

THE BISHOP OF CHILAW**V****WIJENATHAN**

SUPREME COURT.

FERNANDO, J., AMERASINGHE, J. AND DHEERARATNE, J.

S. C. APPEAL NO. 30/87

C. A. APPEAL NO. 10/80.

M.C. COLOMBO (CIVIL) 31/GE.

JULY 15 AND 18, 1991.

Landlord and Tenant - Rent and ejectment - Reasonable requirement - charitable Trust - Landlord lacking beneficial interest - Capacity of Landlord - Devise under last will - Succession to trust property - Trustee of charitable trust - Sections 12, 22 (1) (b), 22 (2) (b), 22(7) of Rent Act.

The appellant, the Bishop of Chilaw was a Corporation incorporated under the Roman Catholic Archbishop and Bishops of Ceylon Ordinance. The appellant was appointed Executor under a last will wherein the following bequests, inter alia, were made:—

(i) Udalawela Estate to the Roman Catholic Bishop of Chilaw to be used solely for the support of St. Anne's Nursing Home, Marawila.

(ii) Two flats Nos. 33 and 33/1, Guildford Crescent, Colombo 7 to the Roman Catholic Bishop of Chilaw to be used solely for the support of St. Joseph's Home for the Aged, Lansigama, Marawila.

In 1964 the respondent became tenant of 33/1, Guildford Crescent. The testator died in 1971. As Executor, the appellant informed the respondent that the premises were required for Church work and one years' notice was given. In 1976 the appellant instituted action for ejectment by a petition under the Administration of Justice Law in the Magistrate's Court. The premises are residential premises the standard rent of which exceeded Rs. 100/-per mensem. It was pleaded in the concise statement of facts that the premises were required for Church work and in the concise statement of law that the premises were reasonably required for the purposes of the appellant.

The appellant held the legal title (but not the beneficial title) subject to a charitable trust solely for the support of St. Joseph's Home for the Aged.

The case was argued on two issues:—

1. Were the premises reasonably required by the appellant for the reasons set out in the concise statement of facts?
2. Was the appellant's action barred by section 22(7) of the Rent Act?

The trial judge held in favour of the appellant but the Appeal Court reversed the judgement as follows:—

- (a) A landlord cannot succeed on the ground of reasonable requirement where he has no beneficial interest in the premises.
- (b) The object of the trust was the support of St. Joseph's Home, but this was not the reasonable requirement pleaded in the concise statement of facts.
- (c) The appellant had acquired ownership of the premises by inheritance or gift otherwise than from a parent or spouse after the respondent became the tenant.

The respondent was a partner of a coconut and copra business in Dankotuwa. He had one son studying at St. Thomas College, Mount Lavinia. Residence in Colombo was necessary for purposes connected with his business, meeting workers, attending auctions, purchasing raw materials etc. He had built a house in 1974 in the adjoining premises but sold it in 1975 (after receiving notice to quit). Efforts to find alternative accommodation at the same rent as at present (Rs. 422/- p.m.) were unsuccessful.

St. Joseph's Home had 108 inmates cared for by 16 nuns. A new building for 45 inmates had been built but could not be made functional for want of funds. Government assistance was received at Rs. 38/50 p.m. per inmate but the cost of maintenance, on food alone was Rs. 6,000/- p.m. The deficit was met by public support which however was dwindling. The net income from the premises in suit was Rs. 300/- per month. Five nuns were residing at 33, Guildford Crescent. The premises were required to run social charitable activities to raise funds such as a nursery school, a Home for Orphan Girls and a centre for the sale of the products made by the girls.

Held:

1. Between the two competing needs, that of the beneficiaries of the charitable trust was more urgent and far outweighed the needs of the respondent.

2. Section 12 of the Rent Act prohibits the landlord and tenant of residential premises from using them for other purposes. It does not prohibit an owner (or his agent) from using his premises for non-residential purposes. A landlord can use residential premises for non-residential purposes after recovering the premises from his tenant, if he refrains from letting the premises. Accordingly such non-residential purposes can be taken into account by the Court in considering whether the premises are reasonably required by the landlord. The competing requirements being balanced by the court need not be identical i.e. both residential or both non-residential. The appellant's need for non-residential purposes can be considered even though the premises are residential or are used by the tenant solely for residential purposes.

