Nor is the omission of any provision in the Omnibus Service Licensing Ordinance empowering a Tribunal to remit an application for the decision of the Commissioner to be considered an oversight on the part of the legislature. For clearly the object and effect of the provisions of sections 13 and 14 is that, upon an appeal from the Commissioner the Commissioner is *functus officio* so far as the particular application is concerned, and the Tribunal is vested with all the powers which the Commissioner had, to determine the matter itself. That is borne out by the provision of section 14 (2) that the Tribunal, if it decides that a licence shall be issued, shall in determining the route and conditions have regard to the provisions of sections 4 to 7 of the Ordinance, sections which set out at length the matters to be considered by the Commissioner when application is made to him. Furthermore, the object of expediency, a necessary object in road transport licensing, is better achieved by the Tribunal's having itself to make the final order upon an appeal, without reference back to the Commissioner.

For these reasons I hold that the order of the Tribunal dated July 3, 1948, was made in excess of jurisdiction. This application is allowed with costs, and a writ of *certiorari* will issue to quash the said order.

Application allowed.

1950 *Present :* **Gratiaen J.**

ANDREE, Appellant, *and* DE FONSEKA, Respondent

S. C. 43—C. R. Colombo, 9,879

Rent Restriction Ordinance—Premises required for use of landlord—Starting new business—Quantum of proof necessary—Ordinance No. 60 of 1942, Section 8 (c).

Where a landlord pleads under section 8 (c) of the Rent Restriction Ordinance that the premises are reasonably required for the purposes of a new business which he proposes to start, the burden is on him to furnish the Court with sufficient material upon which it can be inferred that his proposal is genuine and that his demand to eject the tenant in occupation is reasonable having due regard to the tenant's position.

It is in certain circumstances open to a landlord, in terms of section 8 (c) of the Rent Restriction Ordinance, to claim back his premises for the purpose of establishing a business which has not yet come into existence.

Hameedu Lebbe v. Adam Saibo (1948) 50 N. L. R. 181, followed.

Mamuhewa v. Ruwanpatirana (1948) 50 N. L. R. 184, not followed.

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

H. V. Perera, K.C., with *S. J. Kadirgamar*, for defendant appellant.

G. E. Chitty, with *Vernon Wijetunge*, for plaintiff respondent.

Cur. adv. vult.

February 10, 1950. GRATIAEN J.—

This is a tenancy action in which the landlord, who is a Barrister-at-law, sued the appellant, who is the proprietor of a printing establishment, to have him ejected from premises No. 246, Union Place, Colombo. The action was instituted on November 5, 1947, and the premises are admittedly situated in an area to which the provisions of the Rent Restriction Ordinance of 1942 are applicable. The plaintiff claimed that he was entitled to maintain the action on three separate grounds—(*a*) that rent was in arrears, (*b*) that the condition of the premises had deteriorated owing to the appellant's neglect or default, and (*c*) that the premises were reasonably required for the purposes of his business.

The first of these grounds was abandoned at the trial, and on the second ground the plaintiff failed to satisfy the Court that there had been any deterioration of the premises for which the appellant could be held responsible. On the third ground, however, he succeeded, and the present appeal is concerned only with the correctness of the learned Commissioner's decision on this point.

As the plaintiff had not obtained authorisation from the Assessment Board to institute this action, it was incumbent on him to satisfy the Court that the premises were " reasonably required for the purposes of his business ". As I read section 8 (*c*) of the Ordinance, the reasonableness of the landlord's demand to be restored to possession for the purposes of his business must be proved to exist at the date of institution of the action and to continue to exist at the time of the trial. In determining this issue the Court must take into account the position of the landlord as well as of the tenant together with any other factor which is relevant to a decision to the case. Doubts which had at one time existed as to the proper interpretation of the words " reasonably required " appearing in the section have now been set at rest by the ruling of this Court in *Gunasena v. Sangaralingam Pillai & Co.*[1].

