COURT OF APPEAL

Aloysius
V.
Pillaipody

C.A. (S.C) 72/77 — L/1167 — M.C. Civil Jaffna

Rent Act Section 4 (5), 22(2), 34 – Reasonable Requirement – Refusal of tenant to look for alternative accommodation – Determination of authorized rent.

A premises bearing Assmt. No. 32 was described as a tiled house in 1941 and its annual value was given as Rs. 720/-.

In 1956, the No. of the premises was changed to 49 and the description of the premises was changed to tiled boutique. At the same time the annual value was increased to Rs. 1,173/-.

The question that arose was when was the premises first assessed.

It was also contended on behalf of the Plaintiff Respondent that the premises which he bought eight months earlier while the tenant was in occupation was required by him to commence a new business.

Plaintiff further stated that since the Defendant Appellant had taken no steps whatsoever to look for alternative accommodation despite the availability of suitable accommodation in the immediate neighbourhood he was entitled to judgment.

Held 1) that the premises were assessed for the first time as residential premises in 1941 and as business premises for the first time in 1956.

2) that taking into consideration the defendant appellant's refusal to look for alternative accommodation the requirement of the plaintiff respondent was reasonable.

APPLICATION for leave to appeal from the order of the Magistrate of Jaffna.

Argued on: 7.12.1981
8.12.1981 &
9.12.1981.
Decided on: 10.2.1982.

Cur. adv. vult.

ABDUL CADER. J.

The plaintiff sued the defendant for ejectment from the premises in suit on the ground that he required the premises for his business. It was admitted that the premises are governed by the Rent Act and that the plaintiff became the owner of the premises when the defendant was in occupation as a tenant. The learned District Judge held that the plaintiff required the premises for his business under Section 22 (6) of Act No. 7 of 1972 and, therefore, gave judgment for the plaintiff for ejectment and damages from the date of plaint till ejectment with costs. He also declared that if the plaintiff failed to occupy the premises in terms of Section 22 (8) (9) of Act No. 7, of 1972, the defendant would be entitled to take necessary steps in terms of the law. It is against this judgment that the defendant has appealed.

The dispute as regards the validity of the notice to quit was not pursued before us.

Counsel for the plaintiff-respondent conceded that the plaintiff could not maintain this action in terms of Section 22 (1) as the plaintiff had purchased this land over the head of the defendant who was then the tenant, but Counsel maintained that this action was maintainable and correctly decided in terms of Section 22(2) which reads as follows:

> "Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of-
>
> (i) .....
> (ii) any business premises the standard rent (determined under section 4) of which for a month exceeds one

hundred rupees and the annual value of which does not exceed the relevant amount,

shall be instituted in or entertained by any court, unless where –

(a) .....

(b) the premises are, in the opinion of the court, reasonably required ..... for the purposes of the trade, business, profession, vocation or employment of the landlord;"

Counsel for the appellant agreed that in view of Section 22(7), this action falls within subsection (2)(ii) and the plaintiff can succeed only if the plaintiff establishes the ingredients in that subsection.

It was common ground that the annual value of the premises does not exceed the relevant amount and that these are business premises. Therefore, the two matters in dispute were:-

(1) whether the standard rent of these premises is below or above Rs. 100/-. Counsel for the respondent agreed that if the Court holds that the standard rent is below Rs.100/-, the plaintiff's action will fail.

(2) has the plaintiff established reasonable requirement for the purposes of his trade or business?

The plaintiff applied to the Rent Control Board on 14th September, 1974, to determine the authorized rent of these premises and the Rent Control Board determined the standard rent at Rs. 1319/64 per year and authorized rent at Rs.1532/36. Therefore, the authorized monthly rent would be Rs.127/69. The plaintiff appealed against this order to the Board of Review, but, unfortunately, the Board of Review has failed to make its order.

Counsel for the respondent submitted that the application to the Rent Board was under Section 4 (5) (a) and that the appellant was bound by the decision of the Rent Control Board in terms of that subsection which reads as follows:-

(a) "where any premises the annual value of which does not exceed the relevant amount are first assessed or first

separately assessed after the first day of January, 1949; or
(b) .....
(c) .....

the Board may ....on application made by the tenant .....fix in consultation with the appropriate local authority, as the standard rent per annum of such premises, such amount as in the opinion of the board is fair and reasonable; and where an amount has been fixed by the board as the standard rent under this sub-section such *amount shall be deemed to be the standard rent of such premises and shall not thereafter be varied.*"

He submitted that these premises were "first assessed" or first separately assessed in 1956 on a change of character from residential to business premises.

