

1954

*Present : Fernando A.J.*W. L. A. DEP *et al.*, Petitioners, and P. NAGARATNAM, Respondent*S. C. 249—Application in Revision in C. R. Colombo, 32,445**Jurisdiction—Court acting beyond its powers—Consent of parties—Validity of compromise—Rent Restriction Act, No. 29 of 1948, s. 13.*

Although parties cannot by agreement give the Courts jurisdiction which the Legislature has enacted that they are not to have, nevertheless a compromise after action which is advantageous to a party and secured to him by a decree subsequently entered of consent is not void as offending the prohibition against waiver. A sub-tenant, therefore, who, after a decree has been entered against the tenant, consents to be bound by it upon conditions advantageous to himself and embodied in the decree by adjustment, cannot subsequently resist enforcement of the decree on the ground that it is invalid for lack of jurisdiction. The sub-tenant, in such a case, forfeits by waiver the protection of section 13 of the Rent Restriction Act.

**A**PPPLICATION to revise an order of the Court of Requests, Colombo.

*L. G. Weeramantry*, for the 2nd, 3rd and 4th defendants petitioners.

*P. Somatilakam*, for the plaintiff respondent.

*Cur. adv. vult.*

July 27, 1954. FERNANDO A.J.—

This is an application in revision in respect of an order of the learned Commissioner of Requests directing the issue of writ for the ejection of the petitioners from certain residential premises in the city of Colombo. The plaintiff respondent had in 1951 instituted an action for the ejection of his tenant one B. W. Nicholas on the ground that the latter had sub-let the premises (without plaintiff's consent) in contravention of s. 9 of the Rent Restriction Act to the present petitioners who however were not made parties to the action. The learned Commissioner dismissed that action on the ground that the sub-letting was not proved, but on appeal against his order a decree was entered by *this Court* for the ejection of Nicholas. When the plaintiff sought to enforce that decree he was resisted by the present petitioners, and after some inquiry into their objections, a settlement was arrived at in June 1952 by which the petitioners agreed to be bound by the decree and were permitted to remain in occupation *paying damages* for each month, and by which writ of ejection was not to issue until 31st December 1953. The decree was adjusted in terms of the settlement, which was honoured by the plaintiff during its period of operation. On 31st December 1953 (when the sands had all but run out), the petitioners moved for a stay of execution of the decree. The learned Commissioner on 9th April 1954, made order refusing the stay of execution and allowing the issue of writ, and the present application is for the revision of that order.

Counsel for the petitioners makes the following submissions in support of his application:—

1. The decree entered by *this Court* was a nullity for the reason that s. 13 of the Rent Restriction Act had the effect, on the facts of the case, of depriving this Court of jurisdiction to enter decree for the ejection of Nicholas, and the Commissioner should not therefore have issued writ in execution of that decree. (It is unnecessary to set out the facts on which this contention is based.)

2. The decree being a nullity, the subsequent adjustment in terms of the settlement of June 1952 was itself a nullity and not binding on the petitioners.

3. In consenting that writ may be issued after December 1953, the petitioners had waived the protection of s. 13 of the Rent Restriction Act, but that protection could not have been effectively waived, even by consent.

In view of the opinion I have formed upon the last of these submissions, it is unnecessary to decide the interesting and perhaps difficult questions which arise upon Counsel's other propositions, even if there be substance in them.

Counsel relied in the main on the following observations in the judgment of a bench of five Judges in the case of *Ibrahim Saibo v. Mansoor* <sup>1</sup>:—" S. 13 says ' no action or proceedings for ejection of the tenant of any premises to which this Act applies shall be instituted in or entertained by any Court unless the Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings' except in certain specified cases. Any decree entered in an action in which such authority, being necessary, has not been obtained would be a nullity because a Court acting without such authority would be acting without jurisdiction. It has to be noted that it is not competent for a defendant to contract out of such a requirement or by waiver tacit or express to obviate the necessity for compliance with it. There may be other cases where there is a failure of jurisdiction. Such pleas would be open to a sub-tenant in an inquiry under s. 327 or in a separate action brought against him.

Something more has to be said about the statutory protection given by the Act to a tenant and of which a sub-tenant may avail himself. A tenant can never contract out of the protection afforded. It follows from this that he can at any moment recall a promise to surrender possession".

I am, with much respect, in entire agreement with those observations concerning the nature and scope of the protection afforded to tenants and sub-tenants by the Rent Restriction Act, but I find nothing in them which casts any doubt upon the correctness of the decision in the earlier case of *Nugera v. Richardson* <sup>2</sup>. There, after the plaint was filed, the defendant (whether in waiver or ignorance of his right to protection) agreed to a compromise by which he was enabled to continue in possession for a considerable period; and Gratiaen J. forcefully resisted his attempt on the approach of "D-Day" to have the agreed decree set aside on the ground of lack of jurisdiction. The principle to be derived from these judgments (read together) is that " while parties cannot by agreement give the Courts jurisdiction which the Legislature has enacted that they are not to have ", nevertheless a compromise after action which is advantageous to a party and secured to him by a decree subsequently entered of consent is not void as offending the prohibition against waiver. *A fortiori*, a person who, after a decree has been entered, consents to be bound by it upon conditions advantageous to himself and embodied in the decree by adjustment, cannot subsequently resist enforcement of the decree on the score that it is invalid. The petitioners in this case had ample opportunity in June 1952 to dispute the validity of the decree entered by this Court, if indeed it could have been successfully challenged as a nullity. They chose instead to have a favourable arrangement embodied in the decree and have enjoyed the fruits of that arrangement for longer than the stipulated period, and they have thereby forfeited the protection of the statute. Moreover, their agreement in the settlement to pay *damages* during the period of permitted occupation was an admission of the fact that they were trespassers, an admission which now estops them from claiming the protection which the statute affords to those in lawful occupation.

The application is refused with costs.

*Application refused.*

<sup>1</sup> (1953) 54 N. L. R. 217 at p. 224.

<sup>2</sup> (1949) 51 N. L. R. 116.