3. The seeming discrepancy between Church work and charitable purposes in no way prejudiced or misled the respondent.

4. The landlord's requirement does not have to be an immediate one, a genuine need which will come into existence in the near future is sufficient such as residence for a child not yet married, but soon to be married, a public officer living in government quarters due to retire soon or business to be commenced in the future. Here however the need was not dependent on an event yet to occur but was both immediate and urgent; an increase in income was essential to supply the day-to-day requirements of 108 inmates and to accommodate 45 others awaiting admission to the new building. The proposed activities could not be commenced unless and until the premises are recovered.

5. All that the Court had to decide was whether the premises were reasonably required for the purposes of the business or vocation of the appellant and so long as the proposed activities were not patently unlawful or *Ultra Vires* the strict enforcement of the terms of the charitable trust was neither the tenant's concern nor a matter falling within the jurisdiction of the Court in this action. However here the proposed activities were substantially in conformity with the testator's wishes.

6. Under our Rent Act the definition of landlord does not make beneficial interest the criterion. A person with bare legal title or even without a shred of title can be landlord. The person for the time being entitled to receive the rent is the landlord and need not have title. A tenant who sublets the premises is also a landlord vis-a-vis his subtenant and can recover possession on the ground of reasonable requirement.

7. The appellant in his capacity as executor was the landlord. He therefore had to institute action in his representative capacity and not in his personal capacity. The cause of action that accrued to the appellant in his

representative capacity as Executor was founded on the contract of tenancy and it was sufficient for that to be pleaded, put in issue or admitted.

8. The contention that as the ownership was acquired after the specified date by inheritance or gift (being by last will) but not from a parent or spouse does not apply here. In view of the duties and obligations imposed on the trustee of a charitable trust he does not acquire ownership of the trust property by inheritance or gift but by transfer *inter vivos* or upon declaration by will. Section 22(7) does not bar appellant's action.

Cases referred to:

1. *Noorbhoy v. Sellappa Chettiar* (1957) 58 NLR 389
2. *Thamby Lebbe v. Ramasamy* (1965) 68 NLR 356
3. *Thomas v. Rodrigo* (1964) 66 NLR 437
4. *Ismail v. Herft* (1948) 50 NLR 112
5. *Andree v. De Fonseka* (1950) 51 NLR 213
6. *Swamy v. Gunawardena* (1958) 61 NLR 85
7. *Abdul Rahim v. Gunasena* (1964) 66 NLR 419
8. *Kader Mohideen v. Nagoor Gany* (1958) 60 NLR 16
9. *Arnolis Appuhamy v. De Alwis* (1958) 60 NLR 141
10. *Martin Appuhamy v. Urban Council Gampaha* (1960) 62 NLR 156
11. *Mamuhewa v. Ruwanpatirane* (1948) 50 NLR 184
12. *Nanayakkara v. Pawlis Silva* (1959) 60 NLR 490
13. *Gunasekera v. Mathew* (1953) 54 NLR 299
14. *Appuhamy v. De Silva* (1964) 67 NLR 188
15. *Gunasena v. Sangarapillai* (1948) 49 NLR 473
16. *Hamedu Lebbe v. Adam Saibo* (1948) 50 NLR 181
17. *Aloysius v. Pillaipody* [1982] 1 Sri LR 106
18. *Parker v. Rosenberg* [1947] 1 KB 371
19. *Sharpe v. Nicholls* [1945] 1 KB 382
20. *Patel v. Patel* [1982] 1 All ER 68
21. *Harrison v. Hopkins* [1949] 2 All ER 597
22. *Alles v. Krishnan* (1952) 54 NLR 154
23. *Viswalingan v. Gajaweeera* (1954) 56 NLR 111
24. *Blacker v. David* (1951) 53 NLR 499
25. *Senanayake v. Dissanayake* (1908) 12 NLR 01
26. *Visaladchypillai v. Sivapakkiamma* (1938) 40 NLR 114
27. *Murugiah v. Jainudeen* (1954) 56 NLR 176, 181

APPEAL from the judgment of the Court of Appeal.

