JAYAWEERA BANDARA
V.
WEERASINGHE

SUPREME COURT
SHARVANANDA, J., WANASUNDARA, J., AND WIMALARATNE, J.
S.C. 11/82 AND 35/82, C.A. APPEAL NO. L/A 134/82
D.C. MOUNT LAVINIA 571/RE
MARCH 9, 1983.

Landlord and Tenant — Eviction of tenant — Standard rent not exceeding Rs. 100/- — The Commissioner of National Housing to provide alternate accommodation — Section 22 of the Rent (Amendment) Act, No. 55 of 1980 —Rent Act, No. 7 of 1972 and Rent (Amendment) Act, No. 10 of 1977.

The Appellant, who is the landlord of premises where the standard rent does not exceed Rs. 100/- per month, instituted the action to have her tenant (Respondent) evicted on the ground of reasonable requirement under the Rent (Amendment) Act, No. 10 of 1977. This action was filed on 22nd June 1978 and the judgment was entered on 25th February, 1980, in the Appellant's favour. The Respondent did not appeal against the judgment. The Appellant however was prevented from making an immediate application for a writ of execution, as the Commissioner of National Housing had not complied with the condition set out in section 22(1) (c) of the Rent (Amendment) Act, No. 55 of 1980.

About nine months later, the Commissioner by his letter of 24th November 1980, notified the Court that he had made alternate accommodation available for the Respondent. The Respondent upon receipt of this notification by his letter dated 25th November 1980, made representation to the Commissioner that the upstair flat allocated to him was not suitable. By a letter of 10th December 1980, the Commissioner then informed the Respondent that a ground floor flat has now been allocated to him.

Thereupon, on 8th December 1980, the Appellant made application for a writ of execution. The learned District Judge directed that notice of the application be given to the Respondent, and called for the objection of the Respondent. On 21st January 1981, the Respondent moved the Court of Appeal, by an application for Revision, and on 26th January 1981, filed objections. The Court of Appeal granted a stay order, but on 13th May 1981 dismissed the Revision Application.

Meanwhile, the Commissioner had written to the Respondent on 13th February, 1981 stating that unless the Respondent acknowledges the offer

of 10th December 1980 within seven days, he would consider that the Respondent has no interest in the alternate accommodation provided. No reply was received by the Commissioner.

With the dismissal of the Revision Application and the lapse of the stay order, the Appellant moved again for issue of writ of execution. Though the Respondent objected on 30th September, 1981 the District Judge allowed the issue of writ. As the Respondent appealed again for relief the Court of Appeal ordered a suspension of the writ for three months under section 27(c). Simultaneously the Respondent filed an application for leave to appeal against the order of the trial Judge and this was decided in the Respondent's favour.

Held —

Where a tenant by his own act has disabled himself from accepting the offer made by the Commissioner, writ can lawfully issue, because it is a case where the Commissioner had notified the court that he is able to provide alternate accommodation for such tenant within the meaning of section 22(1)(c). This is also a case where the Respondent must blame only himself for the situation he has created. He cannot be allowed to take advantage of circumstances which are self-induced or brought about by himself.

APPEAL from an Order of the Court of Appeal.

K.N. Choksy, Senior Attorney-at-Law, with *Mahes Kanagasunderam* and *Nihal Fernando* for Plaintiff-Petitioner-Appellant.

V.S.A. Pullenayegum with *Miss Mangalam Kanapathipillai* and *Miss Deepali Wijesundera* for Defendant-Respondent-Respondent.

Cur. adv. vult

March 24, 1983.

WANASUNDARA, J.

The Appellant, who is the landlord of premises No. 22, Dawson Road, Colombo 5, instituted this action to have her tenant, the Defendant-Respondent, evicted from the premises on the ground that they were reasonably required by the Plaintiff-Appellant for her own use and occupation. Even though these are premises where the standard rent does not exceed Rs. 100 per month, it is now possible because of the amending legislation contained in the Rent (Amendment) Act, No. 10 of 1977, to institute this action for ejectment.

Prior to this, an unsuccessful attempt had been made by the Appellant to evict the Respondent, but then existing statutory provisions of the Rent Act did not permit it. Later, Act No. 7 of 1972 was introduced to remedy this, but those provisions did not permit eviction in respect of tenancies subsisting prior to the date of that amending Act. The amending Act No. 10 of 1977 removed that bar.

