

1939

Present : Soertsz A.C.J.

JEEVANI *v.* ARUNACHALAM CHETTIAR.

30—C. R. Colombo, 32,452.

Landlord and tenant—Agreement by tenant to carry out Municipal regulations—Closing order of premises by Municipality—Liability of tenant—Claim for remission of rent.

The defendant took certain premises on a monthly tenancy from the plaintiff and undertook at the same time to be responsible for all Municipal regulations. The Municipal authorities made a closing order in respect of a portion of the premises on the ground that the portion was unfit for human occupation, being filthy and insanitary.

Held, that the defendant was not entitled to claim a reduction of rent in consequence of the closing order, as he had failed in his obligation to maintain the premises in conformity with the Municipal regulations.

A PPEAL from an order of the Commissioner of Requests, Colombo.

V. A. Kandiah (with him *Miss Mehta*), for plaintiff, appellant.

N. E. Weerasooria, K.C. (with him *M. Somasunderam*), for defendant, respondent. *Cur adv. vult.*

May 23, 1939. SOERTSZ A.C.J.—

Stated briefly, the facts relevant to this appeal are these. The defendant took certain premises belonging to the plaintiff on a monthly tenancy from February 1, 1936, at a rental of Rs. 150. The defendant undertook to be “responsible for all Municipal regulations”.

On February 2, 1937, the Municipal authorities made a closing order in respect of a portion of these premises, on the ground that that portion was unfit for human occupation in that it was “very filthy and insanitary; gunny and plank partitions all over, walls and roof sooted, floor badly damaged, no proper dustbins, goats being tethered in the garden, and the walls of the premises in a ruinous condition”.

In consequence of this closing order, the defendant appears to have lost some of the tenants to whom he had sublet some of these rooms. In the

middle of March, 1937, he wrote to the plaintiff requesting him to take back possession of the leased premises on March 31, and he addressed a circular letter to his remaining tenants to pay rent from April to the plaintiff. Plaintiff now sues to recover rent for the months January-April. The defendant claims a remission of Rs. 100 for each of the months January-March inclusive and denies liability for April's rent in view of the notice he gave. The learned Commissioner held the defendant liable in full for January's rent, gave him a remission of Rs. 75 in respect of each of the months of February and March, and exempted him altogether from rent for April. The appeal is from that order.

Voet (19.2.23) enumerates the grounds upon which a tenant is entitled to claim a remission or reduction of rent. In brief, a tenant is so entitled if he has been deprived in whole or in part, of the use of the leased premises for the purposes for which they were leased to him, where the deprivation is caused by *vis major*, *casus fortuitus*, or the default of the landlord, but not if it is due to his own default.

In this case, there is no question of *vis major* or *casus fortuitus*. The only question is whether the closing order was due to the default of the landlord or of the tenant. Of the issues framed, the one that deals with this question is issue No. 6, "did the defendant (i.e., the tenant) undertake to conform to and be responsible for all Municipal regulations and to pay damages?" The Commissioner's answer to this issue is "I have no doubt he did". But he goes on to add "but that would not exonerate the plaintiff for having let to him a building that was unfit for human habitation. It is not suggested that the closing order was due to any act or default on 'plaintiff's' (sic) part". (I think 'defendant's' was meant.) There was no plea by the defendant that the building was not fit for human habitation when it was let to him, and there was no issue on it, and what is more there is no evidence whatever to justify such a finding. The premises were let to the defendant from February, 1936. The letter from the Public Health Department complaining of the state of the building is dated December 1, 1936, nearly ten months after the letting, and the terms of that letter suggest that the default was that of the tenant, "at present, they are very filthy and insanitary". That fact is borne out by the defendant's failure to protest against the statements made in the plaintiff's letter to him P 3.

In my opinion, therefore, the closing order was made because the defendant failed in his obligation to maintain the premises in conformity with Municipal regulations, and he is not entitled to any reduction in rent for the months of February and March.

In regard to the rent for the month of April, the Commissioner has exempted the defendant from it on the ground that he was entitled to quit without notice. I am unable to share that view. In my opinion, the plaintiff was entitled to reasonable notice, and I hold that in the circumstances of this case, the notice the defendant gave to the plaintiff was reasonable. The plaintiff is not entitled to claim rent for April.

In accordance with these findings of mine, I set aside the judgment of the Commissioner, and enter judgment for the plaintiff for Rs. 150 and half costs here and below.

Appeal allowed.