H. L. De Silva P.C. with *K. Kanag - Iswaran P.C.* and *E. R. S. R. Coomaraswamy (Jr.)* for appellant.

Miss. Maureen Seneviratne P.C. with Neville Jacolyn Seneviratne and Miss Damayanthi Perera for Respondents.

Cur. adv. vult.

September 10, 1991.

FERNANDO, J.:

The Petitioner-Respondent-Appellant ("the Appellant"), a Corporation incorporated under the Roman Catholic Archbishop and Bishops of Ceylon Ordinance (Cap. 338), was appointed Executor of a Last Will. Apart from two small legacies, the entirety of the estate was devised for charitable purposes. There was a bequest of Rs. 50,000/- to the priest in-charge of St. Anthony's Church, Kochchikade, for charity and church repairs, and the residuary estate was to be distributed among charitable organisations at the Executor's sole discretion. The following provision of that Will is relevant to this appeal:

"I do hereby give and devise:

- (a)Udalawela Estate to the Roman Catholic Bishop of Chilaw to be used solely for the support of St. Anne's Nursing Home, Marawila;
- (b) My two flats Nos. 33 and 33/1 Guildford Crescent, Colombo 7 to the Roman Catholic Bishop of Chilaw to be used solely for the support of St. Joseph's Home for the Aged, Lansigama, Marawila".

In 1964, the Respondent-Appellant-Respondent ("the Respondent") became tenant of 33/1 Guildford Crescent. The testator died in 1971. As Executor, the Appellant informed the Respondent that the premises were required for Church work, but the Respondent did not vacate the premises; having given

one year's notice, in 1976 the Appellant instituted action for ejection by a petition to the Magistrate's Court under the Administration of Justice Law. The premises are, admittedly, residential premises the standard rent of which exceeded Rs. 100/-p.m. In the concise statement of facts it was pleaded that the Appellant informed the Respondent "that the said premises are required for Church work"; in the concise statement of the law, it was averred that "the premises are reasonably required for the purposes of the [Appellant]". It is common ground that upon the death of the testator the legal title to the premises (but not the beneficial interest therein) vested in the Appellant, subject to a charitable trust "solely for the support of St. Joseph's Home for the Aged". Both in the Magistrate's Court and the Court of Appeal, the case was fought on two issues;

- (1) Were the premises reasonably required by the Appellant for the reasons set out in the concise statement of facts?
- (2) Was the Appellant's action barred by section 22(7) of the Rent Act?

The trial judge answered these issues in the Appellant's favour and further ordered that when the Respondent has vacated, or is ejected from the premises, in terms of section 22(8) the premises should be maintained by the Appellant as a Home for orphan girls and/or a nursery school and/or a centre for the sale of articles produced by the girls, for the maintenance of St. Joseph's Home for the Aged, Lansigama, Marawila.

The Court of Appeal set aside that order, taking the view that (a) a landlord cannot succeed on the ground of reasonable requirement where he has no beneficial interest in the premises, (b) the object of the trust was the support of St. Joseph's Home, but this was not the reasonable requirement pleaded in the concise statement of facts, and (c) the Appellant has acquired ownership of the premises by inheritance or gift,

otherwise than from a parent or spouse, after the Respondent became the tenant.

It was in evidence that the Appellant was engaged in a number of charitable activities in the diocese of Chilaw, including orphanages and homes for elders such as St. Joseph's Home. The running of that Home had been entrusted by the Appellant to a religious congregation; at the relevant time (in 1976) it had 108 inmates who were being cared for by 16 nuns; a new building had been constructed to accommodate another 45 persons, but these could not be admitted due to lack of funds for maintenance; Government assistance was received at the rate of Rs. 38/50 p.m. per inmate; food alone cost Rs. 6,000/- p.m., and the deficit was met out of public contributions; however public support was dwindling. The nett income received by way of rent from the premises in suit, after deduction of rates, was about Rs. 300/-p.m. Five nuns were residing in the upstairs flat (33 Guildford Crescent). One of these was teaching at St. Bridget's Convent, and she donated her entire salary for the Home; although there were training facilities at Lansigama, special training was provided at Aquinas College, Colombo, and two others were undergoing such training. The upstairs flat had only one bedroom, in which three nuns slept; one slept in the kitchen and the other in the servant's room. That flat was also used to accommodate nuns on visits to Colombo. In an affidavit filed with the petition one of the nuns deposed that the nuns proposed "to undertake social charitable activities in the premises to raise funds" for the Home, and that "the premises are required for the said purposes of the Church work". In her evidence a few months later, she stated that the premises were required "in order to derive some income as well as for social service activities" such as a nursery school, a Home for orphan girls, and a centre for the sale of products made by the girls. The Respondent was a partner of a coconut oil and copra business in Dankotuwa; he had one son studying at St. Thomas's College, Mount Lavinia; it was necessary for him to reside in

