SITHTHI FAUSIYA
v.
HARUN KAREEM

SUPREME COURT
H. A. G. DE SILVA, J., AMERASINGHE, J. AND DHEERARATNE, J.
S.C. 41/87 – C.A. No. 546/82
AUGUST 27, 1990.

Landlord and tenant-Rent Act, No. 7 of 1972 as amended by Law No. 10 of 1977 Sections 22(1)(a), 22(1)(bb), 22(3), 22(6) – Rent Restriction Act, No. 29 of 1948 – Rent Restriction (Amendment) Act, No. 10 of 1961 Section 13 (1a), 13(1a)(b) – Rent Restriction (Amendment) Act, No. 12 of 1966 – Interpretation of Statutes – Notice.

A Landlord of rent controlled premises gave notice of termination of tenancy on the ground of reasonable requirement, purporting to be in terms of Section 22 (1) (*bb*) of the Rent Act No. 7 of 1972 as amended by Law No. 10 of 1977. The tenant was in arrears of rent at the time notice was given. The plaint was filed on the grounds both of reasonable requirement and arrears of rent but at the trial the case was restricted to the latter ground only. The Court of Appeal held that the notice is bad in law as it failed to specify that the termination of tenancy is made on the ground of arrears of rent.

Held :

(1) In the unambiguous words of Section 22(3)(*a*) a prerequisite of filing action on the grounds of arrears of rent is a notice of termination of tenancy. The requirement of words "intimating to the tenant that the tenancy is terminated on the ground of arrears of rent" or words to similar effect cannot be imported to that section.

(2) Interpolation of words to a statute is improper since the primary source of legislative intent is in the language of the statute.

(3) There are no formal requisites for a notice of termination except where the statute specifies a period of duration. The test to be adopted is whether the notice has been given by the landlord with the intention of terminating the tenancy and the tenant would have reasonably understood it as serving that purpose. This cannot be negatived by the Ominibus averment in every answer of a tenant that the notice "is not valid in Law".

***Per* Dheeraratne, J.**

"No tenant need be reminded of his obligation to pay rent and besides it would be unfair to impose on a landlord such an additional burden not provided for by the Common Law and not expressly required by the statute which seeks to alter the Common Law. The Common Law relating to Landlord and tenant not having been abrogated by the legislature, the statutory inroads made into it may be aptly described

as a process of etching on the surface of the common Law – the Common Law standing out where no statutory etching is done. This appears to be the consistent judicial approach to the statutory modifications".

Cases referred to :

(1) *Fernando v. Samaraweera 52 NLR 278 at 283*
(2) *George v. Richard 50 NLR 128*
(3) *Dias v. Gomes 55 NLR 337*
(4) *Ratnam v. Deen 70 NLR 21 at 22*
(5) *A.R.M.C. Thambi Lebbe v. P. Ramasamy 68 NLR 356*
(6) *Abdul Hasan v. Calideen 74 NLR 22 at 23*
(7) *Appuhamy v. Seneviratne [1981] 2 Sri LR 45 at 50*
(8) *Wellington v. Amerasinghe [1987] 1 Sri LR 41*
(9) *Western Bank Ltd. v. Schindler [1976] (3) WLR 355, 356*
(10) *Magor & St. Mellons Rural District Council v. Newport Corporation [1955] AC 189 at 191*

APPEAL from judgment of the Court of Appeal.

H. L. de Silva P.C. with *G. L. Geethananda, Janaka de Silva* and *P. M. Ratnawardena* for plaintiff-appellant.
D. R. P. Goonetilleke for defendant-respondent.

Cur. adv. vult.

October 05, 1990

DHEERARATNE, J.

The landlord of the premises which is the subject matter of this action, sued his tenant on 9.6.81 in the District Court, to have him ejected from the premises on two grounds *viz.*, that the tenant was in arrears of rent from June to December, 1980 and that the premises were reasonably required for the landlord's occupation. In the plaint the landlord averred that by letter dated 21.1.1981 notice of termination of the tenancy was given to the tenant to quit and deliver possession of the premises on or before 30.4.1981. The tenant in his answer took up the position that on an agreement between him and the landlord, the arrears of rent were set off against a sum of money he expended on account of repairs to the premises and a further sum due to him from the landlord as costs in another case, leaving a balance, which he stated was already paid to the landlord.

