

1967

Present : Srimane, J.

K. V. K. THEIVENDRARAJAH, Appellant, and A. L. M. SANOON,
Respondent

S. C. 1 of 1966—C. R. Colombo, 87698/RE

Rent-controlled premises—Termination of notarially executed lease—Continuation of occupation by the tenant—Right of landlord to demand authorised rent—Rent Restriction Act (Cap. 274), ss. 3 (1), 14.

Where, after the termination of a notarially executed lease, the tenant continues to remain in occupation of the premises by virtue of the Rent Restriction Act, the landlord is entitled to raise the rent to the full amount permitted by the statute. Accordingly, if the tenant fails to pay the authorised rent, he is liable to be ejected on the ground of arrears of rent.

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

C. Ranganathan, Q.C., with *S. Sharvananda* and *C. Chakradaran*, for the Defendant-Appellant.

H. W. Jayewardene, Q.C., with *H. D. Tambiah* and *N. S. A. Goonetilleke*, for the Plaintiff-Respondent.

Cur. adv. vult.

August 21, 1967. SIRIMANE, J.—

The defendant was the lessee of the premises in question on deed of lease, P4, for a period of 5 years from 1.1.1957 to 31.12.1961. The plaintiff purchased these premises during the subsistence of the lease and the defendant thus became the lessee of the plaintiff. The defendant did not leave the premises on the expiry of the lease, but, seeking the protection of the Rent Restriction Act, remained in occupation as the plaintiff's "statutory tenant". (I use this term for the sake of convenience, though it has been looked upon with disfavour at times.)

The rent payable according to the terms of the lease was Rs. 45 per month (the lessee had also to pay the rates).

By P14, dated 9.4.1962, the plaintiff requested the defendant to pay Rs. 86.00 per month (which the learned Commissioner has found to be the authorised rent of the premises) as damages. He was informed that he should not pay the rates. The defendant, however, did not pay the rent demanded by the plaintiff, but continued to pay at the rate stipulated in the lease, i.e. Rs. 45 per month. The plaintiff sued him for ejectment both on the ground of arrears of rent and on the ground that the premises were reasonably required by him for the purposes of his business. He has succeeded on both grounds and the defendant has appealed.

In view of the provisions of the amending Ordinance No. 12 of 1966, it is admitted that the decree is unenforceable in so far as it is based on "reasonable requirement".

The only question is whether the defendant has been in arrears of rent.

It was conceded that if the rent or damages which the defendant was liable to pay was Rs. 45 per month he was not in arrear, but that he was in default if his liability was to pay Rs. 86.00 per month. The question for decision therefore is this—Is a landlord entitled to demand the authorised rent from a tenant after the original contract has terminated?

For the defendant, reliance was placed mainly on the decisions in three cases. The first of these was *Sideek v. Sainambu Natchiya*¹, where Gratiaen J. in the course of his judgment said, that the tenant enjoys the statutory right of occupation (after the expiry of a lease) so long as

¹(1964) 65 N. L. R. 367.

he pays the monthly rent "at the original contractual rate". But in that case the present question did not arise. In fact the tenant had offered to pay rent even at a higher rate than the contractual rate, but the landlord refused to accept any rent whatsoever. In those circumstances the learned Judge held that the tenant was protected if he paid at the contractual rate.

In the next case, *Britto v. Heenatigala*¹, it was decided that a decree for sale under the old Partition Ordinance did not affect a month to month tenancy, and the tenant could not be ejected if he continued to pay rent at the old contractual rate to the purchaser at the partition sale. There again the present question did not arise.

In the last case, *Vadivel Chetty v. Abdu*², the agreed rent was Rs. 18 per month. The landlord raised it to Rs. 29.18 *during the subsistence of the contract*, and the tenant refused to agree to pay this amount. Weerasooriya J. held that the landlord could not unilaterally raise the rent to a sum higher than that agreed upon. The landlord had thereafter given the tenant a notice to quit thus terminating the contract. An issue had been raised in the lower Court whether there was a valid termination of the contract, which issue had been answered in the affirmative. No argument had been addressed in appeal on that point and in the course of the judgment Weerasooriya J. said that he would decide the case on the footing that there was a valid termination of the contract. But, there is nothing in the judgment to indicate that the learned Judge addressed his mind to the question whether the landlord could have increased the rent (if such increase was legally permissible) *after* the termination of the contract. In fact that question did not arise at all, and the appeal was decided on an entirely different ground. The landlord in that case having consistently refused to accept Rs. 18 per month as rent had later called upon the tenant to pay for a number of months at that rate, within a very short time and filed the action a couple of days after the period granted to the tenant had expired. In those circumstances it was held that the tenant was not in arrears of rent for a month after it had become due.

