

WIMALARATNE
- v -
LINGANATHAN AND ANOTHER

COURT OF APPEAL.

B. E. DE SILVA, J. AND T. D. G. DE ALWIS, J.

C.A. No. 772/75 (F) -D.C. MT. LAVINIA 2491/RE

MARCH 1 AND 2, 1984.

Landlord and tenant—Guest house run for profit—Whether business premises or residential premises?—Test to be applied.

Where the question was whether premises where a guest house was being run for profit were business premises or residential premises within the meaning given to these terms in the Rent Act.—

Held—

Though the definitions given in the Rent Act of "residential premises" and "business premises" exclude each other the expressions "purposes of residence" and "purposes of business" do not, and in a given case one may include the other. The purpose that is material is the tenant's purpose. The occupation contemplated in the definition of residential premises is not limited to actual physical occupation. The test for deciding whether premises are residential premises or business premises within the meaning of the Rent Act is the user to which the premises are wholly or mainly put by the occupiers for the time being. The user to which a tourist puts the room he occupies in the guest house is that of residence for how short a period it may be. It is his temporary residence. Hence the premises in suit are residential premises.

Cases referred to

- (1) *Hepponstall v. Corea*, (1952) 54 NLR 214, 215.
- (2) *Standard Vacuum Oil Co. v. Jayasuriya*, (1951) 53 NLR 22, 23, 24
- (3) *Gunatilleke v. Fernando*, (1954) 56 NLR 105, 110.
- (4) *Hussain v. Ratnayake*, (1967) 69 NLR 421.

APPEAL from the District Court of Mt. Lavinia.

H. W. Jayewardene, Q.C. with *J. V. C. Nathaniels, Miss Seneviratne and Lakshman Perera* for plaintiff-appellant.

Defendants—respondents absent and unrepresented.

April 6, 1984.

T. D. G. DE ALWIS, J.

The plaintiff sued the defendants for ejection from premises bearing assessment No. 45 1/1, Galle Road, Wellawatte. The 1st defendant is the tenant of these premises and the 2nd defendant is the sub-tenant of the 1st defendant. The main question in dispute was whether these premises were residential premises or business premises as contemplated by the Rent Act, No. 7 of 1972. It was common ground that if the premises were business premises they were excepted premises, and the plaintiff was entitled to judgment, and if they were residential premises the provisions of the Rent Act applied and no cause of action accrued to the plaintiff.

The plaintiff let these premises to the 1st defendant in about the year 1968 at a rental of Rs. 1,000 per month. In about 1971 the 1st defendant sub-let the premises to the 2nd defendant. The former tenant of the premises was one M. S. A. Gaffoor who ran a guest house in the premises and this business was bought by the 1st defendant, who in turn sold that business to the 2nd defendant. The guest house contains ten furnished rooms, and the charges are Rs. 55.00 per double room and Rs. 45.00 per single room per day. No meals are provided for the guests. The guests occupied the rooms usually for a day or two, and some guests stayed on for as long as two months. On these facts the learned District Judge held that the premises were occupied wholly or mainly for the purposes of residence and were hence residential premises as contemplated by the Rent Act, and dismissed the plaintiff's action. The plaintiff has appealed.

The Rent Act refers to two categories of premises, namely, residential premises and business premises. Residential premises are defined as "any premises for the time being occupied wholly or mainly for the purposes of residence" Business premises are not specifically defined. But "business premises means any premises that are not residential premises". So that all premises that are not residential premises are business premises. It is not disputed that the defendant runs a business in these premises. He runs the business of a guest house for profit.

In the case of *Hepponstall v. Corea* (1) the premises were taken on rent for the purpose of keeping a boarding house, and used in fact for that purpose and also to serve as a residence for the tenant. In

considering whether these premises were residential premises or business premises. L. M. D. de Silva, J. adopted the test that the character of the physical occupation of the premises by the tenant should be examined. Having so enunciated the test to be applied he stated, "The premises in question were used by the tenant to run a hostel and also to serve as a residence for herself. There can be no doubt that the main use to which they were put was the running of a hostel. It was clear therefore that the premises were not occupied wholly or mainly for residential purposes and therefore they are not 'residential premises'"

In an earlier case that of *Standard Vacuum Oil Co. v. Jayasuriya* (2) Gunasekera, J. had taken a different view. There the defendant Company used the premises as a residence for its manager and his wife. The premises were furnished and provided with a staff of domestic servants at the expense of the Company and it also paid the electricity and telephone bills. Two motor cars belonging to the Company were garaged there and both were used by the manager on the company's business. The manager entertained the company's guests in this house, and also accommodated visiting executives from abroad in these premises. The house was also used for business conferences after office hours and confidential papers of the company were kept in the premises. The learned District Judge held "it appears to be quite evident that although certain business transactions are effected in the premises it is used mainly for the residence of the manager and his wife and on some occasions for the residence of guests of the company." Gunasekera, J. said: "I do not think there can be any doubt that this is the correct view of the use to which the premises were put." Gunasekera, J. went on to state: "I shall assume that the occupation that is contemplated in the definition of 'residential premises' in section 27 (which is the same as in the present section 48) is not limited to actual personal occupation and also that the purpose that is material is the tenant's purpose. I agree that in this view of the matter the premises were occupied wholly or mainly for the purposes of the Company's business. That circumstance, however cannot conclude the question. Although by definition 'business premises' and 'residential premises' exclude each other, 'purposes of business' and 'purposes of residence' do not, and in a given case the one may well include the other, as for example in the case of a tenant who takes in paying guests In the present case the premises in question were

occupied wholly or mainly for the purposes of the Company's business, but at the same time mainly for the purposes of residence. Being occupied mainly for the purposes of residence they were residential premises. The Act does not provide that premises occupied wholly or mainly for the purposes of business are 'business premises'."