I shall first consider the position of the tenant. He has been in occupation of the premises since March, 1938, and according to his uncontradicted evidence he has used them continuously for carrying on his business as a printer and publisher. He prints what he describes as a newspaper called the " Trespasser Racing and All Sports " which is apparently so palatable to the taste of its readers that each bi-weekly publication claims a circulation of 33,000. His efforts to find a suitable place of business since he received notice to quit the premises have failed, and it must therefore be assumed that, should the plaintiff's action succeed, the appellant's business would in all probability have to come to an end. Whether this loss to " literature " and the ensuing frustration of his 33,000 clients would amount to a very great catastrophe, is of course besides the point. The business of printing and publishing is *per se* a lawful occupation.

It is now necessary to assess the reasonableness of the plaintiff's claim to occupy the premises for the purposes of his own business. He

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

is fifty-eight years old, and is a Barrister-at-law, but has admittedly not practised his profession for very many years; it is not suggested that he requires the premises for use as "chambers". Nor does he require to reside there. He states, however, that he "intends" to set himself up in business. When invited in cross-examination to give more information regarding the nature of this proposed undertaking, he refused to do so. A man is no doubt entitled to withhold from others his closely-guarded secret as to the details of any future business which he has in contemplation, but in that event I fail to see how he can expect to satisfy a Court of law as to the merits of his claim that the premises which his tenant now occupies are reasonably required for that business. In my opinion the burden which rests on the plaintiff cannot be discharged unless the Court is furnished with sufficient material on which it can determine that the premises are necessary or suitable for the launching of his new enterprise; that the proposal to start a new business after ejecting a tenant in occupation is a practical proposition; and that it is reasonable to compel the tenant to abandon his own long-established business so as to make room for such a project. The plaintiff is apparently a gentleman of means. He had been away in Europe for some years before the war, and returned to this Island in 1939. Eight years later, he became attracted by the idea of undertaking a business venture of an unspecified nature. At one time he thought of returning to Europe after the war, but later he decided not to. I do not doubt that his somewhat vague intentions as to the future were genuine enough at the time when he gave evidence at the trial, but he has not placed before the Court sufficient material upon which it could be inferred that his proposal to enter the field of commerce was something more than a decision to gratify a passing whim. I have therefore come to the conclusion that the plaintiff has not discharged the burden of establishing that he is entitled to have the defendant ejected from the premises. It is not improbable that his decision to claim to be restored to possession for the purpose of establishing a new business was in some measure motivated by the belief that the condition of the premises had deteriorated through some fault of the defendant. That belief has now been proved to be without foundation.

The question has also been raised as to whether it is open to a landlord, in terms of section 8 (c) of the Ordinance, to claim back his premises for the purpose of establishing a business which has not yet come into existence. In *Hameedu Lebbe v. Adam Saibo*[1] my brother Nagalingam seems to have decided the question in the affirmative. In a later case, however, my brother Basnayake took a contrary view, and held that the section only applied if there was an *existing* trade or business for which the leased premises were required by the landlord (*Mamuhewa v. Ruwanpatirana*[2]). I myself am not prepared to go so far. It seems to me that the section would cover the case of a landlord who has decided to establish a new business and who is only prevented from implementing that decision owing to lack of suitable accommodation for the purpose. In other words, there must exist at the relevant date *a present requirement*

[1] *(1948) 50 N. L. R. 181.*
[2] *(1948) 50 N. L. R. 184.*

to use the premises for the purposes of a business which has already been established or, in the alternative, which will be established by him as soon as the premises are made available to him. In either event, he must place before the Court the necessary material to assist it in deciding whether his demand to eject the tenant in occupation is a reasonable one having due regard to the tenant's position. This is precisely what the plaintiff has failed to do in the present action. I accordingly set aside the judgment appealed from and dismiss the plaintiff's action with costs both here and in the Court below.

Appeal allowed.