

1944

*Present: Cannon J.*

RAMEN, Appellant, and PERERA, Respondent.

58—C. R. Colombo, 93,268.

*Rent restriction—Premises reasonably required for landlord's occupation—Position of tenant—Rent Restriction Ordinance, No. 60 of 1942, s. 8.*

In deciding the question under section 8 of the Rent Restriction Ordinance whether the premises are reasonably required for the occupation of the landlord the Court should take into consideration the circumstances of the tenant as well.

**A** PPEAL, from a judgment of the Commissioner of Requests, Colombo.

*E. B. Wikramanayake* for the defendant, appellant.

*J. E. M. Obeysekere* (with him *C. Renganathan*), for the petitioner, respondent.

*Cur. adv. vult.*

October 26, 1944. CANNON J.—

This is an appeal against a judgment given in favour of the landlord in an action for ejection. The issue was whether certain premises No. 81, Hill street, Colombo, were reasonably required for occupation as a residence for the landlord within the meaning of the Rent Restriction Ordinance, No. 60 of 1942, section 8. The ground of appeal is misdirection in that the Commissioner has not taken into consideration the position of the tenant.

The question arises: To what extent must the position of the tenant be taken into consideration? In *Rahem v. Jayawardane*<sup>1</sup> Howard C.J. says: "The learned Commissioner seemed to think that the landlord discharges the burden of proof imposed on him by proving that he has a good reason for requiring the premises . . . Having regard to the words "in the opinion of the court" which occur in section 8 (c) of the local Ordinance, I do not think that the words "reasonably required" cast on the landlord the burden of merely establishing a good reason, so far as he himself is concerned, for requiring the premises as in the first part of section 5 (1) (9d) of the English Act. The Court has to be satisfied, after taking into consideration other matters such as alternative accommodation at the disposal of the landlord and the position of the tenant, that the requirement is a reasonable one." In *Abeewardene v. Nicolle*<sup>2</sup> the Commissioner decided that premises were not reasonably required in view of the 'relative position of the parties concerned'. The inconvenience caused to the landlord was the Commissioner thought little when compared with the inconvenience the tenant would have to face in finding another house. Mr. Justice Soertsz in affirming the Commissioner's decision, saw no misdirection in the way he had considered the matter of alternative accommodation. The words "reasonably required" would at first sight, appear to require no explanation to a reasonable man. Guiding principles are, however, desirable. Whether an action or a request is reasonable must depend upon a consideration of all the surrounding relevant facts. It rests

<sup>1</sup> 45 N. L. R. at p. 316.

<sup>2</sup> 45 N. L. R. 354.

upon circumstantial as well as direct evidence. It follows that the circumstances of the tenant as well as those of the landlord must be taken into consideration and, although the Ceylon Ordinance, unlike the English Statute, does not require the landlord to provide suitable alternative accommodation, the availability or non-availability of alternative accommodation to the tenant, as well as to the landlord, is a fact which in my view, is a major circumstance. Though the landlord may have sound reasons for seeking possession, as Mr. Justice Acton said in an English case cited by Soertsz, J. "because the landlord's wish for possession was reasonable, it does not follow that it was reasonable for the court to gratify it".

The question to be answered may, it seems to me, be paraphrased thus. Is the landlord's requirement for occupation a reasonable one having regard to the circumstances of both parties? And where the hardship to neither party appears to overbalance that of the other, I think, the landlord should succeed by virtue of his ownership.

In the present case, the landlord has shown good reasons. He gave evidence that he resides at Kandana, about 11 miles from Colombo, he is a toddy and arrack renter and has a number of taverns in Colombo. He bought the premises in question for the occupation of himself and wants to live there with his family. Kandana, he said, was too distant to enable him to look after his business. He has an office at Hill street. Before he went to Kandana, he was a tenant of premises in Wolfendahl street, but went to Kandana during the time of the air raids. He owns a car and motor lorries. He further stated that he bought the premises solely for the reason of residing in them and, therefore, immediately gave the defendant notice to quit. He was unable to say whether he could get a rented out house in Colombo, and added "I cannot live in a rented out house". The landlord, however, has alternative accommodation; and although it is 11 miles from his business, there is no hardship in the present times to a successful business man who has motor transport at his disposal. On the other hand, the tenant gave evidence that he has no alternative accommodation although he has looked for it, and his household comprises 15 persons.

The Commissioner in his reasons for judgment stated "I do not see any circumstance in this case to doubt the *bona fides* and the reasonableness of the plaintiff's need for the house in question. As soon as he purchased the house plaintiff gave defendant notice to quit. I accept plaintiff's evidence that he bought the house for the express purpose of residing in it. Plaintiff's large business as a toddy and arrack renter requires his daily presence in Colombo. His headquarters and office are situated in the same street as the premises in question. At present he resides 11 miles away from Colombo in a rented house. I can therefore well believe plaintiff when he states that he finds it extremely inconvenient to continue to reside away from Colombo". The Commissioner has evidently based his judgment on the good faith of the landlord and not on the reasonableness of his requirement. He does not appear to have taken into consideration the position of the tenant. On account of this misdirection, the appeal must be allowed with costs.

*Appeal allowed.*