Section 3 (1) of the Rent Restriction Act (Chap. 274) empowers a landlord to increase the rent up to the authorised rent, but there is no section in the Act which is applicable to the present question. Section 14 is not helpful in dealing with this problem as it only provides for the continuance of the original contract of tenancy where an action for ejectment *has been dismissed by reason of the provisions of the Act*.

Section 15 of the English Increase of Rent and Mortgage Interest (Restriction) Act, 1920, and the decisions thereon are helpful. The relevant part of that section reads as follows :—

Section 15 (1) "A tenant who by virtue of the provisions of this Act retains possession of any dwelling house to which this Act applies shall, so long as he retains possession, observe and be entitled to the

¹ (1956) 57 N. L. R. 327.

² (1953) 55 N. L. R. 67.

benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act”.

In *Phillips v. Copping*¹ it was held that the landlord of a dwelling house may raise the rent to the standard rent, provided that on terminating the tenancy due notice of his intention to do so has been given to the tenant. In the course of his judgment Maughan, L.J. said, “Since the permitted increases are additions to the standard rent there is nothing to show that the common law right of the landlord to terminate an existing tenancy and to fix the rent for the new tenancy at the standard rent is interfered with”.

In *Dean v. Bruce*², Denning L.J. said at page 928, “Once the contractual tenancy is at an end and the tenant remains in possession by virtue of the statute, the rent of the house is regulated by the statute and is not affected by terms or conditions or estoppels. On giving proper notice the landlord can raise the rent to the full amount permitted by the statute”.

In the local case, *Nadarajah v. Naidu*³, it was held that where a landlord, before claiming from his tenant a permitted increase of rent in terms of section 6 (1) (b) of the Rent Restriction Act, sells the premises, the purchaser is entitled to claim the permitted increase from the tenant. An argument advanced in that case that a permitted increase must be agreed upon between the new landlord and the tenant was rejected.

After a contract of tenancy is terminated, a tenant who wishes to remain in possession must pay the rent which the landlord may lawfully demand. He cannot be permitted, in my view, to seek the protection of the Rent Restriction Act and remain in possession, and deny the landlord the latter's right under that same Act to charge the authorised rent. If, for instance, a lease for a long period is ended by effluxion of time, when rental values of properties are very different from those that prevailed at the time the lease was entered into, it would be manifestly unfair to permit the tenant to remain in possession and insist on the landlord accepting the rent payable under the defunct contract, and deny the landlord the right to claim the rent which the law authorises him to charge.

At a late stage of the argument, in fact, in his reply to Counsel for the plaintiff-respondent, Counsel for the defendant-appellant submitted that the landlord could not ask the tenant not to pay the rates and pay them himself, and further that as the tenant had, at a certain stage, sent Rs. 85 per month to the landlord, the arrears were very small, and that the sum of Rs. 540 paid at the commencement of the lease should be taken into account to cover this sum.

¹ 152 *Law Times Reports*, page 175.

² (1951) 2 *A. E. R.* page 926.

³ (1955) 68 *N. L. R.* 230.

Once the lease expired the defendant was in the position of a monthly tenant. There was nothing to prevent the landlord from deciding to pay the rates himself and there can be several good reasons for the landlord choosing to do so. The tenant took a risk when he decided to ignore the landlord's directions.

I might state that on the question as to whether the tenant was entitled to set off any rent due against the sum of Rs. 540, it seems to me from the terms of the lease that this sum was a "deposit" by way of security for the due performance of the terms of the lease, and that such a deposit did not, in the absence of an express agreement, relieve the tenant of his obligation to pay the current rent for each month. (See *Kanapathypillai v. Dharmadasa*¹). However that may be, even having given credit for this sum, the learned Commissioner has correctly found that the tenant was still in arrears of rent within the meaning of the Act.

The appeal is dismissed with costs.

Appeal dismissed.
