

**KODITUWAKKUARACHCHI**  
**v.**  
**PARAMANATHAN AND ANOTHER**

SUPREME COURT  
S.N. SILVA, C.J.,  
WIJETUNGA, J. AND  
GUNASEKARA, J.  
SC APPLICATION NO. 188/97  
CA NO 551/85(F)  
DC KANDY NO 1426/RE  
18<sup>TH</sup> OCTOBER, 1999

*Landlord and tenant - Ejection of tenant on the ground that he has been convicted of using the premises for an immoral or illegal purpose - Section 22(1)(d) of the Rent Act - The proper test for applying section 22(1)(d).*

The plaintiff (landlord) instituted action for the ejection of the defendants who were tenants of business premises let to them where they carried on a business of a Pharmacy under the name of "Rex Pharmacy". The ground of ejection was that the 1st defendant had been convicted of using the premises for an illegal purpose within the meaning of section 22(1)(d) of the Rent Act. The 1<sup>st</sup> defendant was convicted of refusing to sell a packet of Lactogen milk powder whilst he had 21 packets of such milk in his possession, an offence punishable section 8(2) read with section 8(6) of the Control of Prices Act.

**Held :**

The plaintiff had failed to prove the ground of ejection in section 22(1)(d) of the Rent Act. The conduct of keeping milk powder in the premises does not *per se* amount to the user of the premises for a illegal purpose. The illegal conduct was referable only to the refusal to sell.

*Per S.N. Silva, C.J.*

" . . . . the proper test would be to ascertain whether the tenant or such other person occupying as provided in the section took advantage of the rented premises and the opportunity it afforded for the immoral or illegal purpose which in turn results in the conviction for an offence".

**Cases referred to :**

1. *Saris Appuhamy v. Ceylon Tea Plantation Co. Ltd.* 55 NLR 447
2. *Asiya Umma v. Kachi Mohidden* 61 NLR 330
3. *Abraham Singho v. Ariyadasa* 71 NLR 138
4. *Shneider Sons Ltd. v. Abrahams* 1925 K B 301
5. *Asilin Nana v. K. Don William* 75 NLR 136
6. *Paranavithana v. Themanis* 77 NLR 185
7. *Sumanadasa v. Edmund* (1981) 1 Sri LR 147

**APPEAL** from the judgment of the Court of Appeal.

*A.K. Premadasa, P.C.* with *C.E. de Silva* for appellant.

*L.C. Seneviratne, P.C.* with *S. Mahenthiran* for respondents.

*Cur. adv. vult.*

January 21, 2000  
**S.N. Silva, C.J.**

The Plaintiff Respondent Appellant ("Plaintiff") has instituted this action for the ejectment of the Defendant Appellant Respondents ("Defendants") who are the tenants of the premises bearing assessment No. 23 Dalada Veediya, Kandy. The Defendants have been carrying on the business of a Pharmacy on a partnership basis under the name of "Rex Pharmacy" at the said premises. It is common ground that the standard monthly rent of the premises computed in terms of Section 4 of the Rent Act does not exceed Rs. 100/- and proceedings for ejectment were instituted on the basis of two grounds permitted under Section 22(1)(d) of the Rent Act in respect of such premises.

They are:

- (i) that the Defendants have been guilty of conduct which is a nuisance to adjoining occupiers,
- (ii) that the 1st Defendant has been convicted of using the premises for an illegal purpose.

Learned District Judge entered judgment in favour of the Plaintiff. He has come to findings in favour of the Plaintiff on both grounds stated above. But, Counsel for the Plaintiff has not sought to support the ground based on conduct amounting to a nuisance.

In the Court of appeal it has been agreed by both Counsel that the decision in the appeal on the ground of the alleged use of the premises for an illegal purpose, involves a substantial question of law. Accordingly, the Court of Appeal acted in terms of Rule 12 of the Court of Appeal (Appellate Procedure) Rules of 1990, allowed the appeal pro forma and granted leave to appeal to this Court, on the substantial question of law formulated as follows:

“Whether the conviction of the tenant under Section 8(2) and 8(6) of the Control of Prices Act, for denial by the tenant that the tenant has articles for sale by stating that he has not got the articles, fell within the ambit of section 22(1)(d) of the Rent Act.”