It is clear from P2 that the appellant wanted the Board "to determine the authorized rent of the said premises" - paragraphs 7 and 8 of P2, and it is the authorized rent that the Board determined (P1) in terms of Section 34.

Counsel for the respondent referred us to the information contained in P1 as regards the standard rent. He submitted, therefore, that the Board "fixed" this figure as the standard rent on that application. But that was incidental to the determination of the authorized rent, which could be done only after the determination of the standard rent. In terms of Section 34, the Board is empowered "to determine the amount of authorized rent of the premises." Neither the appellant nor the Board had been in any misapprehension as regards the Section under which the application was made and the determination was made by the Board. I hold, therefore, that Section 4 (5) (a) will not apply and, therefore, there is no binding order against the defendant. In any event, I do not agree that the Rent Board fixed the standard rent of these premises on a first assessment of these premises. It appears to me that this Section is intended for some other circumstances as,for instance, where the premises are assessed for the first time when the tenant is in occupation and he complains to the Board that the annual value assessed is excessive. That is the reason for the rent to be fixed "in consultation with the apropriate local authority." I also take the view that a "first separate assessement"

takes place when the premises are "sub-let or occupied in separate parts." In this case, there was no question of any separate assessment. The premises remain one undivided whole.

The respondent having failed in respect of his submission that Section 4 (5)(a) applies and the assessment by the Board binds the defendant, it has now become necessary for me to decide what the standard rent is. Section 4 (1) of the Rent Act reads as follows:-

> "The standard rent per annum of any residential premises ..... and of any business premises ..... means-
>
> (a) the amount of the annual value of such premises as specified in the assessment in force during the month of November, 1941, or ..... ;or
>
> (b) if the rates ..... are ..... payable by the landlord, the aggregate of the amount determined under paragraph (a) and of the amount payable per annum by way of rates."

Subsections 2, 3 and 4 of section 4 refer to residential premises. Section 2(4) expressly distinguishes residential from business premises. Business premises are defined as premises other than residential premises. This is a substantial distinction that runs through the entire Act, residential premises receiving greater protection than business premises.

In 1941, these premises bore No. 32 and was described as a tiled house with the annual value assessed at Rs.720/-. The situation did not change till 1949, when against the description of the property, there is an entry "Obj. 95" which indicates that there has been an objection as regards the description of the property, but the annual value remains the same. In 1951, the annual value was increased to Rs.960/-. There is no column for the description of property. In 1952, 1953 and 1954, the description of property is left blank and the annual value is the same, and the assessment Nos are 32 and 34. In 1956, there was a substantial change in several respects. 32 and 34 is described as an obsolete number. 49 is given as the Street number. The property is described for the first time as a tiled boutique and the annual value is increased to Rs. 1173/- and there

is a proportionate increase in the rates. I do not attach any weight to the change of assessment number because as new buildings start coming up in between existing numbers, the numbers are changed when a revision takes place. But the description from tiled house to tiled boutique and the increase in the annual value are very significant and the Rent Act makes a substantial distinction between business premises and residential premises as I have pointed out earlier. . .

Taking all these into consideration, there has been a change of character from one to the other which would necessarily involve the "first assessment" referred to in Section 4(1). When the assessment register refers to these premises as residential premises in 1941, the first assessment of these premises as residential premises would be the 1941 assessment. When the assessment register refers to these premises as business premises in 1956 for the first time, the first assessment of these premises as business premises would be the 1956 assessment. It is true that the defendant had used these premises for business even prior to 1946, but, in my view, that makes no difference on the question of determining the standard rent, which the Rent Act provides for determination by reference to annual value and rates only.

Therefore, I am of the view that for the purpose of determining the authorized rent of these premises, it is the 1956 assessment that should be taken as the starting point. Therefore, the standard rent of these premises would be Rs. 1173/- plus Rs. 146/46, totalling to Rs. 1319/64 which is the figure that was arrived at by the Rent Control Board, too.

