

1953

*Present : Swan J.*

C. A. SAMARAKOON, Appellant, and A. H. K. JAYAWARDENA,  
Respondent

*S. C. 182—C. R. Colombo, 40,122*

*Rent Restriction Act, No. 29 of 1948—Area of operation—Section 2—Interpretation.*

Where the limits of an area which was within the operation of the Rent Restriction Ordinance, No. 60 of 1942, are extended subsequent to the date of proclamation of the Rent Restriction Act, No. 29 of 1948, the latter Act is not applicable to premises situated within the extended area until such area is brought within the operation of the Act by means of notification under section 2 (b) of the Act.

**A**PPPEAL from a judgment of the Court of Requests, Colombo.

*H. W. Tambiah*, with *S. Ambalavanar*, for the plaintiff appellant.

*Vernon Wijetunge*, for the defendant respondent.

*Cur. adv. vult.*

December 14, 1953. SWAN J.—

In this case the appellant sued the respondent for ejection from the house and premises called and known as “Ediston Lodge” situated at Udahamulla. The respondent in his answer said that the appellant was not entitled to eject him inasmuch as the premises were situated in an area which was within the operation of the Rent Restriction Act, No. 29 of 1948.

There were only two issues raised at the trial, namely, (1) does the Rent Restriction Act apply to the premises in suit; (2) if not, is the appellant entitled to a decree in ejection. The learned Commissioner answered the first issue in the affirmative. In the result the action was dismissed with costs.

Mr. Thambiah appearing for the appellant contends that the Rent Restriction Act does not apply. The area in which the premises are situated was brought within the limits of the U. C., Kotte, in 1951. It was conceded at the trial that prior to 1951 the premises in suit were outside the U. C. limits.

In order to ascertain whether the Rent Restriction Act of 1948 applies we have to look at Section 2 which provides as follows :—

“ This act shall apply :—

- (a) in every area in which the Rent Restriction Ordinance, No. 60 of 1942, was, by virtue of any Proclamation under Section 2 of that Ordinance, in force immediately prior to the date appointed by the Minister under Section 1 of this Act; and
- (b) in every other area for the time being declared by the Minister by notification published in the *Gazette*, to be an area in which this Act shall be in operation. ”

It is not suggested that there was a notification at any time published in the *Gazette* whereby the Minister declared the Rent Restriction Act to apply to the area brought within the limits of the U. C., Kotte, in 1951. We have therefore to interpret the meaning of Section 1 (a). The appointed date referred to in this Section is 1st January, 1944<sup>1/2</sup>. The simple question is whether the area in which the premises were situated came within the operation of the Rent Restriction Ordinance, No. 60 of 1942, by virtue of any Proclamation under Section 2 of that Ordinance.

By notification in *Government Gazette* No. 9,084 of the 12th February, 1943, the area within the administrative limits of the U. C., Kotte, was brought within the operation of the Rent Restriction Ordinance, No. 60 of 1942. By notification published in *Gazette* No. 9,773 of the 10th July, 1947, the notification in *Gazette* 9,084 was cancelled and a new list of the areas brought within the operation of the Rent Restriction Act was published. In that list we once again find reference to the area within the administrative limits of the U. C., Kotte. *Gazette* No. 7,910 of the 4th March, 1932, published a list and gave the boundaries of the areas in which Urban Councils were established. There we have reference to the administrative limits of the Kotte U. C. which are described by physical metes and bounds. In my opinion there can be no question that the area brought within the operation of the Rent Restriction Act of 1948 by virtue of Section 2 (a) was the area within the boundaries mentioned in the notification in *Gazette* No. 7,910. Perhaps it was a *casus omissus* on the part of the authorities not to have notified that the Rent Restriction Act of 1948 would apply to the administrative limits of the U. C., Kotte, as extended from the beginning of 1951. But upon an interpretation of Section 2 (a) of the Rent Restriction Act I have come to the conclusion that in the absence of a notification under Section 2 (b) the Rent Restriction Act does not apply to the extended limits. In the result the appellant is entitled to succeed. I would therefore allow the appeal with costs and enter judgment for the appellant as prayed for with costs in the lower court which I fix at Rs. 31.50. I think it only fair to allow the respondent time to find another house. I would therefore make order as follows :—

If the respondent pays all rent and damages up to 31st December, 1953, the costs of appeal and costs in the lower court which I have fixed at Rs. 31.50 on or before the 29th December, 1953, and thereafter pays each month's damages on or before the 15th of such month commencing from 15th January, 1954, writ of ejection will not be executed till 30th June, 1954. In default both writs may issue.

*Appeal allowed.*