SABOORIYA BEGUM
V.
HASSAN

COURT OF APPEAL.
WEERASEKERA, J.AND
WIGNESWARAN, J.
C.A. NO. 305/94 F.
D.C. COLOMBO CASE NO. 4325/RE.
13 and 30 NOVEMBER 1995.

Landlord and tenant-Reasonable requirement - Ejectment - Section 22 (1) (bb) of the Rent Act, No.7 of 1972 as amended by Law, Nos. 34 of 1976, and 10 of 1977 and Act No. 55 of 1980.

In weighing the needs of the landlord and tenant in this case the following matters are relevant, it being not in dispute that the standard rent of the premises does not exceed Rs. 100/-.

(a) The landlady and her husband were much older than the tenant.

(b) The tenant had six children while the landlord had 8 children to maintain.

(c) The youngest child of the tenant 2 years old in 1984 would be about 13 or 14 years old now and still school going but the landlord had five unmarried daughters still dependent on the parents.

(d) The tenant's husband runs an eating house not far away from the premises in suit. But the landlord has to depend on the munificence of her married daughter for her family's maintenance and upkeep.

(e) The tenant's family claimed to be firmly established in the Hulfsdrop area. The landlord was forced to leave her rented house in Nugegoda for want of finances to pay rent at Rs. 1500/- per mensem. The husband of the landlord earned only Rs.2000/- per mensem as salary and was the sole breadwinner in the family.

(f) While the tenant complains that finding houses for low income groups is most difficult it applies to the landlord as well since she is a one house owner unable to get back her only house and she too belongs to the low income groups.

(g) Even if reasonable requirement has to be determined at the time of the issue of writ of ejectment the position of the tenant at the time of trial and judgment in the District Court has not got worse now nor the position of the landlord got any better now.

(h) Leaving the premises in suit at Meeraniya Street does not mean giving up the eating house business at Dam Street for the husband of the tenant because of the alternate accommodation to be found for the tenant by the Commissioner.

RE-HEARING OF APPEAL on the direction of the Supreme Court on the question of the reasonable requirement of the landlord having regard to hardship that would result to the tenant.

Harsha Soza for Defendant-Tenant-Appellant.
Ikram Mohamed for Plaintiff-Landlord-Respondent.

Cur. adv. vult.

31 January, 1996.
WIGNESWARAN, J.

Plaintiff-Landlord-Respondent (hereinafter referred to as the Landlord-Respondent) instituted this action to eject the Defendant-Tenant-Appellant (hereinafter referred to as the Tenant-Appellant) from premises No. 103, Meeraniya street, Colombo 12 on the ground of reasonable requirement in terms of section 22 (1) (bb) of the Rent Act No. 7 of 1972 as amended by Law, Nos. 34 of 1976, 10 of 1977 and Act, No. 55 of 1980.

By judgment dated 26.6.84 the learned Additional District Judge Colombo held in favour of the landlord Respondent.

The Tenant-Appellant's appeal against the said judgment dated 26.6.84 to the Court of Appeal was dismissed on 16.10.91.

An appeal was made thereafter to the Supreme Court by the Tenant-Appellant against the said dismissal dated 16.10.91 on special leave to appeal in that behalf having been obtained in the first instance.

By judgment dated 10.10.94 the Supreme Court set aside the judgment of the Court of Appeal and directed this Court to hear and determine afresh the question of reasonable requirement. Apparently the findings of the Court of Appeal on the other matters urged before it have been accepted or affirmed by the Supreme Court.

The relevant portion of the judgment of the Supreme Court dated 10.10.94 states as follows :-

> " We are of the view that the reasonable requirement of the landlord ought to be considered having regard to hardship that would result to the tenant."

The Supreme Court in its order directed this Court to consider any resulting hardship to the tenant as well. This direction seems to have been the outcome of the following observation made by the Court of Appeal in its order dated 16.10.91 :-

> "..... we are of opinion that the reasonable requirement of the premises by the landlord only is relevant as there is no provision in the Rent Act to consider reasonable requirement of the premises by the tenant."

Thus the matter before this Court to be decided centres around the question as to whether the judgment of the learned Additional District Judge dated 26.6.84 was justified on the evidence adduced, taking into account the relative hardships faced by both the landlord and tenant.

The facts in this regard which the learned Counsel for the Appellant alleges should have been taken into account by the learned Additional District Judge are as follows :-

(i) The tenant was 37 years of age in1984. She had six children. (Eldest 20 years and youngest 2 years).

(ii) Of them probably only three are now independent and others school going.

(iii) The youngest who was two years in 1984 must be now attending Hussainiya Vidyalaya. Hulftsdrop situated close by.