Counsel for the defendant stated that there is no evidence that the plaintiff paid the rates and, therefore, the rates should not be added to the annual value. He submitted that if the rates are not added, even on the basis of the annual value in 1956 (Rs. 1173/-), the standard rent of the premises will be less than Rs. 100/- per month. It is true that there is no evidence that the plaintiff paid the rates. But (1) before the Rent Control Board, the defendant did not contend that he paid the rates; and the Board made order on the basis that the plaintiff paid the rates. (2) The defendant did not claim in reconvention the rates he had paid. (3) The defendant did not give evidence that he paid the rates, and (4) I find that in the last written submissions tendered by the appellant, his Counsel has

computed the standard rent on the basis that the plaintiff paid the rates. I hold that the plaintiff paid the rates, and, therefore, the standard rent for these premises is over Rs.100/-.

As regards reasonable requirement on the part of the plaintiff, Counsel for the appellant conceded that the plaintiff would be entitled to maintain this action even though he was attempting to commence a new business, but submitted that the hardships caused to the defendant would be considerable and the defendant's needs should prevail over the plaintiff's needs. The question now is as to whose requirement should prevail, weighing in the balance the plaintiff's requirement and the defendant's requirement.

In Abdeen v. Niller & Co. Ltd. reported in 50. N.L.R. 43, Nagalingam, J.

held: "Where a landlord wants a 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....."

In Thamby Lebbe v. Ramasamy reported in 68 N.L.R. 356, G.P.A.Silva, J.

held: "Where, in regard to the issue of "reasonable requirement", it is shown that the hardship of the landlord is equally balanced with that of the tenant, the landlord's claim must prevail."

That was also a case where the landlord wanted the premises for a prospective business. His decision in favour of the landlord that his requirement prevails over that of the tenant was for the reason that the defendant had admitted in cross-examination that he did not make any attempt to find out whether there were alternate premises available and that he did not propose to shift even if alternate premises were available as the premises that he occupied were more suitable to him.

Counsel for the plaintiff has drawn our attention to the evidence of the defendant. The defendant admitted in evidence that the premises which belonged to the business firm known as "Crown" was vacant. He also stated that he did not wish to rent out any

premises on Kankasanturai road; and that he did not make any attempt to rent out boutiques on Kankasanturai road; that there are, in fact, textile boutiques on that road; and that even if premises were available on Kankasanturai road, he would not take those premises. He admitted that there were shops vacant on Kankasanturai road which were once textile boutiques. He agreed that Ganeshan Saree Emporium, Cheapside, Razeen boutiques were all once textile boutiques which now remain vacant, and in all there were as many as 20 shops vacant on that road. He agreed that one of those premises, the Saree Emporium on Kankasanturai Road was just 200 yards away from his premises. He told Court that he is doing business in these premises in the belief that the shop belonged to him and that so long as he gave the rent he was entitled to remain in these premises for all time.

Later on in cross-examination, he admitted that even in Grand Bazaar where these premises are situated, there were two shops closed and that he had not made an attempt to find out who the owners of these two shops were and that one of these shops is very close to his shop.

Counsel for the appellant pointed out to the hardship that would be caused to the appellant if he is ejected.

(1) The defendant has been in occupation from 1948,
(2) This is the only shop that the appellant has to conduct his business,
(3) The plaintiff can carry on with his itinerant business,
(4) The plaintiff knew that the defendant was in the premises when he purchased the premises,
(5) For 8 months after purchase, the plaintiff did not call upon the defendant to attorn to him,
(6) The plaintiff has no children while the defendant has 14 children.

Notwithstanding all these circumstances, the learned Magistrate decided in favour of the plaintiff. I think he was right. The decision of C.P.A. Silva, J. referred to above makes it quite clear that a tenant's refusal to make an effort to obtain alternate premises will tilt the scales in favour of the landlord and I agree, with all respect, with that decision.

The appeal is dismissed with costs.

The question whether it is the 1956 assessment or the 1941 assesssment that will apply in the circumstances of this case, does not appear to be covered by authority. Therefore, we grant leave to appeal ex moro motu on this question only.

SENEVIRATNE, J. — I agree

Leave to appeal granted.