

1946

Present : Nagalingam A.J.

MAHAROOF, Appellant, and ISADEEN, Respondent.

146—C. R. Colombo, 99,103.

Landlord and tenant—Allegation that premises were reasonably required by the landlord for purposes of his trade—Factors which Court should consider—Burden of proof—Rent Restriction Ordinance, No. 60 of 1942, s. 8, proviso (c).

In an action for ejection instituted in terms of proviso (c) of section 8 of the Rent Restriction Ordinance, the trial Judge, although he was of opinion that "neither the plaintiff nor the defendant proved their respective allegations", entered judgment in favour of the plaintiff without examining the question whether the premises were reasonably required by the plaintiff having regard to the situation of the defendant as well.

Held, that in the circumstances the plaintiff's action should be dismissed.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

H. W. Thambiah, for the defendant, appellant.

C. Chellappah, for the plaintiff, respondent.

Cur. adv. vult.

December 18, 1946. NAGALINGAM A.J.—

This is an appeal from a judgment of the learned Commissioner of Requests, Colombo, decreeing the ejection of the defendant-appellant from the premises of which he was tenant under the plaintiff-respondent on the ground that the premises were reasonably required by the plaintiff for the purpose of his trade in terms of section 8 proviso (c) of the Rent Restriction Ordinance.

The learned Commissioner states in his judgment, "neither the plaintiff nor the defendant proved their respective allegations". If the plaintiff, therefore, did not establish his case, as the burden clearly was on him to adduce proof of facts upon which he based his claim for relief, the obvious course was for the learned Commissioner to dismiss the plaintiff's

action. But on the contrary, the plaintiff's case has thereafter been examined and the learned Commissioner, holding that the plaintiff's request was a reasonable one and that the defendant must have known that when he signed the tenancy agreement with the plaintiff he would have to quit on one month's notice being given to him, has decreed ejectment of the defendant.

The learned Commissioner has not examined the question whether the premises were reasonably required by the plaintiff having regard to the situation of the defendant as well. It does not appear that his attention has been drawn to a series of judgments of this Court where the factors that should properly be taken into account in adjudicating upon the question whether the premises are reasonably required by the plaintiff for his occupation are set out. In *Rahim v. Jayawardene*¹ my Lord the Chief Justice held that proviso (c) to section 8 of the Rent Restriction Ordinance did not cast on the landlord the burden of establishing merely a good reason but that having regard to the words "in the opinion of the Court" which occur in the proviso the Court had to be satisfied after taking into consideration other matters such as alternative accommodation at the disposal of the landlord and the position of the tenant that the requirement was a reasonable one. In this case no attempt has been made to establish that the landlord has no alternative accommodation at his disposal or that the position of the tenant was such that his needs were not greater than those of the plaintiff. In *Abeyewardene and Nicolle*² Soertsz J. himself expressed the view that the matter of alternative accommodation was a relevant fact to be taken into account along with other facts in considering the question of reasonableness. The observations of the Chief Justice were cited with approval by Cannon J. in *Raman v. Perera*³ In *Mohamed v. Salaudeen*⁴ Rose J. followed the decision of *Abeyewardene v. Nicolle* which he stated was in accordance with the observations of the Chief Justice in *Rahim v. Jayawardene*. Ganekeratne J. in *Edmund Appuhamy v. Samarasekera*⁵ held that either landlord or tenant was entitled to lead evidence that injury might result to his health from an order for possession being refused or made or that some pecuniary loss might directly flow from being turned out from the premises, with a view to enable the Court to consider these matters before making an order under section 8 (c) of the Rent Restriction Ordinance. As I said earlier, the facts disclosed in this case not only did not show that any of the relevant matters have been considered but the Commissioner expressly states that the plaintiff has failed to prove his case.

In these circumstances it seems to me unnecessary to remit the case to the learned Commissioner for further adjudication. I would therefore allow the appeal and dismiss the plaintiff's action with costs both in this Court and in the Court below.

Appeal allowed.

¹ (1944) 45 N. L. R. 313.

² (1944) 45 N. L. R. 350.

³ (1944) 46 N. L. R. 133.

⁴ (1945) 46 N. L. R. 166.

⁵ (1945) 46 N. L. R. 310.