Colombo for purposes connected with his business, namely to meet his brokers, to attend auctions, purchase raw materials etc. In 1957 he had bought a block of land, adjoining the premises in suit, on which he commenced building a house in 1970. When this was completed in 1974, he was unable to repay the construction loans utilising the rental income from that house, and accordingly sold the house in 1975 (after receiving the notice to quit); after settling his debts, he was left with Rs. 75,000/-. He had made unsuccessful efforts to find alternative accommodation, at the same rent (of Rs. 422/- p.m.) as he was paying for the premises in suit.

There can be no doubt that as between these two competing needs, that of the beneficiaries of the charitable trust was more urgent and far outweighed the need of the Respondent. On behalf of the Respondent it was strenuously contended that, by reason of the provisions of the Rent Act and the Last Will, the premises could not be said, in law, to be reasonably required by the Appellant. Relying on the Rent Act, it was submitted that the Appellant's need for non-residential purposes could not, in law, be weighed against the Respondent's need for residential purposes; that section 12 precluded the use of residential premises wholly or mainly for any purpose other than that of residence; that though the pleadings referred to "Church work", the purposes disclosed in evidence were quite different; that in any event those activities were not actually being carried on but were only activities proposed for the future. Relying on the Last Will, it was contended that the testator intended only that the rent from the premises be utilised for the purpose of the Home; that "Church work" was outside the scope of the charitable trust; that the use of the premises for residential purposes by the nuns, or for the proposed future activities, would contravene the testator's directive that the premises be used "solely" for the support of the Home.

Reasonable requirement: sections 12 and 22(1)(b): Section 12 of the Rent Act prohibits the landlord and the tenant of residen-

tial premises from using it for other purposes; it does not prohibit an owner (or his agent) from using his premises for non-residential purposes; a landlord can use residential premises for non residential purposes, after recovering the premises from his tenant, if he refrains from letting the premises; accordingly such non-residential purposes can be taken into account by the Court in considering whether the premises are reasonably required by the landlord. It was also stated that the use of residential premises for other purposes was prohibited by the Urban Development Authority Law, No. 41 of 1978; this was enacted after the conclusion of the evidence but before judgment, and there was no pleading, issue, evidence or submission at the trial as to whether the premises in suit was affected by any such prohibition, and it is too late to raise that question now. Therefore the Appellant's need must be assessed on the basis that there was no bar on the use of the premises by the owner for non-residential purposes. Where the tenant is using the premises for residential purposes sections 22(1)(b) and 22(2)(b) do not provide that, in assessing the relative needs of landlord and tenant, the landlord's need for non-residential purposes cannot be considered. If that was the legislative intent, the relevant provision would have read —

“.....such premises, being residential premises,..... are in the opinion of the Court reasonably required for occupation as a residence for the landlord.....; and such premises, being business premises, are..... reasonably required for the purpose of the business of the landlord.....”

Further, sections 22(1)(b) and 22(2)(b) do not refer only to “residence” and “business”; “trade”, “profession”, “vocation” and “employment” are also contemplated; if the tenant is using the premises for residence (or business), can the landlord's need for professional use be excluded from consideration? I think not. The legislature intended that the requirement of one be balanced against the requirement of the other; but it did not further prescribe that the basis of such requirement