At the trial, the landlord confined his case to the cause of action based on arrears of rent only. The learned trial judge gave judgment for the landlord, having held that there is no evidence of an agreement to set off the arrears, as alleged by the tenant. On an appeal by the tenant, the Court of Appeal reversed the finding of the original court and dismissed the landlord's action, on the basis that in its opinion "implicit in the scheme of the (Rent) Act and the statutory context, that it is an imperative requirement to set out in the notice the ground of termination of the tenancy." The present appeal is the sequel. The Court of Appeal, however found no reason to disturb the finding of the trial judge that there was no evidence of an agreement to set off the arrears and no arguments were addressed to us canvassing that finding of fact.

Before considering the statutory provisions applicable to the action, it would be convenient to set out the relevant parts of the letter dated 21.1.1981(P.1)relied upon by the landlord as the notice of termination of the tenancy, which the Court of Appeal held to be invalid in law.

> "I am instructed by my client Mrs. Siththi Fausia of No. 9, Kumarimulla, Pugoda, your landlord of the above premises, to give you notice to quit and hereby give you notice that you should quit, vacate and deliver vacant possession of the above premises to my client on or before the expiration of 30th day of April, 1981. My client is not the owner of any other residential premises and the above premises are reasonably required by her for her own residence.
>
> This notice is been given to you in terms of Section 22(1)(*bb*) of the Rent Act, No. 7 of 1972 as amended by Rent, (Amendment) Law, No. 10 of 1977 and in the event of your failure to comply with this notice action will be filed against you to have you and all persons holding under you ejected from the said premises."

A copy of this letter had been sent to the Commissioner of National Housing.

The premises in dispute, being premises of which the standard rent per month does not exceed Rs. 100, the landlord relied on Section 22(1)(*a*) of the Rent Act, No. 7 of 1972, to ground his action and such an action for ejectment could be instituted in terms of that sub-section, only if the rent of the premises has been in arrear for 3 months or more after it has become due ; but such an action cannot be instituted unless the landlord has complied with the provisions of Section 22(3) relating to

the notice of termination of the tenancy. The relevant portions of that Section which now calls for our interpretation read as follows : –

22(3) "The landlord of any premises referred to in sub-section (1) . . . . . shall not be entitled to institute, or as the case may be, to proceed with any action or proceeding for the ejectment of the tenant of such premises on the ground that the rent of the such premises has been in arrear for 3 months or more . . . . . after it has become due,–

(a) if the landlord has not given 3 months' notice of termination of the tenancy if it is on the first occasion of which the rent has been in arrear . . . . . ;or

(b) if the tenant has prior to the institution of such act or proceedings tendered to the landlord all arrears of rent ; or

(c) if the tenant has on or before the date fixed, in such summons as is served on him, as the date on which he shall appear in court in respect of such action or proceeding, tendered to the landlord all arrears of rent."

Since the Court of Appeal considered "the scheme of the Act and the statutory context" in coming to the finding it did, it would be necessary to look back at the legislative predecessor of the Rent Act, No. 7 of 1972 and some of the decided cases on those and similar statutory provisions. The original Rent Restriction Act, No. 29 of 1948, had no provision similar to present Section 22(3) affording a defaulting tenant an opportunity to pay his arrears before or after the institution of an action of ejectment and the failure on his part to perform his statutory obligations exposed him to the peril of being ejected. In *Fernando v. Samaraweera (1)* Basnayake, J. (as he then was) remarked –

"Once the tenant commits a breach of any one of his statutory obligations the bar against the institution of proceedings in ejectment imposed by Section 13 of the Act, is removed and there is nothing the "statutory tenant" can do to regain his immunity from eviction. His rights and obligations are governed by the statute and immediately he violates its provisions the consequences of such violation begin to flow. For instance if he is in arrears of rent for one month after it has become due the landlord becomes free to institute proceedings in ejectment. He cannot prevent his eviction by process of law by tendering the rent out of time either before or after the institution of legal proceedings. The consequences of the failure to observe the

obligations imposed by the statute cannot be avoided by doing late what should have been done in time."

The contrary view expresed by Nagalingam, J. earlier, in *George v. Richard* (2) necessitated the reference of the case of *Dias v. Gomes (3)* to a bench consisting of 3 judges. Pulle, J., writing the main judgement, "the reasoning and conclusions set out" of which Nagalingam, J. himself was "prepared to adopt", stated at page 342 as follows: –

"This brings me to the final question whether the protection conferred on a tenant by the Act, is taken away, if he allows himself to be in arrears for over a month. It seems to me that being in arrears is a condition or state in which the tenant finds himself by his own lapse and upon that condition or state supervening the tenant places himself outside the limits of the protection and it is for him to show how thereafter he regained that protection. I fail to see how he ragains the protection only by the act of tendering the arrears before the institution of the action. The Rent Restriction Act has made heavy inroads into the common law rights of the landlord and I do not see anything oppressive in interpreting proviso (*a*) to mean that, having regard to the new and extensive rights conferred on a tenant, it is a condition precedent to the continued protection of the Act, against the eviction that the tenant shall pay the rent not necessarily as it falls due but at least within a month thereafter."

