person who was the tenant until the tenancy was terminated.

- (5) The Rights of tenancy ceased on the decree being entered and therefore Section 36 would not apply.

APPLICATION in Revision from the Order of the District Court of Colombo.

Cases referred to :

1. *Leelawathie Vs. Manel Ratnayake* 1998 3 SLR 349.
S. Kanagasingham for Plaintiff-Petitioner.
K. Deektriweera for Defendant Respondent

Cur. adv. vult.

October 29, 1999.

EDUSSURIYA, J. (P/CA)

The Plaintiff-Petitioner-Landlord had instituted action under Section 22(1) (bb) of the Rent Act on the ground that he reasonably required the premises in suit for occupation as a residence, and obtained judgment. However, as per Section 22(1c) of the Rent Act writ of execution of the decree was not to issue until the Commissioner of National Housing notified to Court that he is able to provide alternate accommodation for "such tenant".

The tenant died in 1992 as admitted by the Respondent's Counsel.

Thereafter the Plaintiff-Petitioner-Landlord-Judgment Creditor made an application for writ which was refused on the ground that the widow had succeeded to the tenancy.

On decree being entered in favour of the Plaintiff-Petitioner the tenancy was terminated, but writ was not to issue as per Section 22(1c). Thus, the "tenant" judgment debtor had no right of tenancy thereafter to which his heirs could succeed.

Although the word "tenant" is used in Section 22(1c) it does not mean that the defendant tenant had any rights of tenancy after decree was entered in favour of the Landlord. It is used therein to identify the person to whom the Commissioner of National Housing should provide alternate accomodation.

The Plaintiff-Petitioner's counsel contended that the widow of the judgment debtor was substituted only for the purpose of the execution proceedings.

Further, the Commissioner of National Housing is under an obligation under Section 22(1c) to provide alternate accomodation to "such tenant" only. That is the person who was the tenant until the tenancy was terminated by the decree of Court.

I may also refer to the decision in the case of *Leelawathie vs. Manel Ratnayake*⁽¹⁾ where the Supreme Court held that an application under Section 13 of the Ceiling on Housing Property Law to purchase a premises could not be continued by a party substituted under Section 36 of the Rent Act as the right to purchase the premises was personal to the tenant who made the application.

On the other hand, in this case before me, the rights of tenancy ceased on the decree being entered and therefore Section 36 of the Rent Act clearly does not apply in such a situation. Besides, as set out hereinbefore in terms of Section 22(1c) the Commissioner of National Housing is bound to provide alternate accomodation to "such tenant" only.

For the above mentioned reasons, the order of the learned Additional District Judge dated 26th October 1998 refusing the application for issue of writ for the execution of the decree is set aside with costs and the application for the issue of writ to execute the said decree is allowed with costs fixed at Rs. 5250/.

Application allowed