The 1<sup>st</sup> Defendant tenant was charged along with another in case no. 11236, Magistrates Court, Kandy, with having on 7.9.79, committed an offence punishable under Section 8(2) read with Section 8(6) of the Control of Prices Act. The offence referred to in the question of law stated above was committed by the refusal to sell a packet of Lactogen infant milk powder to a Price Control Officer (decoy) whilst he had 21 packets of such milk powder in his possession. After the prosecution was instituted, the charge was withdrawn against the other accused and the 1st Defendant pleaded guilty to the charge on 7.9.79 itself. He was accordingly convicted and fined a sum of Rs. 350/-.

The relevant provisions of Section 22(1)(d) of the Rent Act reads thus:

“Notwithstanding anything in any other law, no action or proceedings for the ejection 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-

- (a) .....
- (b) .....
- (c) .....
- (d) the tenant or any person residing or lodging with him or being his subtenant has, in the opinion of the Court, ..... been convicted of using the premises for an immoral or illegal purpose ....."

Counsel for the Plaintiff contended that the offence under Section 8(2) of the Control of Prices Act comprises of the following three ingredients :

- (i) carrying on business at any premises;
- (ii) having in possession for purpose of trade a stock of articles in respect of which the price is fixed;
- (iii) the refusal (where asked) to sell such article.

He submitted that all ingredients of the offence of which the 1<sup>st</sup> Defendant has been convicted relate to the premises being the subject of the tenancy and that this would amount to the use of the premises for an illegal purpose as contemplated by section 22(1)(d) of the Rent Act.

On the other hand, Counsel for the Defendants contended that the mere physical location of the commission of the offence and the occurrence of its constituent ingredients in the rented premises is not the determinant factor but that there should be an actual use of the rented premises in the commission of the offence to attract the ground of ejection under Section 22(1)(d) of the Rent Act.

The submissions of Counsel tend to veer towards either end of the spectrum of views that may be taken in relation to this brief by somewhat nebulous provision.

A similar ground of ejectment was contained in Section 13(1)(d) of the Rent Restriction Act No. 29. of 1948, as amended, which preceded the currently operative Rent Act No. 7 of 1972. An analogous provision was operative in the United Kingdom in section 4 of the Rent and Mortgage Interest Restriction Act of 1923, which stated that no judgment for the recovery of the possession of any dwelling house could be given unless the tenant "has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose."

An examination of some of the different cases in which an interpretation of the said provisions were drawn in issue would be a useful guide to the proper application of the ground of ejectment as set out in Section 22 (1)(d) of the Rent Act.

In the case of *Saris Appuhamy vs Ceylon Tea Plantations Co. Ltd.*,<sup>(1)</sup> the tenant was convicted of an offence under section 4 of the Protection of Produce Ordinance. The basis of the offence was that he was found in possession of 3 gunny bags containing manufactured tea dust and 8 gunny bags containing tea sweepings in such circumstances as it was reasonable to suspect that the same were not honestly in his possession and that he was unable to give a satisfactory account of his possession thereof. It appears that 11 bags were kept in the boutique being the tenanted premises in suit. Rose C.J. upheld the judgment entered against the tenant and observed (at page 448).

"It seems to me that the learned Commissioner was fully entitled to come to the view that this was a case in which the premises were made use of for the purpose of storing this tea which was reasonably suspected to have been stolen."

The next is the case of *Asiya Umma vs Kachi Mohideen*<sup>(2)</sup> in which, Sinnetamby, J considered the application of Section 13 (1)(d) of the Rent Restriction Act to a situation where the

tenant had been convicted of an offence of possession of cocaine without a licence. He allowed the appeal and set aside the judgment of the court of first instance entered in favour of the landlord on the basis that the conviction of the tenant does not come within the "compass" of section 13(1)(d) of the Act. He observed at page 332 as follows:

