

C.C. FERNANDO
v
SENEVIRATNE

COURT OF APPEAL
UDALAGAMA, J. AND
WIJAYARATNE, J.
CA 244/93(F)
DC MT. LAVINIA NO. 2976/RE
19TH JUNE, 2002

Rent Act, No. 7 of 1972 – Excepted premises – Unreliability of evidence led – Decision of Rent Board – Does it bind court ? – Res judicata – Prima facie proof of fact – No appeal from Rent Board - Estoppel.

The plaintiff-respondent instituted action seeking to eject the defendant-appellant; it was also averred that the premises was excepted premises. The defendant appellant whilst admitting tenancy denied that the premises was excepted premises.

Held:

- (i) Although the decision of the Rent Board – not being a court of competent jurisdiction – could not operate as *res judicata* the trial Judge is not precluded from considering the decision of the Board pertaining to the authorised rent to enable the latter to decide a question as to whether the premises are excepted or not.
- (ii) Failure to appeal against the order of the Rent Board leads to the obvious implication that the defendant-appellant accepts the decision of the Board.
- (iii) The evaluation of the Rent Board necessarily stands as *prima facie* proof of the fact, that the premises is excepted premises. The defendant-appellant is estopped from contesting the decision of the Board.

APPEAL from the judgment of the District Court of Mt. Lavinia.

1. *Ranasinghe v Fernando* - 53 NLR 163
2. *Ranasinghe v Jayatilake* - 72 NLR 727

Rohan Sahabandu for appellant.

Harsha Soza for respondent.

Cur.adv.vult.

August 20, 2002

UDALAGAMA, J.

The plaintiff (respondent) instituted D.C. Mt. Lavinia case No. 01 2976/RE praying *inter alia* that the defendant (appellant) be ejected from the premises morefully described in the schedule to the plaint and damages.

The plaintiff (respondent) by his plaint also averred that the said premises, the subject matter, was excepted premises not governed by the provisions of the Rent Act, No. 7 of 1972.

The defendant (appellant) by his answer in response to the averments in the plaint while admitting the tenancy under the plaintiff (respondent) specifically denied that the premises, the subject matter of this action, was excepted premises and insisted that the defendant (appellant) was protected under the provisions of the Rent Act referred to above as a monthly tenant. 10

At the trial in the court below parties admitted that the rent payable was Rs. 400/- per month, that the premises were business premises and the receipt of the notice to quit. Four issues were suggested by the plaintiff (respondent) while the defendant (appellant) also suggested four issues, but later abandoned the last two.

The following witness, H. Somasiri, the Secretary to the Rent Board of Maharagama, and Balakrishnan, an Assistant Valuer of the Valuation Department including the plaintiff (respondent) testified on behalf of the respondent and significantly no evidence including that of the defendant (appellant) was led on behalf of the defendant (appellant) at the trial. 20

Subsequent to the tendering of written submissions of both parties the learned District Judge by his judgment dated 28.07.93 entered judgment in favour of the plaintiff (respondent) with damages and costs.

The defendant (appellant) appeals therefrom.

When this appeal was taken up for argument before this court the learned Counsel for the appellant restricted his argument to the matter of the acceptance of the evidence in particular that of the Secretary to the Rent Board on which basis the learned District Judge appears to have come to a finding that the premises, the subject matter of this action, was in fact excepted premises and that the tenant was thereby precluded from claiming protection under the provisions of the Rent Act referred to above. 30

A further submission by the learned Counsel for the appellant also appears to be the unreliability of evidence led at the trial of the witness from the Valuation Department whose evidence as stated by learned Counsel for the appellant were unacceptable as same consisted of material emanating from the notes made by another. It was the submission of the learned Counsel for the appellant that assessments based on such hearsay evidence ought to have been rejected. The learned Counsel also moved that this case be remitted back to the original court to clearly assess the annual value. 40

The crux of the argument of the learned Counsel for the appellant was that due to the acceptance of an unacceptable assessment based on the evidence of the witness who testified on behalf of the Rent Board to the effect, that the premises, the subject matter of this action, was excepted premises cannot stand. 50

It was also the submission of the learned Counsel for the appellant that the decision of the Rent Board in any event would not bind this court. Learned Counsel for the appellant sought to buttress his argument that the decision of the Rent Board would not bind court as stated above by citing the decisions of *Ranasinghe v. Fernando* 53¹, *Ranasinghe v Jayatilaka* 2.

It is my view that although the decision of the Rent Board, not being a court of competent jurisdiction would not operate as *res judicata*, the trial Judge is not precluded from considering the decision of the Rent Board pertaining to the authorized rent to enable the latter to decide a question as to whether the premises are excepted or not.

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I would also hold that as in the instant case, the decision of the Rent Board in relation to the authorized rent would apart from being relevant would also in no uncertain terms assist the court to decide whether the premises concerned was excepted or not.

As correctly held by the learned District Judge the fact that the defendant-appellant failed to appeal against the assessment of the Rent Board led to the obvious implication that the defendant-appellant too accepted the decision of the Rent Board.

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I would further venture to hold that in the circumstances, the defendant-appellant is now estopped from contesting the decision of the Rent Board referred to above. In any event the evaluation of the Rent Board necessarily stands as *prima facie* proof of the fact that the premises is excepted premises and that the defendant-appellant is precluded from claiming the contrary in the absence of evidence. As stated earlier the defendant-appellant failed to testify nor did he lead other evidence to contradict the aforesaid *prima facie* proof as to the premises being excepted premises which burden I would hold clearly shifted to the defendant-appellant on the establishment of *prima facie* evidence as stated above.

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In the attendant circumstances considering importantly the admissions recorded, I would hold that the impugned judgment is in accordance with the weight of the evidence and the law and I would hold as correct the *prima facie* finding of the learned District Judge on the valuation based on the unchallenged reasoning of the Rent Board, which institution is in itself a creation of the statute, itself.

For the reasons stated above, I would dismiss this appeal with costs.

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WIJAYERATNE, J. – I agree.

Appeal dismissed .