(iv) The husband of the tenant runs a Rice Packet Shop at nearby Dam Street. (Two sons work with the father).

(v) The tenant's family has been firmly established in the Meeraniya Street area for a long period of time and if uprooted

from the present environment it would have an adverse effect on the family.

(vi) Finding another house for low income groups is most difficult though the tenant in this instance had not looked for alternative accommodation. (*Abeysekera v. Carolis*)[1] was referred to in order to point out that looking for alternative accommodation is not a decisive factor)

(vii) Reasonable requirement has to be determined not as at the date of institution of action but at the conclusion of the trial. This was amplified by the learned Counsel to mean the time at which Court is required to make an ejectment order. (*Ismail v. Herft.*[2] *Swamy v. M.D. Gunawardene*[3] *Rahim v. M.D. Gunasena Corporation Ltd.*[4] and *Weerasena v. Mathupala*[5] were mentioned in this connection).

The learned Counsel for the Landlord-Respondent has referred to the following facts :-

(i) The Landlord-Respondent has 8 children of whom five are unmarried girls.

(ii) The five unmarried daughters are living with their parents in the house belonging to the landlord's married eldest daughter.

(iii) The Landlord-Respondent and family shifted to the house of the eldest daughter when they found payment of Rs. 1,500/- per month as rent to premises No. 282/16, High Level Road, Nugegoda difficult.

(iv) Husband of the Landlord-Respondent the only bread-winner in the family received Rs. 2,000/- as salary as a stenographer.

(v) Difficulty of residing with the family of a married daughter.

(vi) The Landlord-Respondent and her family need the premises in suit as a residence for themselves as they own no other house.

The learned Counsel for the Landlord-Respondent also brought to the notice of this Court the fact that no writ of ejectment could be issued in this case (since the standard rent does not exceed Rs. 100/- per month) until alternative accommodation is provided by the Com-

missioner of National Housing in terms of the law. In this regard the far-reaching decision of *Mowjood v. Pussadeniya and Another* [6] was referred to.

It was also argued that the *bonafides* of the Tenant-Appellant were in question for the following reasons :-

(i) She had no intention whatsoever to handover premises in suit to the landlord.

(ii) She had no intention to occupy an alternate house that might be provided (by the Commissioner of National Housing).

(iii) She had not looked for any alternate accommodation.

The tenant appellant's reply at page 74 of the brief was referred to in this connection. Her answer was as follows:-

මගේ පිරිමි ළමයි දෙදෙනා බත් කඩේ සිටිනවා. මේ ළමයි දෙදෙනා පදිංචිව සිටින්නේ නිවසේය. පැමිණිලිකාරියට විවාහ වී නැති ගැහැණු දරුවන් පස්දෙනෙක් සිටිනවාද කියා මම දන්නේ නැහැ. මම කිසි කලක වෙනත් නිවසක් සොයා බැලුවේ නැහැ. මම වෙනත් නිවසකට යන්නේ නැත. මම අදහස් කරන්නේ මෙම නිවසේම පදිංචිව සිටීමට. වෙනත් නිවසක් ලැබෙනවා නම් ඒ නිවසට පදිංචියට යන්නේ නැත. ගෙවල් හිමියාට ආපසු දෙන්න බලාපොරොත්තුවක්ද නැත.

It was further pointed out by the learned Counsel for the Landlord-Respondent that no serious consequences that would ensue on the entering of a decree for ejectment had been referred to. In any event, it was pointed out that the tenant was protected until alternate accommodation was provided by the Commissioner of National Housing.

These submissions would now be examined.

This action was instituted under the provisions of section 22 (1) (bb) of the Rent Act which runs as follows :-

"22. (1) Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises the standard rent (determined under section 4) of which for a month does not exceed one hundred rupees shall be instituted in or entertained by any Court, unless where-

(bb) Such premises, being premises which have been let to the tenant prior to the date of commencement of this Act, are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord.

(1A) Notwithstanding anything in subsection (1), the landlord of any premises referred to in paragraph (bb) of that subsection shall not be entitled to institute any action or proceedings for the ejectment of the tenant of such premises on the ground that such premises are required for occupation as a residence for himself or any member of his family. If such landlord is the owner of more than one residential premises and unless such landlord has caused notice of such action or proceedings to be served on the Commissioner for National Housing.

(1B) Where any action or proceedings for the ejectment of the tenant of any premises referred to in paragraph (bb) of subsection (1) is or are instituted in any Court, on the ground that such premises are required for occupation as a residence for the landlord or any member of the family of the landlord, such action or proceedings shall have priority over all other business of that court.