"section 13(1)(d) is restricted to cases in which a tenant has been convicted of keeping or using the premises let for an illegal purpose. The conviction in this case was certainly not in respect of the use or the purpose for which the premises were kept. The conviction was for possession of cocaine. There are certain cases in which the use of a house or premises for a certain purpose is itself an offence; instances that come to mind are the keeping or using a house for themselves independent of the purpose for which the premises are themselves put. Unlawful gaming, is by itself an offence separate and independent of the offence of using a building or premises for that purpose; the former is punishable under Section 2 of the Gaming Ordinance while the latter is punishable under Section 3. Likewise, under the Brothels Ordinance, a person who keeps or uses the premises for the purpose of a brothel is punishable under Section 2 of the Ordinance (Chapter 25 of the Legislative Enactments). There is thus a clear distinction between a conviction in respect of an illegal act and a conviction for keeping premises for the purpose of an illegal or immoral act. What the section of the Rent Restriction Act contemplates is a conviction for using the premises let for an illegal purpose and not the conviction of an occupant therein of an illegal act."

In the case of *Abraham Singhovs Ariyadasa*<sup>(3)</sup> Weeramantry J., considered an instance where a person permanently residing with the tenant was convicted of committing an offence of selling arrack within the premises in suit. He departed from the reasoning of *Sinnetamby J.*, following the test adopted by *Bankes L.J.*, in the case of *Shneider Sons Ltd., vs Abrahams*<sup>(4)</sup>. He observed as follows at page 140 at 141 -

“The more satisfactory test in my view would be not whether the user of the premises constitutes an essential element in the offence for which the occupier of his licensee has been convicted, but rather as Bankes L.J. .... observed ....., whether the tenant has taken advantage of the premises and the opportunity they afforded for committing the offence.”

Subsequently in *Asilin Nona vs K. Don William*<sup>(5)</sup>, Weeramantry J, considered the application of this ground of ejection to a situation where the only evidence of the conviction was an admission by the Defendant in her answer that she had been convicted in one case on a charge of possession of arrack, contrary to the provisions of the Excise Ordinance. She had also pleaded that the arrack was brought for a house party. Weeramantry J., allowed the appeal and set aside the judgment entered against the Defendant on the basis that the said conviction does not establish the ground of ejection set out in the Rent Act. At page 137 he observed as follows:

“In the case of *Abraham Singho vs Ariyadasa*, I had occasion to hold that an illegal sale of arrack on the premises in contravention of the provisions of the Excise Ordinance is a use of the premises for an illegal purpose and that a sale on a single occasion is sufficient to constitute such use. It was there pointed out that the satisfactory test would be not whether the user of the premises constitutes an essential element of the offence but whether the tenant has taken advantage of the premises and the opportunity they offered for committing the offence. As I there observed an illegal sale of arrack requires a measure of cover and there is no doubt the building had in that case been taken advantage of.

In the present case there seems to be hardly any evidence of the tenant taking advantage of the premises for the purpose of committing the offence. Unlike in the case of an illicit sale where the cover of the building is made use of

or taken advantage of for the purpose of effecting the sale, the mere offence of possession does not appear to involve taking advantage of the building as such."

In the next case of *Paranawithana vs Themanis*<sup>(6)</sup> Kretzer J held that where a tenant carried on business of a eating house in the rented premises without a licence from the Municipal Commissioner "the house is being put to a purpose forbidden by the law, and the landlord would be entitled to the ejectment of the tenant on that ground."

The case of *Sumanadasa vs Edmund*<sup>(7)</sup> relates to a situation where the inmates of the rented premises had been prosecuted in no less than 20 cases for offences under the Excise Ordinance committed in and within close vicinity of the tenanted premises.

Wanasundera J reviewed several previous judgments on the subject. He disagreed with the view expressed by Sinnetaamby J in the case referred to above on the basis that it was "a narrow interpretation" of the provisions and inconsistent with previous dicta. He has made a somewhat similar comment with regard to the second judgment of Weeramantry J referred to above in the case of *Asilin Nona vs Don William*. He cited a portion of the observation made by Weeramantry J., in the said case (which has been referred to above) and observed that if "Weeramantry J., by this statement meant that one act of possession cannot in any circumstances constitute a use of the premises within the meaning of the section, then I think he has declared the law a little too narrowly." On the facts stated Wanasundera J., held that there was no basis to interfere with the findings made against the Defendant tenant by the court of first instance and the Court of Appeal. As a general observation he stated that on the material adduced the court should draw an inference "as to whether or not the convictions were associated with the premises in such a way as to constitute user of the premises for an illegal purpose."

