

1948

Present : Nagalingam J.

ABDEEN, Appellant; *and* MILLER & CO., LTD., Respondent.

S. C. 56—C. R. Colombo, 6,402.

Rent Restriction Ordinance—Premises required by plaintiff—Alternative accommodation available to defendant—No effort to secure it—Plaintiff entitled to ejectment—Section 8 (c)—Ordinance No. 60 of 1942.

Where a landlord wants the premises for the purpose of his business and the tenant has made no effort to secure other accommodation which might have been available, the landlord is entitled to a decree for ejectment under section 8 (c) of the Rent Restriction Ordinance.

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

H. V. Perera, K.C., with *M. A. M. Hussein*, for plaintiff, appellant.

S. J. Kadirgamer, for defendant, respondent.

Cur. adv. vult.

November 12, 1948. NAGALINGAM J.—

The Commissioner of Requests has dismissed the appellant's claim to have the defendant company ejected from certain premises of which the latter was tenant under the former. The sole point that arises for determination in this case is whether the landlord, the appellant, has in terms of section 8 (c) of the Rent Restriction Ordinance, No. 60 of 1942, been able to make out a case from which the Court could come to the conclusion that the premises are reasonably required for the purposes of the trade or business of the plaintiff. That the plaintiff is a wealthy landowner owning property in the Fort, Pettah and Maradana, not to enumerate all his other possessions, is not in dispute. That he is also one who carries on business in the purchase and sale of rubber is equally beyond controversy. He also alleges that he is engaged in an import and export trade and that although he is even now dealing in tea and importing large quantities of goods, he is anxious to expand his tea business by opening a new line of business in respect of that commodity for the purpose of which he requires storage accommodation and that of the several properties owned by him, the most suitable and the one which would cause the least inconvenience to any of his tenants is the premises rented out to the defendant. The plaintiff therefore says he gave notice to the defendant terminating the tenancy. All the other properties of the plaintiff are in occupation of tenants who carry on business in them and those tenants would be entitled to claim the benefit of the provisions of the Rent Restriction Ordinance to the same extent as the tenant in the case of *Gunasena v. Sangaralingam Pillai*¹.

On behalf of the defendant company, however, it was suggested that the plaintiff did not require the premises for any *bona fide* purpose of his own, but that his sole interest in wanting to obtain possession of the premises was due to a desire on his part to let out the premises at a higher rental, meaning thereby a rental in excess of that permitted under the Ordinance. The learned Commissioner observes that he is "not satisfied on the evidence before him that the plaintiff required the premises *bona fide* for the purpose of his business" and without going further into any detailed examination of any question affecting the availability of alternative accommodation to the defendant Company has dismissed the plaintiff's action.

It has been strenuously contended that there was no material upon which the learned Commissioner could have come to this conclusion. The Commissioner seems to have been influenced by the suggestion referred to earlier that this was a *mala fide* attempt on the part of the

¹ (1948) 49 N. L. R. 473.

plaintiff to terminate the defendant company's tenancy to secure a higher rental. The only basis for this suggestion was an allegation that the defendant had claimed rent at Rs. 225 while the rent payable under the Ordinance was only Rs. 150 at the time he made the demand. The plaintiff denied that he ever demanded any higher rent than what was allowed to him under the law and was able to establish that the sum of Rs. 225 claimed by him properly represented one month's rent of Rs. 150 and a sum of Rs. 75 being arrears in respect of the rent for five previous months during which period the defendant Company had paid a lower rent than what was allowed under the Ordinance. Notwithstanding this clear and incontrovertible explanation on the part of the plaintiff, which was not thereafter pursued by defendant Company's Counsel, the suggestion of the defendant Company appears to have taken deep root in the mind of the learned Commissioner.

The learned Commissioner also took the view that the plaintiff's evidence should have been corroborated in regard to the extent of the business carried on by him and to the necessity of his wanting these premises for the purpose of his own business. No corroboration would have been possible from any outside sources unless it be that the plaintiff may have been expected to produce all his business correspondence and place them before Court. Counsel for the plaintiff contends that there was no reason for the plaintiff to anticipate that his evidence would not be accepted. The case of the plaintiff was contrasted with that of a lessee who may want to make a few rupees more by turning out a tenant in occupation and re-letting it to another, but here was a very wealthy man to whom a few rupees would not have offered such a large inducement as to make him perpetrate an offence under the statute. On the other hand the learned Commissioner seems to have been satisfied with the sole and uncorroborated testimony of the Accountant of the defendant Company who, although he had been in the firm for twenty years, was unable to answer a simple question put to him in cross-examination, to which I shall advert presently. Considering the position of the plaintiff and the defendant Company's Accountant there can be little doubt but that the plaintiff is in a much better position in life and enjoys a status much higher than that of the Accountant. I am not prepared to hold that the plaintiff's evidence should not be taken at its face value, especially as that evidence remained unshaken under cross-examination, and the Commissioner has not disbelieved the evidence of the plaintiff, which he very well could not have done.

In the view I have taken of the plaintiff's case, it becomes necessary to consider in view of the decision of *Gunasena v. Sangaralingam Pillai* (*supra*) what alternative accommodation is available to the defendant Company. The defendant Company is one which is the lessee or owner of very large premises—premises so large for its own business that it has deemed it necessary to sublet various portions of the property to other tenants. The premises in question are used by the defendant Company as a canteen or a recreation room for the benefit of its clerks. The Accountant of the defendant Company stated that he had advertised in the papers for alternative accommodation but obtained no response. The matter was probed further and he was asked the question to which

I have already made reference, namely, whether if the defendant Company sent out one of its sub-tenants, there would be alternative accommodation available to run the canteen for the clerks. The Accountant took umbrage under the statement that he could not answer that question. If this answer of his is correct, it is obvious that as the defendant Company has put him forward as a responsible officer who could conduct its litigation, it must follow that his inability to answer can only mean that no serious or determined efforts have been made to find alternative accommodation apart from a perfunctory notice inserted in the press in the hope that that action by itself would pass muster in a Court of law.

The position, therefore, is that the plaintiff wants the premises for the purposes of his business, and the defendant Company has accommodation of its own which would serve its needs just as well as the plaintiff's premises, but that the defendant Company has made no effort to take steps to secure such accommodation.

In this state of facts, it will be unreasonable to deny the plaintiff his claim. I would therefore set aside the judgment of the Commissioner of Requests and allow the appeal with costs in both Courts.

Appeal allowed.