(1C) Where a decree for the ejectment of the tenant of any premises referred to in paragraph (bb) of subsection (1) is entered by any court on the ground that such premises are reasonably required for occupation as a residence for the landlord or any member of the family of such landlord no writ in execution of such decree shall be issued by such court until after the Commissioner for National Housing has notified to such court that he is able to provide alternate accommodation for such tenant.

(1D) Notwithstanding anything in any other law, where a writ in execution of a decree for the ejectment of the tenant of any premises referred to in paragraph (bb) of subsection (1) is issued by any court, the execution of such writ shall not be stayed in any manner by reason of any steps taken or proposed to be commenced in any court with a view to questioning, varying or setting aside such writ.

(1E) In any proceeding under subsection (1C) the court shall not inquire into the adequacy or the suitability of the alternate accommodation offered by the Commissioner for National Housing."

Dr. Justice R.F. Dias in the case of *Mendis v. Ferdinands* [7] set out three categories of comparative needs as between a landlord and a tenant which may be considered. He said,

(i) Where the hardship of the landlord is equally balanced with that of the tenant the landlord's claim must prevail :

(ii) Where the hardship to the landlord outweighs the hardship to the tenant, the landlord's claim must prevail :

(iii) Where the hardship to tenant outweighs the hardship to the landlord, the landlord's action must be dismissed.

In deciding whether or not premises are reasonably required for occupation as a residence by the landlord or a member of his or her family, Justice Dias went on to say that it is the duty of the Judge in forming an opinion, to not only ascertain whether the desire of the landlord is a reasonable one but also to be satisfied on various other matters like,

(a) what alternative occupation is available to the tenant;
(b) the position of the tenant, and
(c) the relative positions of the Plaintiff and the Defendant.

It is the duty of Court, he said, not only to take into consideration the situation of the landlord but also that of the tenant together with any factors which may be directly relevant to the acquisition of the premises by the landlord.

It was held in the case of *A.R.M.L.Thamby Lebbe v. Ramasamy* [8] that the *bonafides* of a tenant's conduct should also be considered.

It may also be not out of place at this stage to refer to certain passages from the decision in *Mowjood v. Pussadeniya and Another* [6]

pertaining to alternate accommodation mentioned in section 22(1) (c).

Chief Justice Sharvananda at page 294 stated as follows :-

"To treat the words 'alternative accommodation' as being totally unqualified does not, in my view give effect to the intention of the legislature. The solicitude shown by Parliament to tenants of premises whose standard rent does not exceed one hundred rupees is manifest. In the case of a tenant of premises whose standard rent exceeds one hundred rupees, the landlord may institute action for the ejectment of the tenant on the ground of his reasonable requirement and on obtaining a decree for ejectment can have him evicted and thrown on the streets, regardless of whether any alternative accommodation is available to him to shift to or not. Parliament, in the case of tenants of premises of the other category has taken them under its protective wings, may be in view of their economic circumstances, and enjoined that such tenants should not be rendered homeless, for no fault of theirs but should be offered shelter by making available to them alternative accommodation before writ of execution is issued.

In view of this social objective, the needs and circumstances of the tenant ought to have some relevance if the offer of alternative accommodation is to be meaningful and not be illusory. The accommodation offered to him must be habitable and appropriate to him and the members of his family. It must be appropriate for a family of his size and must have the elementary amenities enjoyed by him in the house occupied by him. It must not be located in a far off area with which he has no local connection, an area where, because of his religion, race or caste etc., it is unsafe for him to dwell. The nature of the environment where the proposed accommodation is located is a relevant consideration in determining whether the new accommodation can fairly be described as 'alternative'. The alternative accommodation must be roughly comparable with the existing accommodation in the matter of basic amenities, rental and appropriateness so that the tenant could continue to lead the mode of life which he had led in the premises from which he is to be ejected. The tenant however should not expect a better dwelling house than that from which he is to be ejected."

Thus in carrying out the direction of the Supreme Court in respect of this case it would be useful to keep in mind the above mentioned observations made in similar cases. This Court will now proceed to scrutinize the submissions made by Counsel for the Tenant-Appellant and Landlord- Respondent.

In comparison,

(a) While the Tenant- Appellant was 37 years of age in 1984 the husband of the landlord was 73 years old. The landlord could not have been very much younger.

(b) While the tenant Appellant had six children to maintain, the landlord had 8 children.

(c) The youngest child of the tenant Appellant who was 2 years old in 1984 may now be 13 to 14 years and still school going. But the landlord has five (unmarried) daughters still dependant on their parents.