should be identical. Where the legislature intended that the landlord's need for residence alone can be considered, express provision was made, as in section 22(2)(bb), but even there the legislature did not restrict the landlord's right only to the case where his need for residential purposes outweighed the tenant's need for residential purposes; section 22(2)(bb) entitles him to recover any "premises" let to a tenant, and not merely "residential premises"; thus if the tenant is using the premises for business purposes his need must be weighed against the landlord's need for residential purposes. The last paragraph of section 22(2) is also relevant. A corporation's need for business premises can be considered in relation to "any premises" (and not merely "any business premises") of which it is the landlord. In that legislative background, to accept the Respondent's submission would necessitate, under the guise of interpretation, the modification of several provisions of the Act. I therefore hold that the Appellant's need for non-residential purposes can be considered even though the premises are residential, or are used by the tenant solely for residential premises. I am fortified in this conclusion by the decision of H.N.G. Fernando J., (as he then was) in *Noorbhoy v. Sellappa Chettiar*, (1). There the landlord sought to recover premises in which his tenant was carrying on business; having pleaded a requirement for business purposes, he raised an issue at the trial relating to his need for residential purposes. This change of position was held, in the circumstances, to be *bona fide*, and his need for residential purposes was held to prevail as against the tenant's need for business purposes. In view of that decision, the seeming discrepancy between "Church work" and the charitable purposes referred to in evidence cannot be regarded as being of any significance: the premises were required for the purposes (whether business or vocation) of the Appellant, and the Respondent was in no way prejudiced or misled by the pleadings or the issue. The particular purpose did not have to be mentioned in the notice to quit *Thamby Lebbe v. Ramasamy*, (2), and it was sufficient to raise an appropriate issue as in *Noorbhoy*. In *Thomas v. Rodrigo*, (3),

the landlord apparently required the rented premises both for her residence and for her vocation (of teaching music), but the issue raised was only whether the premises were required for occupation as a residence, and Sri Skanda Rajah, J., held that she had failed to establish this. That seems to me an unduly strict view – as the purposes of residence and vocation were, in those circumstances, closely intertwined – unless of course the other party was misled by the failure to refer to “vocation” in the issue. Here, however, the issue was not limited in that way; it made reference to the concise statement of facts, which, as already stated, was clarified in the concise statement of the law, and there was no question of the Respondent having been misled. In any event, it was unreal to regard the Respondent’s need as being purely for residence, as he resided in Colombo partly for reasons connected with his business; and any comparison was thus between his residential-cum-business purposes on the one hand, and vocational-cum-business-cum-residential purposes on the other. What had to be balanced was the requirement and not the factors which gave rise to the requirement.

It is apparent from the pleadings, the affidavits and the evidence that the nuns had a general idea as to how they intended to use the premises, but had not developed detailed plans. The Respondent submitted that the business contemplated by them was a future business. It is settled law that reasonable requirement has to be determined not as at the date of institution of action, but at the conclusion of the trial *Ismail v. Herft* (4), *Andree v. de Fonseka* (5), *Swamy v. Gunawardena* (6), *Abdul Rahim v. Gunasena*, (7) and *Kader Mohideen v. Nagoor Gany* (8), which took the contrary view can no longer be regarded as good law. While the landlord’s need must exist at the time the action was instituted, circumstances occurring thereafter can strengthen his requirement: *Aranolis Appuhamy v. de Alwis* (9), where Sansoni, J., took the view that events subsequent to judgement would not be relevant (disagreeing on that point with *Ismail v. Herft*). Mar-

tin Appuhamy v. Urban Council Gampaha, (10) was cited in support of the proposition that where the landlord had to do many things before a business could be commenced, the premises could not be regarded as reasonably required by him; however, in that case Sansoni, J., (as he then was), did not hold that the landlord failed on the ground that the business was not in existence, and expressly disagreed with the views of Basnayake, C.J., in *Mamuhewa v. Ruwanpatirane* (11) and *Nanayakkara v. Pawlis Silva* (12). I hold that the landlord's requirement does not have to be an immediate need; a genuine need which will come into existence in the near future is sufficient, such as a residence for a child, not yet married, but soon to be married *Appuhamy v. de Silva* (13), or for a public officer living in Government quarters, but due to retire soon *Appuhamy v. de Silva* (14), or for a business to be commenced in the future *Gunasena v. Sangarapillai* (15), *Hamedu Lebbe v. Adam Saibo* (16), *Andree v. de Fonseka* (5), *Thamby Lebbe v. Ramasamy*, (2) *Aloysius v. Pillaipody*, (17). Here the need was not dependent on an event yet to occur (such as a prospective marriage or retirement) but was both immediate and urgent: an increase in income was essential to supply the day-to-day requirements of 108 inmates and to accommodate 45 others awaiting admissions to the new building. The proposed activities could not be commenced unless and until the premises were recovered.