In the case of *Gunatilleke v. Fernando* (3) the same question again came up for decision. There Gunasekera, J. held that premises taken on rent by the proprietor of a school and used by him as a hostel for the students and as a place of residence for the warden of the hostel and some of the teachers were residential premises within the meaning of the Rent Act. In that case H. N. G. Fernando A. J. (as he then was) whilst agreeing with Gunasekera, J. stated at page 110 : "The Legislature has not in reality differentiated between *residential purposes* and *business purposes* ; the relevant definitions pose only the question whether the premises are occupied for the purposes of residence, and if not they are to be regarded as business premises whether or not they are actually business premises. Nor is the Legislature concerned with the character of the tenant's occupation. In my view therefore, the only issue to be determined is whether in fact persons actually 'reside' (in the ordinary connotation of the word) in the premises or in the majority of the rooms which it comprises. If such is the case, the premises are residential within the meaning of the Act, and the circumstances in which the residents came to reside in the premises and their contractual relationships, if any, with the tenant, do not alter the character which the premises acquire by reason that persons reside there ".

The question whether premises taken to be run mainly as a boarding house are 'residential premises' or 'business premises' within the meaning of the Rent Act was referred to a bench of three judges in view of the conflict of authorities on this point. That is the case of *Hussain v. Ratnayake* (4). In this case it was held that premises taken to be run as a boarding house are 'residential premises' and not 'business premises'. Tambiah, J. cited with approval the passage of the judgment of Fernando, A. J. in the case of *Gunatillake v. Fernando* (*supra*) referred to above, and held that the case of *Hepponstall v. Corea* (*supra*) was wrongly decided. Sivasubramaniam, J. rejected the argument that the occupation referred to in the definition of residential premises is occupation only by the tenant and he also ruled that *Hepponstall's case* was wrongly decided. With the judgments of

Tambiah, J. and Sivasubramaniam, J., H. N. G. Fernando C. J. agreed. Thus now the view is well established that the test for deciding whether premises are residential premises or business premises within the meaning of the Rent Act is the user to which the premises are wholly or mainly put by the occupiers of those premises for the time being.

In the instant case on the evidence that has been accepted by the learned District Judge the rooms in these premises are wholly or mainly used for the occupation of tourists or foreign guests, usually for a few days at a time. Learned counsel for the plaintiff-appellant sought to distinguish the facts of the present case from those of the divisional bench case of *Hussain v. Ratnayake*. He referred to the dicta of Fernando, A. J. in *Gunatillake v. Fernando (supra)* at page 110 which was cited with approval by Tambiah, J. in the case of *Hussain v. Ratnayake (supra)* where Fernando, A. J. has stated : " In my view therefore, the only issue to be determined is whether in fact persons actually 'reside' (in the ordinary connotation of the word) in the premises or in the majority of the rooms which it comprises ". He submitted that tourists occupied rooms in these premises for very short periods and they cannot be said to reside there in the ordinary connotation of the word. He submitted that residence necessarily involves some degree of permanency. Accordingly in the case of a boarder he generally pays his boarding fees monthly, and lives or intends to live in the boarding house for some considerable period of time, whereas in the case of a tourist it was submitted there was no element of any permanency in his occupation. The meaning of the word 'reside' as contained in the Shorter Oxford Dictionary, 3rd edition, is as follows :— " to settle ; to take up one's abode or station : to dwell permanently or for a considerable time ; to make one's settled or usual abode ; to live in or at a particular place." It was submitted that these dictionary meanings would show that residence requires some degree of permanency.

But however the test to be applied in the present case would be the user to which the persons occupying rooms in this guest house, namely the tourists, put them to. We are accustomed to the term temporary residence. That would mean a place where one lives for a short period of time. Could it not be said that when a tourist occupies a room in a guest house for a short period when he is in this country it is his temporary residence ? It would thus appear that the use to which

a tourist puts the room he occupies in this guest house is that of residence for how short a period it may be. It would appear that Gunasekera, J. had this view in mind when in the case of *Standard Vacuum Oil Co. v. Jayasuriya* (*supra*) at page 23 he said : " Although by definition 'business premises' and 'residential premises' exclude each other, 'purposes of business' and 'purposes of residence' do not : and in a given case the one may well include the other, as for example in the case of a tenant who takes in paying guests."

I would accordingly affirm the judgment of the learned District Judge that the premises in question in this case are residential premises, and dismiss the appeal without costs.

B. E. DE SILVA, J. – I agree.

Appeal dismissed.
