

1948

*Present : Basnayake J.*FERNANDO, Appellant, *and* DAVID, Respondent.*S. C. 174—C. R. Kandy, 1,685.**Rent Restriction Ordinance, section 8 (c)—Premises reasonably required by landlord—Alternative accommodation for tenant—Duty of Court.*

Once a Court is satisfied that premises are reasonably required by the landlord for any of the purposes mentioned in section 8 (c) of the Rent Restriction Ordinance, the Court is not entitled to take into account the tenant's difficulties of finding accommodation.

Raheem v. Jayawardene (1944) 45 N. L. R. 313 doubted.

APPPEAL from a judgment of the Commissioner of Requests, Kandy.

Vernon Wijetunge, for defendant, appellant.

S. R. Wijayatilake, for plaintiff, respondent.

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Cur. adv. vult.

March 18, 1948. BASNAYAKE J.—

This action was instituted by the respondent to this appeal against the appellant to have him ejected from premises No. 89, Trincomalee Street, at Kandy. The respondent avers that he wants the house for his occupation. The appellant has been the tenant of the premises since 1942. He lives at Moratuwa and carries on the business of an undertaker at these premises. He resists the action on the ground that he has no suitable accommodation to which he can move and that if he leaves these premises his business will be adversely affected.

The respondent lives at a place called Kulugammana about eight miles from Kandy. He has to travel daily to Kandy for the purpose of his business and his children who attend schools in Kandy have to do likewise. This is the only house he owns in Kandy and wants it as he wishes to live there in order that he may be near the schools which his children attend and the centre of his business activities.

On the evidence before him the learned Commissioner of Requests has formed the opinion that the premises are reasonably required by the respondent for his occupation as a residence. I am not prepared to say that the evidence does not justify the opinion formed by the learned Commissioner. In dealing with the question of reasonableness of the landlord's demand for possession the Court is entitled to consider the arguments by the landlord with regard to the convenience he would enjoy by being nearer his work and the schools which his children attend and the financial benefit he would derive.

Learned Counsel for the appellant placed great reliance on the cases of *Raheem v. Jāyāwardene*¹ and *Ramen v. Perera*². In regard to the former case I wish to say with the greatest respect that I find myself unable to agree with the opinion of My Lord the Chief Justice that section 8 (c) of our Rent Restriction Ordinance, No. 60 of 1942, should be read as if the words "and, in any such case as aforesaid the Court considers it reasonable to make such an order or give such judgment" were included therein.

I am not aware of any rule of interpretation by which express provisions of other legislation can be read into an enactment of our legislature. The English law on the subject of rent restriction is complex and ranges over several enactments and decisions thereon have to be utilised in interpreting our Ordinance with extreme caution. As observed by Lord MacMillan³ "the best and safest guide to the intention of all legislation

¹ (1944) 45 N. L. R. 313.

² (1944) 46 N. L. R. 133.

³ *Commissioner of Stamps, Straits Settlements v. Oei Tjong Swan* (1933) A. C. 378 at 387.

is afforded by what the legislature has itself said ". For my part I am unable to read into the words " in the opinion of the Court, reasonably required " the express provisions of section 5 (1) (d) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 or of section 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act 1933. Whether a landlord's demand is reasonable or not will depend on the circumstances of a particular case. The onus is on him to satisfy the Court that his requirement is reasonable. Once the Court is satisfied that the premises are reasonably required by the landlord for any of the purposes mentioned in section 8 (c) the Court is not in my view entitled to take into account the tenant's difficulties of finding accommodation.

Learned Counsel stressed that the issue framed in the case is whether the premises are reasonably required for the respondent's business but that the learned Commissioner has held that he is satisfied that they are required for his occupation. As I pointed out earlier the respondent's plaint avers that they are required for his occupation and in his evidence he has stated at length why he wants them. In the circumstances I am not prepared to hold that the discrepancy between the issue and the pleadings is in this case a good ground for setting aside the Commissioner's finding.

The appeal is dismissed with costs.

Appeal dismissed.