Amending Rent Act, No. 10 of 1977, enabled the Appellant to maintain this action in respect of these premises even though the letting was prior to March 1972. Such an action however is subject to and governed by a number of conditions. Amending Act, No. 55 of 1980, has added one more to these conditions.

The salient features are the following:—

(a) The concession contained in section 22 (bb) of instituting such an action is granted only to owners of one residential premises.— Sec. 22 (1A).

(b) Notice of such action or proceedings must be served on the Commissioner of National Housing.— Sec. 22(1A). This, taken with item (d) below, is to ensure alternate accommodation to the tenant.

(c) Such an action must be given priority over all other business of the court.— Sec. 22 (1B).

(d) No writ or execution of a decree in such action shall be issued by court until after the Commissioner of National Housing has notified to such court that he is able to provide alternate accommodation for such tenant.— Sec. 22 (1C).

(e) Notwithstanding anything in any other law, the execution of a writ of ejectment issued by court shall not be stayed in any manner by reason of any steps taken or proposed to be commenced in any court with a view to questioning, varying, or setting aside such writ.— Sec. 22 (1D).

(f) The court is precluded from inquiring into the adequacy or the suitability of the alternate accommodation offered by the Commissioner of National Housing.

The present action was filed by the Appellant on 22nd June 1978. After trial, judgment was entered on 25th February 1980, in her favour. The Respondent did not appeal against the judgment. The Appellant however was prevented from making an immediate application for execution of writ, as the Commissioner of National Housing had not complied with the condition set out in item (d) above.

About nine months later, the Commissioner, by his letter of 24th November 1980, notified the court that he had made alternate accommodation available for the respondent. Thereupon, on 8th December 1980, the Appellant made application for a writ of execution. Upon the receipt of the notification from the Commissioner, the Respondent on his part, by his letter dated 25th November 1980, made representations to the Commissioner that the upstair flat allocated to him was not suitable, considering his age and state of his health. By letter of 10th December 1980, the Commissioner of National Housing then informed the respondent that, in deference to his request, a ground floor flat has now been allocated to him.

The application for writ of execution made by the appellant took an unsual turn. The learned District Judge directed that notice of the application be given to the Respondent, and the journal entry of 8th December 1980 shows that he had also, as a matter of course, called for the objections of the respondent. Mr. Choksy submitted that the learned trial judge went wrong at this point and, but for this error which provided a spring board to the Respondent to drag out and prolong these proceedings, this case would have terminated in a satisfactory manner well within the time envisaged by the law.

On 26th January 1981, the Respondent filed objections in the District Court. A few days earlier, on 21st January 1981, he also moved the Court of Appeal, by an application for Revision (C. A. 72/81), praying that he be permitted to lead fresh evidence to show that the appellant owned more than one residential house. He was thereby seeking to canvass the judgment in the case, although he had not appealed against it. When the application was supported in the Court of Appeal, the respondent asked for a stay order, which the Court granted. On 13th May 1981, the Court of Appeal dismissed the Revision application.

Meanwhile the Commissioner of National Housing had written to the Respondent on 13th February 1981, stating that unless he accepts the offer of alternate accommodation contained in the Commissioner's earlier letter of 10th December 1980 within a period of seven days, the Commissioner would consider that the Respondent is no longer interested in such alternate accommodation. No reply to this letter was received by the Commissioner.

With the dismissal of the Revision Application No. 72/81 and the lapse of the stay order, the Appellant moved for issue of writ of execution. The Respondent filed further objections on 28th May 1981, now taking the stand that the alternate accommodation offered by the Commissioner was no longer available and therefore the court had no power to issue the writ. The fact that the Respondent by his own conduct deprived himself of this right was one of the grounds urged against him in all the subsequent proceedings.

On 30th September 1981, after due inquiry, the learned District Judge rejected the Defendant's contention and allowed the issue of writ.

Once again the Respondent applied for relief to the Court of Appeal by way of Revision (C. A. 1191/81). He also prayed for a stay order. The Court ordered a suspension of the writ for three months, relying on the provisions of section 27(2). This provision deals with a different situation and could have had no application

to the facts of that case. There was therefore no justification for that order, and we disapprove of that judgment. Simultaneously the Respondent filed an application for Leave to Appeal against the order of the trial Judge (C. A. L/A 134/81). These two matters were taken up together and the Court of Appeal granted the Respondent leave to appeal. The appeal was decided in his favour on 15th June 1982, and it is against that judgement that the present appeal has been taken.