Reasonable requirement: breach of trust: The trust created by the testator required that "..... flat No 33/1, Guildford Crescent..... be used solely for the support of St. Joseph's Home". The Respondent seeks to read this as "the income from the flat.....". The words are plain, and require no interpretation. Read as a whole, the Last Will discloses a general charitable intention, and this is an additional reason to resist a restrictive construction. The premises could be used in any manner conducive to the support of St. Joseph's Home: by deriving an income from it (as by renting it or by using it for income-generating purposes) or by using it directly or indi-

rectly for purposes necessary or beneficial thereto (as by accommodating inmates and those who serve inmates). "Support" cannot be restricted to financial support, for the care of the aged requires many skills and services (to meet their mental, emotional, spiritual, psychological and other needs) which money cannot always buy or provide. It seems to me that all that the Court had to decide was whether the premises were reasonably required for the purposes of the business or vocation of the Appellant, and so long as the proposed activities were not patently unlawful or *ultra vires*, the strict enforcement of the terms of the charitable trust was neither the tenant's concern nor a matter falling within the jurisdiction of the Court in that action. Could the Court come to a conclusion, in proceedings in which neither the Attorney-General nor the inmates of the Home are heard, that providing accommodation for nuns who donate their earnings or undergo training is a breach of trust? It is only in proceedings under section 101 of the Trusts Ordinance that such questions can properly be decided. Conceivably, there might be an exception in the case of a patent breach of trust, where the making of the claim itself (apart from its interpretation) constitutes a breach of trust; e.g. in the case of a charitable trust if the trustee pleads requirement as a residence for his relative, or in a (non-charitable) trust for the sole benefit of A, if the trustee claims the premises as being required for B's use. This case does not even remotely approach that situation. Since this contention was vigorously pursued I would express my view — conscious that it is *obiter* — that the proposed activities were substantially in conformity with the testator's wishes. Learned President's Counsel for the Respondent did not question the veracity of the affidavits and the evidence shows a *bona fide* general intention to use the premises for the purposes of the trust, the nature and scope of the proposed activities being progressively identified, elaborated and clarified. The reference to "Church work" in the notice to quit and the concise statement of facts cannot be taken in isolation, to mean only Church work outside the scope of the charitable trust; the provision of accom-

modation for nuns (engaged in work connected with the support of the Home, or undergoing appropriate training, or raising funds for the Home, etc.), and running income generating projects (such as a nursery school and a sales centre) were clearly for the "support" of the Home. The Appellant's requirement for these purposes satisfied the provisions of the trust and of section 22(2)(b). A Home for orphan girls may not be a source of income or other support for the Home for the aged, but such a Home together with a sales centre for the products made by them might well yield a profit; sympathy for the products may loosen the purse strings of customers; the facts before us are insufficient to enable a decision either way. In any event, the fact that such a Home was contemplated was, by itself, not sufficient to displace or outweigh the Appellant's proved requirement for other purposes. If it is proved in appropriate proceedings that a Home for orphan girls would be contrary to the trust, appropriate orders would be made : that possibility does not disprove the Appellant's requirement of the premises for the purposes of the charitable trust.

Reasonable requirement: landlord lacking beneficial interest:

One of the grounds on which the Court of Appeal held against the Appellant was that he had only the legal title to the premises, and that a claim based on reasonable requirement must fail where the landlord had no beneficial interest in the premises; *Parker v. Rosenberg*, (18) was relied on. In support of this view, learned President's Counsel for the Respondent submitted that while the law relating to landlord and tenant was the Roman-Dutch law, the Rent Act had imposed statutory restrictions on the landlord's common law rights; that the concept of "reasonable requirement" was imported from English statutes, and on that matter English decisions should be followed; *Sharpe v. Nicholls* (19), was also cited. "Lease of immovable property" is not one of the matters specified in the Civil Law Ordinance (Cap. 79), which is therefore not an open licence for the free importation of the English law relating to