(d) While the Tenant-Appellant's husband runs an eating house not far away from the premises in suit, the Landlord-Respondent has to depend on the munificence of her married daughter for her family's maintenance and upkeep.

(e) While the Tenant-Appellant's family claimed to be firmly established in the Hulftsdorp area, the Landlord-Respondent was forced to leave her rented house in Nugegoda for want of finances to pay rent at Rs. 1,500/- per mensem. The husband of the landlord earned only Rs. 2,000/- per mensem as salary and was the sole breadwinner in the family.

(f) While the Tenant-Appellant complains that finding houses for low income groups is most difficult it applies to the Landlord-Respondent as well since she is a one house owner unable to get back her only house and she too belongs to the low income groups.

(g) Even if reasonable requirement has to be determined at the time of the issue of writ of ejectment the position of the Tenant-Appellant at the time of trial and judgment in the District Court has not got

any worse now nor the position of the Landlord-Respondent any better now.

It was argued on behalf of the Tenant-Appellant that leaving Hulftsdorp would mean leaving a lucrative business set up at Dam Street by the husband of the Tenant-Appellant with her two sons.

Leaving the premiss in suit at Meeraniya Street does not mean giving up the eating house business set up at Dam Street. According to the decision of the Supreme Court in *Mowjood v. Pussadeniya and Another* (6) the alternate accommodation to be found for the Tenant-Appellant by the Commissioner of National Housing would not take him to a very far off place away from his area of business. A decree for ejectment would not throw the Tenant-Appellant on the streets. Adequate alternate accommodation would have to be provided by the Commissioner of National Housing before the writ of ejectment could issue.

Thus there is no doubt that on a comparative analysis of the hardships to the landlord and the tenant in this instance, the hardships of the landlord and her family seems to outweigh the hardships to the tenant and her family.

In any event even if the hardship of the landlord is equally balanced with that of the tenant, the landlord's claim must prevail. The fact that no writ of ejectment could issue until alternate accommodation in terms of the Supreme Court decision in *Mowjood v. Pussadeniya and Another*(6) is provided by the Commissioner of National Housing should also be necessarily considered by Court. The representative of the Commissioner of National Housing at page 67 of the brief stated as follows :-

> විත්තිකාරිය ප්‍රකාශ කර තිබෙනවා. එම ප්‍රකාශනයේ 2.6.81 වෙනි දින විත්තිකාරිය ඇයගේ පදිංචිය සඳහා ජාතික නිවාස කොමසාරිස්තුමාගෙන් ස්ථානයක් ඉල්ලා තිබෙනවා. විත්තිකාරියට විරුද්ධව මෙම අධිකරණයෙන් තීරණයක් ලැබුණොත් ජාතික නිවාස කොමසාරිස්තුමා විසින් විත්තිකාරියට නිවාසයක් සපයනු ලැබේ. මෙපමණ කල් ජාතික නිවාස කොමසාරිස් විසින් නිවාස සපයා ඇත්තේ 30 ක් පමණයි.
>
> නවුවේ තින්දු 300 කට පමණය.

Thus it would seem that at the date of giving evidence although about 300 decrees had been entered by Courts where the Commissioner of National Housing had to find alternate accommodation only about 30 tenants had been found suitable alternate accommodation. Others continued to occupy their premises in suit. The tenant is thus in a protected position. The Supreme Court held in *Abeysekera v. Carolis*[1] that the certainty of providing alternative accommodation by the Commissioner of National Housing to the tenant is a factor that the Court should take into consideration in determining the reasonableness of a landlord's requirement.

In comparison to the protected tenant the landlord has no security of a roof above her head. Her family's future depends on the goodwill of her married daughter.

Again the financial position of the Tenant-Appellant seems better than the Landlord-Respondent. While the landlord's husband (sole breadwinner) earned a salary around Rs. 2,000/- per month the husband of the tenant carried on a lucrative eating house business with his 2 sons.

Finally there is also the question of *bonafides* of the Tenant-Appellant to be considered in the light of the reply given by her at page 74 of the brief earlier reproduced in this order.

Justice Abdul Cader in *Alousius v. Pillaipody* [9] held following the decisions in *Abdeen v. Niller and Co. Ltd.*[10] and *A.R.M.L. Thamby Lebbe v. Ramasamy*[8] (*supra*) that a tenant's refusal to make an effort to obtain alternate premises will tilt the scales in favour of the landlord.

In the light of all these facts judgment of the learned Additional District Judge dated 26.6.84 seems correct and reasonable and therefore this Court holds in favour of the Landlord-Respondent and dismisses the appeal with taxed costs payable by Tenant-Respondent.

L.H.G. WEERASEKERA, J. - I agree.

Appeal dismissed.