

1958

Present : Weerasooriya, J.

SWAMY, Appellant, and GUNAWARDENA, Respondent

S. C. 163—C. R. Matale, 13,128

*Rent Restriction Act, No. 29 of 1948—Section 13 (1) (c)—Premises required for use of landlord—Point of time at which the needs of the landlord must be shown to exist—“Reasonable requirement”.*

The point of time at which the conditions set out in paragraph (c) of the proviso to section 13 of the Rent Restriction Act must be shown to exist is the time when the Court is required to make the ejection order and not the date of institution of action. Accordingly, when a landlord seeks to eject his tenant on the ground that the premises let are reasonably required for his own occupation, the question whether the premises are so required should be decided with reference to the state of affairs existing at the time of the trial and not at the date of the institution of the action.

In deciding the question of the needs of the landlord, the Court may take into consideration the moral obligation incurred by him to vacate, in accordance with a previous undertaking given by him, the house occupied by him as the tenant of another landlord.

**A**PPEAL from a judgment of the Court of Requests, Matale.

*H. V. Perera, Q.C.*, with *P. Somatilakam* and *D. R. P. Goonetilleke*, for defendant-appellant.

*H. W. Jayewardene, Q. C.*, with *S. B. Yatawara*, for plaintiff-respondent.

*Cur. adv. vult.*

July 31, 1958. WEERASOORIYA, J.—

This appeal concerns a dispute between two medical practitioners resident in Matale over the possession of certain premises to which the Rent Restriction Act, No. 29 of 1948, (hereinafter referred to as “the Act”) applies.

The defendant became the tenant of the premises in May, 1956, and he is still living there with his family. The plaintiff has for over twelve years been in occupation of a house to which the provisions of the Act do not apply and which belongs to one Mr. Gopallawa, Municipal Commissioner, Colombo. Mr. Gopallawa lived in Colombo in a house provided by the Colombo Municipal Council which he would have to relinquish on the termination of his employment.

According to the plaintiff he was informed by Mr. Gopallawa in September, 1956, of his impending retirement from the office of Municipal Commissioner as from the 1st July, 1957, and that after his retirement he intended to return to Matale, where he had been living prior to his appointment as Municipal Commissioner. The purpose of this intimation was to obtain the plaintiff's assent to vacating the house tenanted by him so

that Mr. Gopallawa could move into it after his retirement became effective. The plaintiff stated that in these circumstances he gave Mr. Gopallawa a definite undertaking to vacate the house "somewhere" in September, 1957. Apparently this undertaking satisfied Mr. Gopallawa and he did not think it necessary in the circumstances to determine the contractual tenancy by a formal notice. When the trial took place on the 27th August, 1957, Mr. Gopallawa had still not retired from office, but the plaintiff stated that the retirement was due within a month or two.

In view of the undertaking given by the plaintiff he looked out for another house. Eventually, on the 30th March, 1957, he purchased the house of which the defendant is the tenant. The change of ownership was communicated to the defendant by letter P2 of the 5th April, 1957. In that letter the defendant was also informed that the plaintiff required the house for his occupation and the defendant was requested to find alternative accommodation as soon as possible. This letter was followed up by P3 of the 24th April, 1957, giving the defendant notice to quit on or before the 31st May, 1957. The defendant replied by P4 of the 28th April, 1957, attorning to the plaintiff but stating that it would not be possible for him to quit the premises by the 31st May, 1957, on account of the unavailability of suitable alternative accommodation.

The present action was filed on the 5th of June, 1957, and after trial the District Judge entered judgment in ejectment of the defendant and for payment by him of damages at Rs. 55 per mensem from the 1st June, 1957, and costs. From this judgment the defendant has appealed.

In giving judgment for the plaintiff the learned District Judge held that the "need of the plaintiff if not greater is of the same degree as that of the defendant and the need of the landlord should prevail over the need of the tenant". No exception was taken by Mr. H. V. Perera, who appeared for the appellant, to this method of deciding in favour of the landlord in a case where the hardship that would be caused to either side is about the same. It is a method which would appear to have the sanction of previous decisions of this Court—see *Ismail v. Herft*<sup>1</sup> and the cases cited there.