reasonable requirement. The fact that our common law relating to lease has been modified by a statutory provision based on English law does not mean that the matter thereupon becomes governed entirely by English law, and subject to change according to current English decisions. Even if the provisions are identical, English decisions are not binding, and are no more than an aid to construction (see Weeramantry, Contract, Vol I pages 50, 53-54). Here, however, the statutory provisions are not identical, and English decisions are not a sure guide. The decisions cited dealt with provisions in an English Act of 1933, which enabled the landlord (on proof of relative hardship) to recover possession of any protected dwelling-house if "the dwelling-house is reasonably required by the landlord...for occupation as a residence for himself" or a child over eighteen or a parent; there was no definition of "landlord"; that expression had been defined in an Act of 1920, to include "any person..... who is or could but for this Act be entitled to possession of the dwelling-house", but it was doubted whether this definition was applicable to the later provision. In *Sharpe v. Nicholls*, personal representatives of a deceased landlord were held not to be "landlords" within the meaning of the 1933 Act. In *Parker v. Rosenberg* (*supra*) that decision was regarded as authority for the proposition that "personal representatives having no beneficial interest in the dwelling-house cannot avail themselves of the provisions" of the 1933 Act. Learned President's Counsel for the Appellant drew our attention to a more recent decision in *Patel v. Patel*, (20) which makes it unnecessary for me to scrutinize the earlier decisions. It was held in *Patel*, that although those cases were regarded as deciding that personal representatives cannot be landlords unless they have a beneficial interest in the premises, that is not (as pointed out in *Harrison v. Hopkins*, (21) what they in fact decided; the correct position is that personal representatives and trustees can be landlords, but it would not be reasonable to permit them to recover protected premises if they claimed possession for their own occupation,

if to make such a claim would be to act in breach of trust. [In the case before us, for the Appellant to claim possession for use and occupation for the purposes of the charitable trust, as distinct from his personal use, is no breach of trust.] Recourse to English law is thus of no avail to the Respondent. Our Rent Act contains a very different definition of "landlord", which does not make beneficial ownership the criterion; a person with bare legal title, or even without a shred of title, can be a landlord. "The person for the time being entitled to receive the rent" need have no title; a tenant who sublets the premises is also a landlord vis-a-vis the subtenant, and can recover possession on the ground of reasonable requirement. (See also *Alles v. Krishnan*, (22) and *Viswalingam v. Gajaweera* (23)). The lack of beneficial ownership of the premises was thus no bar to the Appellant's claim.

Action not instituted in capacity of landlord: It was then contended that the Appellant instituted this action in his capacity as Executor; that an action based on reasonable requirement must be instituted in the capacity of landlord. Although there was no specific averment in the plaint that the Appellant was the landlord, it was admitted in the answer that after the death of the testator the Respondent attorned to the Appellant. *Blacker v. David*, (24) was cited to show that a person cannot be sued in his personal capacity in respect of a cause of action which arose against him in a representative capacity. But that has no application here; the Appellant, in his capacity as Executor, was the landlord; he therefore had to institute action in his representative capacity, and not in his personal capacity. The Appellant's contractual position as landlord does not require or permit him to institute action in his capacity as landlord, just as an action on a mortgage or a sale does not have to be instituted in the "capacity" of mortgagor or vendor. The cause of action that accrued to the Appellant in his representative capacity as Executor, was founded on a contract of tenancy, and it was sufficient for that to be pleaded, put in issue or admitted.

Section 22(7): Section 22(7) of the Rent Act provides:—

“.....no action or proceedings for the ejectment of the tenant of any premises referred to in..... subsection (2)(i) shall be instituted:—

- (a) on the ground that the premises are reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purposes of the trade, business, profession, vocation or employment of the landlord;

.....where the ownership of such premises was acquired by the landlord, on a date subsequent to the specified date, by purchase or by inheritance or gift other than inheritance or gift from a parent or spouse who had acquired ownership of such premises on a date prior to the specified date”.