In this state of the common law that prevailed causing hardship to the defaulting tenants, came the Rent Restriction (Amendment) Act, No. 10 of 1961 conferring on such tenants in arrears a measure of relief. Section 13 (1A) brought in by that amendment read as follows :–

13 (1A) " The landlord of any premises to which this Act applies shall not be entitled to institute any action or proceeding for ejectment of the tenant of such premises on the ground that the rent of such premises has been in arrear for one month after it has become due.

(*a*) if the landlord has not given the tenant 3 months' notice of the termination of the tenancy, or

(*b*) if the tenant has before such a date of termination of the tenancy as is specified in the landlord's notice of such termination tendered to the landlord all arrears of rent."

It could be observed at once that the wording of Section 13(1A) (*b*) only inferentially suggested that the landlord should specify the arrears of rent due to him in the notice terminating the tenancy.

The above mentioned provisions regarding the notice of termination as a prerequisite for instituting action in ejectment on the ground of arrears of rent in respect of **all premises** to which rent restriction laws applied, prevailed until the passing of the Rent Restriction (Amendment) Act, No. 12 of 1966, which brought in a division of premises – those the standard rent per month of which did not exceed hundred rupees (hereinafter called the first category) and those of which exceeded hundred rupee (hereinafter called the second category). This amendment provided for ejectment of a tenant from the first category of premises on the ground of arrears of rent, only if such tenant was in arrears of rent for three months or more. It also produced somewhat a strange result in that the **statutory prohibition** of filing an action in ejectment on the ground of arrears in rent –

(i) without a notice of termination of tenancy being given ; and

(ii) unless the tenant had tendered to the landlord arrears of rent prior to filing of such action

was not made applicable to premises of the first category. (*See – Ratnam v. Deen (4)*). Nevertheless, it is correct to say that the Common Law reqirement of the notice of termination of tenancy surfaced in such an action.

This situation existed till the enactment of Act, No. 7 of 1972, the law in force at present, which repealed the Rent Restriction Act, (Chapter 274) as amended from time to time and the statutory requirement of a notice of termination of tenancy preparatory to filing of action on the ground of arrears of rent in respect of both categories of premises reappeared. However, it is significant to note that in Section 22(3) (*b*) of the present Act, where reference is made to the relief granted to the defaulting tenant to tender arrears of rent before filing the action, the legislature had thought it fit to drop the words "as specified in the landlord's notice of termination", which words were brought in by the Amendment of 1961.

With this historical conspectus of legislation, I will now turn to the few reported decisions which may have some bearing on the question of construing Section 22(3)(*a*). In *A.R.M.C. Tambi Lebbe v. P. Ramasamy* (5) G.P.A. Silva, J. (as he was then) dealing with provisions of the repealed Rent Restriction Act, at page 357 remarked –

"Thereafter however, he (Commissioner of Requests) appears to have been influenced by an irrelevant consideration namely that the

notice to the defendant to vacate the premises did not contain the purpose for which the premises were required to enable the plaintiff to carry a textile business or trade. It must be stated that there is no legal requirement to mention such purpose at all in a notice to quit."

We are denied the benefit of knowing the actual wording of the notice to quit and that action unlike the present, was solely based on reasonable requirement of the landlord. Could it be that the notice was completely silent as to the reason it was given ? Or did it merely say that the premises were reasonably required by the landlord for the purposes of trade or business, profession or vocation or employment, without specifying which of them? Or if it is for the purposes of trade or business ; did it fail to specify which trade or business? We do not know.

In *Abdul Hassan v. Calideen* (6) Weeramantry, J., observed –

"It is well established that the ground on which the acton is filed need not necessarily be the ground set out in the notice of determining the tenancy."

This observation was apparently considered by the Court of Appeal to be too wide a proposition than that was warranted as it was made in the context of the submission of counsel that an action for ejectment on the ground of arrears of rent could not be maintained upon a basis of a period of arrears of rent other than that referred to in the notice to quit.

The Court of Appeal also gave its consideration to the remark made by Atukorala, J. in *Appuhamy v. Seneviratne* (7) that –

". . . . . .it appears to me that the ground on which an action is filed need not necessarily be the one set out in the notice of termination of the tenancy."

I am in agreement with the Court of Appeal that the above observation is clearly **obiter** and that it was made in respect of notice admitted by parties but not even produced at the trial.

