1948 *Present :* **Nagalingam J.**

HAMEEDU LEBBE *et al.*, Appellants, *and* ADAM SAIBO *et al.*, Respondents

S. C. 249—C. R. Colombo, 5,572

Rent Restriction Ordinance—Premises reasonably required for use of landlord—Starting new business—Matter to be considered—Ordinance No. 60 of 1942—Section 8 (c).

In considering whether the premises are reasonably required for the use of the landlord in terms of section 8 (c) of the Rent Restriction Ordinance, the fact that the landlord who has no business of his own wants to earn a livelihood by commencing a business is a matter to be taken into account.

Gunasena v. Sangaralingampillai (1948) 49 N. L. R. 473, followed.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

H. V. Perera, K.C., with *H. W. Tambiah*, for plaintiffs, appellants.

M. I. M. Haniffa, with *M. A. M. Hussein*, for defendants, respondents.

Cur. adv. vult.

November 12, 1948. NAGALINGAM J.—

This appeal once again involves the application of the provisions of section 8 (c) of the Rent Restriction Ordinance to a new set of facts which, happily, are not in dispute. It would appear that the first plaintiff in partnership with two of his brothers-in-law carried on a business at 97, Maliban Street. His wife died, and the relationship between him and his brothers-in-law became strained. No. 97, Maliban Street, in which the partnership business is carried on had been rented out by the parties, but since the estrangement the brothers-in-law purchased the premises, and, although the first plaintiff has his rights in the business as a partner, he finds himself in a position of insecurity in regard to his continuance as a partner in the firm. The strained relationship between him and his brothers-in-law has been aggravated by the fact that the first plaintiff is now again married. In view of his precarious position as a partner in the firm, he deemed it necessary to commence a business on his own with the aid and assistance of a brother of his present wife, who is the second plaintiff in the case. With this end in view the two plaintiffs purchased the premises, the subject-matter of this action, for a sum of no less than Rs. 35,000, of which they paid to the vendor at the date of purchase a sum of Rs. 20,000 and hypothecated the property for the balance. It is the fact, however, that at the date of purchase by the

plaintiffs of these premises the defendants were and had been tenants thereof for a number of years. It is also, again, the fact that the vendor did not undertake to give vacant possession to the plaintiffs.

The defendants attorned to the plaintiffs and paid rent to them. The plaintiffs thereafter gave notice to the defendants terminating the tenancy and stated that the premises were required by them for the purposes of their own business, the ground upon which they have sought to maintain the action in ejectment. The defendants resist the action on the ground that they are unable to leave these premises, as it is impossible for them to find other premises in that locality to carry on their business. The learned Commissioner, following the earlier series of cases decided under the Rent Restriction Ordinance, all of which emphasise that alternative accommodation should be found for the tenant who is sought to be ejected, held that " it is not possible to eject the defendants without giving them reasonable time to find alternative accommodation or the plaintiffs themselves offering them alternative accommodation somewhere in the neighbourhood."

The proper interpretation to be placed on section 8 (*c*) of the Rent Restriction Ordinance has been laid down in the case of *Gunasena v. Sangaralingampillai*[1] by a bench of two Judges, and Windham J. delivering the judgment of the Court said, " alternative accommodation is a relevant factor, no more and no less, in determining whether the requirement of the premises for the landlord's purposes is reasonable ". The learned Judge took care, however, to indicate that it is not altogether a governing factor in deciding the question whether the premises are reasonably required by the landlord or not. In regard to this aspect of the matter, he expressed himself thus :

> " And so far as concerns the question of alternative accommodation, I would guard against saying that the Court *must* satisfy itself (as it must under the English Acts) that there is alternative accommodation for the tenant before ordering eviction under section 8 (*c*). That is not the position. A case might well occur where, after duly considering the fact that there was no alternative accommodation, the Court might still consider that the landlord's requirement was reasonable."

In the light of this decision, it is plain to see that the learned Commissioner has approached the question from a not altogether satisfactory angle. He was greatly influenced in the view he took by the circumstance that alternative accommodation was not available to the defendants and that the first plaintiff was yet a partner with the brothers-in-law of his first wife in business carried on at No. 97, Maliban Street. He, however, failed to note that the second plaintiff is without employment himself, that the very purpose for which the two plaintiffs made the joint purchase of the property was to enable them to carry on business and that these factors must also be weighed in considering the question of the reasonableness of the landlord's requirement.

I do not read the Rent Restriction Ordinance as placing a fetter for all times on new ventures and as effectively preventing an owner of property from getting possession of it and on which he has laid out large capital

[1] *(1948) 49 N. L. R. 473.*

in order to establish himself in business. If the contrary were the case, the Legislature need not have, and would not have, enacted section 8 (*c*) at all. For, so far as a landlord does not require the premises for purposes of his own, the tenant is ensured complete security of tenure ; but where it is shown that the landlord requires the premises for his own use, then other considerations must apply, not solely, as was pointed out in the case, already cited, the lack of alternative accommodation for the tenant. In fact, in this case, the Commissioner put the case of the defendants very high when he questioned the first plaintiff as to whether he had offered any alternative accommodation to the defendants, implying that it was the duty of the landlord to find alternative accommodation for the tenant before he can claim recovery of the premises. The learned Commissioner, it cannot be said, erred, in view of the earlier decisions.

In these circumstances, the rights of parties must be examined afresh, bearing in mind the true principle applicable to an adjudication of the questions involved. In the case of *Gunasena v. Sangaralingampillai* (*supra*) the landlord failed because he had a place of business of his own and his sole idea was to expand the business by obtaining possession of the demised premises, while the tenant in that case had no other place to go. That was not a case where the plaintiff himself had no place of business of his own, nor was it a case where the landlord had invested money on the purchase of property for the avowed purpose of carrying on business himself. These two factors distinguish the present case from that. If the defendants are turned out from the premises, there is no doubt that hardship will be caused to them. On the other hand, if the plaintiffs are prevented from obtaining possession of the premises, they would suffer equally great hardship. I do not place very much reliance on the unsatisfactory connection of the first plaintiff as a partner with his erstwhile brothers-in-law; there is, however, everything to be said in favour of the second plaintiff who has no business of his own wanting to earn a livelihood by commencing a business himself. Where the hardship is equally great viewed from either the landlord's point of view or that of the tenant, in determining the question of reasonableness of the landlord's requirement the pendulum must be regarded as swinging in the landlord's favour inasmuch as he is the owner of the premises. I would, therefore, hold that the plaintiffs have made out a case under section 8 (*c*) of the Ordinance for ejectment of the defendant.

There is, however, one matter which causes me some anxiety, and that is whether in the circumstances of this case an immediate order of ejectment should issue. The defendants are said to be carrying on a business in tea at the premises, and a period of six weeks, I think, would be more than ample to enable them either to dispose of their stocks or to make other arrangements with regard to them.

I would, therefore, set aside the judgment of the learned Commissioner and enter judgment for the plaintiffs in terms of paragraphs (*a*) and (*c*) of their prayer to the plaint modified to the extent that the writ of ejectment should not issue till January 1, 1949. The plaintiffs will be entitled to the costs both of appeal and of the lower Court.

Appeal allowed.