The Appellant acquired the legal title to the premises in 1971, a date subsequent to the “specified date” (which in this context meant the date on which the Respondent came into occupation). The Court of Appeal held that the Appellant had “inherited the premises in question by the Last Will which gifted the premises” to the Appellant, and that section 22(7), therefore barred the Appellant’s action. Section 22(7) imposes a bar on a landlord re-covering possession. “Ownership” in that context would generally include the right, title and interest whereby a plaintiff became the landlord; since I hold that legal title is sufficient to enable a person to be the “landlord”, despite the lack of a beneficial interest, “ownership” must include such legal title. Ownership of the premises was thus “acquired” by the landlord after the specified date, and the first ingredient of section 22(7) was satisfied. The disputed question is whether such acquisition was “by purchase or by inheritance or gift”. Quite clearly the exception does not apply as the acquisition was not “from a parent or spouse”. Acquisition was not by purchase. The question we have to decide is

whether the acquisition of legal title, without any beneficial interest whatsoever, by the trustee of a charitable trust created by Last Will constitutes either "inheritance" or "gift". Learned President's Counsel for the Appellant submitted that the section contemplates only limited modes of acquisition of ownership; purchase and gift, being transactions *inter vivos*, and inheritance, namely devolution on death, whether testate or intestate; while those who take on intestacy are "heirs" related to the deceased by blood or marriage, he conceded that those who "inherit" under a Last Will consist not only of "heirs" in that sense but even strangers to whom property is bequeathed or devised. He submitted however, that "inheritance" contemplated a bequest which was primarily or principally beneficial, and did not include an obligation which was a burden rather than a benefit. For the Respondent it was contended that, notwithstanding the restrictions on the Appellant's right to use the trust property, the Appellant acquired the property either by gift or by inheritance; thus a *fideicommissum* can be created by gift although the fiduciary's beneficial ownership is restricted *Senanayake v. Dissanayake* (25), and a trust can be created by a deed of gift *Visaladchypillai v. Sivapakkiammal* (26).

The Rent Act imposes restrictions on the common law rights of a landlord. Statutes which encroach on the rights of the citizen must be subjected to a strict construction at least in that any uncertainty as to the extent of derogation must be resolved in favour of preserving common law rights (Maxwell, *Interpretation of Statutes*, 12th ed., pp 251-253; Craies, *Statute Law*, 7th ed., pp 121, 339; *Murugiah v. Jainudeen* (27)). While the Rent Act restricts a landlord's proprietary right to recover possession of the rented premises, section 22(2)(b) preserves his common law right in the case of "reasonable requirement"; section 22(7) is a proviso which restricts even that right, and a proviso creating a restriction on common law rights must in case of doubt or ambiguity be narrowly, rather than broadly,

construed. Viewed in that light, "purchase, inheritance or gift" would cover transactions whereby a landlord acquires the beneficial ownership of property, and not those whereby an obligation in the nature of a charitable trust (devoid of any beneficial interest) is imposed on him. It is true that by a deed of gift a *fideicommissum* or a trust can be created, but it does not follow that every instrument whereby a trust is created is in the nature of a gift. Very different considerations apply in the case of a charitable trust; had the Appellant declined to accept the trust, being a charitable trust it would not have failed for want of a trustee; another trustee would thereupon have been appointed, perhaps by a competent Court, in accordance with appropriate legal procedures. Can such new trustee be properly described as having acquired ownership by inheritance or gift? Considering the nature of the duties and obligations imposed on the trustee of a charitable trust, I am of the view that he does not acquire ownership of the trust property by "inheritance or gift", but by "transfer" *inter vivos* or upon "declaration" by will (cf section 6 of the Trusts Ordinance). Section 22(7) does not bar the Appellant's action.

I therefore set aside the judgment and decree of the Court of Appeal, and restore the judgment and decree of the trial Court, subject to one variation. Section 22(8) requires the Court in its decree to direct "that no person, other than the landlord or some member of his family whose name shall be specified in the decree, shall enter into occupation of the premises" upon vacation by, or ejection of, the tenant; it does not authorise the Court to specify the purposes for which the premises may be used. That part of the order of the trial Court specifying the purpose for which the premises may be used is also set aside, and a direction that no person other than the Appellant (and his servants and agents) shall enter into occupation upon such vacation or ejection is substituted. The Appellant will therefore be entitled to a decree for ejection

and damages, with costs in a sum of Rs. 7,500/- in this Court, and costs in both Courts below.

Amerasinghe, J — I agree.

Dheeraratne, J — I agree.

Appeal allowed.

Decree for ejectment entered subject to variation under section 22B.