However, in the unambiguous words of Section 22 (3) (*a*) a pre-requisite of filing action on the grounds of arrears of rent is a notice of termination of tenancy. The question is whether we are justified on the recognized principles of construction of statutes to import into this section words . . . . . ." and intimating to the tenant that the tenancy is terminated on the grounds of arrears of rent" or words to similar effect.

The Court of Appeal found support for the view it did in the judgment of Sharvananda, C.J. in the case of *Wellington v. Amerasinghe* (8) in which he expresses as follows :–

> "But Section 22 (3) of the Rent Act, of 1972 has altered the law. In terms of this section notice of termination of tenancy in order to be valid can be given only after the tenant had been in arrears for the requisite period and not beforehand. Hence under the present law advantage cannot be taken of an earlier termination of tenancy by which notice to quit at a time when the tenant was not in arrears of rent for the required period to institute an action under Section 22 (1) of the Rent Act, of 1972 for ejectment on the ground of arrears of rent."

It appears by that interpretation Sharvananda, C.J. has ventured to inject to the requirement of a statutory notice a temporal element, apparently having regard to the collocation of words of Section 22 (3) which reads" . . . . . shall not be entitled to institute . . . . . any action . . . . . for ejectment of the tenant . . . . . on the ground that rent of such premises has been in arrears for three months or more . . . . . after it has become due . . . . . if the landlord has not given the tenant three months' notice of termination of tenancy . . . . . " such a construction does not appear to me as one that was reached in consequence of reading some additional words into that section, for on a plain reading it could be contended that the notice of termination should follow the default.

The Court of Appeal was of the opinion that if the notice of termination of the tenancy makes no reference to the fact that the rent is in arrear, then the first intimation by the landlord to that fact will be after the institution of the action, thereby diminishing the time and opportunity available to the tenant to tender arrears of rent. I am of the view that no tenant need be reminded of his obligation to pay rent and besides it would be unfair to impose on the landlord such an additional burden not provided for by the Common Law and not expressely required by the statute which seeks to alter the Common Law. The Common Law relating to the landlord and tenant having not been abrogated *in toto* by the legislature, the statutory inroads made into it may be aptly described as a process of etching on the surface of the Common Law ; the Common Law standing out where no statutory etching is done. This appears to be the consistant judicial approach to the statutory modifications.

Bindra's Interpretation of Statutes (7th edition) page 536 states –

"Where the meaning is clear and explicit words cannot be interpolated. They should not be interpolated even though the remedy of the statute would thereby be advanced or a more desirable or just result would occur. Even where the meaning of statute is clear and sensible either with or without the omitted word, interpolation is improper since the primary source of legislative intent is in the language of the statute."

(Also *see Western Bank Ltd. v. Schindler* (9) per Scarman L. J.)

I am in agreement with learned President's Counsel for the appellant, that to say it is an imperative requirement to set out in the notice the ground of termination of the tenancy, would be in the words of Lord Simon in *Magor and St. Mellons Rural District Council v. Newport Corporation* (10) "a naked usurpation of legislative function under the thin disguise of interpretation."

The matter does not rest there, for it has to be considered whether the letter P1 serves as a valid notice of termination of tenancy. Learned Counsel for the tenant contends that it is invalid because it specifically states that it is a notice given in terms of Section 22(1) (*bb*) as amended by Act, No. 10 of 1977, on the ground that the premises are reasonably required for occupation as a residence for the landlord and that in any event such a notice in terms of Section 22(6) as amended, should be a six months' and not a three months' notice. If a bare three months' notice of termination as I have already held, without mentioning any ground whatsoever would be suficient compliance with Section 22(3)(*a*), would it matter if some extraneous facts are mentioned in that notice of termination ?

There are no formal requisites for a notice of termination under the Common Law or under the statute, except where the latter specifies a period of duration of notice to ground various causes of action. The notice P1 as far as the duration is concerned, conforms to the requirement of Section 22(3) (*a*) and it even conforms to the temporal requirement suggested by Sharvananda, C.J. in Wellington's case (supra). In these circumstances, in my opinion the test to be adopted is whether the notice P1 has been given by the landlord with the intention of terminating the tenancy and the tenant would have reasonably understood it as serving that purpose. I do not think that this reasonable expectation required on the part of the tenant can be negatived by the

ominibus averment containing in every answer of a tenant that the notice "is not valid in law."

Applying this test it seems to me that P1 serves as a valid notice of termination of tenancy and this appeal succeeds. The judgement of the Court of Appeal is set aside and the judgement of the Original Court is affirmed. The appellant landlord will be entitled to costs in this court and courts below.

H. A. G. De SILVA, J. – I agree.

AMERASINGHE, J. – I agree.

Appeal allowed.