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In the light of the observations cited above, I would now turn to a consideration of the basis on which the relevant provisions should be applied to the facts of this case.

In applying section 22(1)(d) which permits the ejection of the tenant where the tenant or any person residing or lodging with him or being his sub-tenant has in the opinion of the court been convicted of using the premises for an immoral or illegal purpose, one has to be mindful of its purpose in the scheme of the Rent Act. The Rent Act is designed to afford a measure of protection to a tenant. It does so by restricting the amount that could be recovered by way of rent and assuring the continuance of the tenancy by limiting the grounds on which proceedings for ejection could be instituted. The rationale of the relevant provision in section 22(1)(d) is that where the tenancy is protected by law, the tenant or a person residing or lodging with him or his sub tenant, should not use premises for an immoral or illegal purpose. Where such user results in a conviction, the tenant would lose the protection afforded to him and be liable for ejection.

The word "conviction" as appearing in this section is referable to the commission of an offence by the tenant or a person residing or lodging with him or his sub tenant.

The words "immoral or illegal" pertain to the offence in respect of which the conviction is entered.

The phrase "using the premises" introduces a link between the premises and the immoral or illegal conduct in respect of which the conviction is entered.

The word "purpose" appearing at the end of the relevant provision qualifies the words "immoral" or "illegal". In the context of the preceding words of the provision, the word "purpose" should be construed as the use of premises, in order to do or perpetrate something which is immoral or illegal.

As noted above the phrase "using the premises" relates to the link between the premises and the immoral or illegal conduct in respect of which the conviction has been entered. The question as to what would amount to user of the premises in this context has been dealt with in the judgments cited above. It is clear that the mere fact that an offence was committed in the premises does not amount to use of the premises for an immoral or illegal purpose. On the other hand, it is not necessary to go so far as to establish that a use of the premises for an immoral or illegal purpose is a necessary ingredient of the offence that has been committed, as reasoned by Sinnetamby J., in *Asiya Umma's case*. The weight of authority supports the reasoning of Bankes L.J., in *Shneider's case* that the ground of ejection would be attracted if it can be established that the tenant or an occupant under him, has taken advantage of the premises and the opportunity it afforded for "an immoral or illegal purpose." When the words in the provision are construed as stated above, the proper test would be to ascertain whether the tenant or such other person occupying as provided in the section took advantage of the rented premises and the opportunity it afforded for the immoral or illegal purpose which in turn results in the conviction for an offence.

If the aforesaid test is applied to the facts of the present case it is clear that the "illegal" act is the refusal to sell the milk powder that was asked for. The submission of counsel for the Plaintiff is that the packets of milk powder in relation to which there was a refusal to sell were kept in the rented premises. There is no evidence as to where the milk powder was kept. However, assuming that the milk powder was kept in the premises, the conduct of keeping the milk powder in the premises does not *per se* amount to a user of the premises for an immoral or illegal purpose. It would indeed be legitimate to keep milk powder in such premises. The illegal conduct is referable only to the refusal to sell. Since it could not be said that the 1<sup>st</sup> Defendant has taken advantage of the premises and the opportunity afforded by it when he refused to sell the

packet of milk powder that was asked for, I am of the view that the Plaintiff has failed to discharge the burden of proof that lies on him to establish the ground of ejection in section 22(1)(d) of the Rent Act. I would answer the question of law formulated by the Court of Appeal against the plaintiff. Accordingly the Judgment dated 20.11.1985 of the Additional District Judge is set aside and the action is dismissed. The appeal had been allowed proforma in the Court of Appeal. In the circumstances this appeal is dismissed.

Considering the facts and circumstances of the case, each party would bear its own costs in respect of the trial in the District Court, proceedings in the Court of Appeal and in this Court.

**WIJETUNGA, J.** - I agree.

**GUNASEKERA, J.** - I agree.

*Appeal dismissed.*