Under paragraph (c) of the proviso to section 13 (1) of the Act, judgment in ejectment of the tenant can be given if "the premises are, in the opinion of the Court, reasonably required for occupation by the landlord". But Mr. H. V. Perera contended that the question whether the premises are so required should be decided with reference to the state of affairs existing at the time of the institution of the action. He relied on the general rule that the rights of the parties should be ascertained as at the date of the institution of the action; as well as on the evidence of the plaintiff himself that his undertaking to Mr. Gopallawa was to leave in September, 1957, and that while that undertaking had been given on the representation made by Mr. Gopallawa in September, 1956, that he would be retiring with effect from the 1st July, 1957, even on the 27th August, 1957, (when the trial took place) Mr. Gopallawa had still not retired from office. Mr. Perera submitted that on this evidence no

<sup>1</sup> (1948) 50 N. L. R. 112 at 114.

present and immediate need for the premises on the part of the plaintiff as at the date of the institution of the action (on the 5th June, 1957) has been established and the Court could not, therefore, have formed the opinion that the premises were reasonably required for occupation by the plaintiff.

It seems to me, however, that the question is essentially one of the proper construction of the relevant provisions of the Act. The language of paragraph (c) of the proviso to section 13 is almost identical with that of paragraph (c) of the proviso to section 8 of the Rent Restriction Ordinance, No. 60 of 1942, which section corresponds to section 13 of the Act. In *Ismail v. Herft (supra)*, the view was expressed by Windham, J., that the time at which the conditions set out in paragraph (c) of the proviso to section 8 of the 1942 enactment must be shown to exist is the time when the Court is required to make the ejectment order. I would respectfully adopt the same view for the purposes of the present case. The view seems to be in accordance with the English decisions too. Under the English Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, power is given to the Court in paragraph (h) of the First Schedule to enter judgment for the recovery of possession of a dwelling-house if it is reasonably required for occupation as a residence by, *inter alia*, the landlord. In *King v. Taylor*<sup>1</sup>, which is a decision of the Court of Appeal in England, Sir Raymond Evershed, M. R., expressed the opinion that a Court which is asked to make an order for possession under paragraph (h) of the First Schedule to the 1933 Act should take into consideration all the circumstances which are then before it at the hearing; that accordingly, on appeal from the refusal of a County Court to make an order for possession, the Court of Appeal can take into consideration a change of circumstances which occurred while the appeal was pending; but in the converse case, where the County Court has made an order for possession, the Court of Appeal should consider the circumstances as they existed at the time of the hearing before the County Court and ignore any subsequent change of circumstances.

The position when the trial Court was called upon to make the ejectment order was that the plaintiff had, on the representation made by Mr. Gopallawa in September, 1956, undertaken to vacate the house occupied by him in September, 1957. Even if this undertaking did not have the effect of legally terminating the contractual tenancy between the plaintiff and Mr. Gopallawa (and the point was not raised at the trial or in appeal) I do not see why, in deciding whether the premises in suit were then reasonably required for the plaintiff's occupation, account should not be taken of the moral obligation incurred by the plaintiff to give up possession of Mr. Gopallawa's house at the latest by the 30th September, 1957. The plaintiff does not appear to have regarded himself as released from that obligation merely because at the time of the trial the retirement of Mr. Gopallawa had not taken place but was deferred for a month or two.

I have not yet referred to certain events which took place after the judgment appealed from had been delivered. The plaintiff, despite the undertaking given by him to Mr. Gopallawa, failed to leave in September,

<sup>1</sup> (1954) 3 A. E. R. 373.

1957, and on the 7th November, 1957, Mr. Gopallawa filed an action for his ejection. On the 28th March, 1958, decree was entered of consent that ~~the plaintiff be ejected from the premises, but subject to the condition that writ of ejection was not to issue till the 30th September, 1958.~~ If it was in evidence at the trial that the plaintiff had time till the 30th September, 1958, to vacate Mr. Gopallawa's house the decision of the District Judge may well have been different. But it does not appear to me, having regard to what I have already stated on the point, that the subsequent change of circumstances has any bearing on the question whether this Court should interfere with the discretion exercised by the District Judge on a consideration of the circumstances existing at the time of the trial.

I would therefore dismiss the appeal with costs. I direct, however, that writ of ejection of the defendant shall not issue till after the 15th September, 1958.

*Appeal dismissed.*

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