On the question as to whether the learned District Judge was in error in permitting the respondent to file objections to the application for execution of writ, the Court of Appeal appears to have entertained some doubts in the matter, but decided that, when an allegation of a fundamental nature like forgery is made, it would be proper for an inquiry to be held. From this premise the court drew the conclusion that in this case the learned trial judge was not in error when he allowed objections to be filed by the respondent.

There is neither statutory provision nor a practice in our courts for notice to be given to the judgement-debtor or for the judgment-debtor to file objections in the case of a first application for execution of writ and made within one year of the decree as in this case. The requirement of the law is that the court must satisfy itself, with reference to the record, if necessary, that the application is in conformity with the decree and if the court is satisfied in this respect, "it shall direct a writ of execution to issue to Fiscal". — Section 225(3) Civil Procedure Code. It should be noted in this connection that this was not a case in which the Respondent had filed an appeal against the judgment of the trial Judge. For all practical purposes the trial had concluded.

In regard to the issue of writ, the only fetter on this power, as far as this action is concerned, is to be found in section 22(1C) of Rent Act, No. 7 of 1972, which provides that-

" . . . no writ in execution of such decree shall be issued by such court until after the Commissioner of National Housing has notified to such court that he is able to provide alternate accommodation for such tenant."

On the 3rd December 1980, when the Appellant made the application for issue of writ, this condition was satisfied. If this initial error of noticing the Respondent and calling for objections had not been committed, none of the subsequent developments involving so much unnecessary litigation would have come to pass.

The judgment of the Court of Appeal turns mainly on the interpretation the Court had given to the provisions of section 22(1C). Even before us, both counsel devoted much of their arguments to this same matter. In fact Mr. Pullenayegum submitted that section 22(1C) is an important safeguard of the right of tenants and said that, since it is a matter of public importance, a ruling on this point by us would be welcomed.

Mr. Pullenayegum's contention is that this provision is intended to ensure that no tenant of this category could be evicted and thrown on the street without alternate accommodation being provided for him. In every case of eviction it is incumbent on the Commissioner of National Housing to see that such evicted tenant is moved into a house provided by him. He argued that the language of section 22(1C) properly interpreted means that the availability of the alternate accommodation must exist not at the time of the application for execution of writ, but at the point of time when the writ is actually issued.

The wording of section 22(1C) however does not set out this intention in such express words. Undoubtedly Mr. Pullenayegum is importing into the words, which are not so expressed, a meaning which he considers rational, having regard to the objects of this legislation. The recent amendements however are not all one way, that is to say, not wholly tipped in favour of the tenant nor weighted completely against the landlord. They

indicate a compromise showing a concern for the plight of the tenant as against the acknowledged rights of the landlord.

The section requires the Commissioner to notify to court "that he is able to provide alternate accommodation for such tenant". This notification or communication by him is to the effect that he has a house which he is ready to place at the disposal of the tenant for the latter's occupation. This notification then has the characteristics of an offer.

The acceptance of this offer and the actual going into occupation of this alternate accommodation must necessarily lie at the will and pleasure of the tenant. They cannot be said to be matters falling within the responsibility of the Commissioner. In short, such a concept cannot be implied by the words used. Mr. Pullenayegam, however, submitted that the tenant's conduct, however reprehensible, is wholly irrelevant to the issue before us, which is a pure question of statutory interpretation. That means that where a tenant has unreasonably rejected an offer of alternate accommodation and the Commissioner has allocated it to another — since the Commissioner has neither an unlimited amount of houses at his disposal nor can he be expected to keep any premises in a state of non-occupation — then the tenant taking advantage of his own unreasonable conduct will be able to keep his landlord at bay for an indefinite period of time. As far as the Commissioner is concerned, it appears that his practice is to make a suitable offer, and if that offer is not accepted he does not make a second offer. I am not prepared to say that this practice is unreasonable.

In all the circumstances, it seems to me more reasonable to hold that, where a tenant by his own act has disabled himself from accepting the offer made by the Commissioner, writ can lawfully issue, because it is a case where the Commisioner had notified the court that he is able to provide alternate accommodation for such tenant within the meaning of section 22(1C). This is also a case where the respondent must blame

only himself for the situation he has created. He cannot be allowed to take advantage of circumstances which are self-induced or brought about by himself.

For these reasons I would allow this appeal with costs and direct that writ of execution be issued without delay.

SHARVANANDA, J. — I agree.

WIMALARATNE, J. — I agree.

Appeal allowed