1971 *Present :* **H. N. G. Fernando, C.J., Alles, J., and Samerawickrame, J.**

PLATÈ LTD., Appellant, *and* CEYLON THEATRES LTD., Respondent

S. C. 326/66—D. C. Colombo, 56449/RE

***Rent Restriction Act** (Cap. 274)—Sections 2 (4), 5 (2), 7, 9—Excepted premises—Position of occupier of part of such premises.*

The occupier of a part of excepted premises is not entitled to claim the protection of the Rent Restriction Act when he is sued in ejectment.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *M. L. de Silva* and *Ben Eliyatamby*, for the defendant-appellant.

C. Ranganathan, Q.C., with *W. S. Weerasooria, Gamini Dissanayake* and *K. Kanakaratnam*, for the plaintiff-respondent.

Cur. adv. vult.

December 30, 1971. SAMERAWICKRAME, J.—

The question that arises in this appeal is whether the occupier of a part of premises which are admittedly excepted premises may claim the protection of the Rent Restriction Act when sued in ejectment. The defendant appellant company was in occupation of part of premises bearing No. 267, Kollupitiya Road, Colombo, paying a monthly rental of Rs. 600·25. The annual value of premises No. 267, Kollupitiya Road as assessed by the Colombo Municipal Council was Rs. 12,000 for the year 1962 and Rs. 13,500 for the years 1963–66. The said premises No. 267 are therefore excepted premises.

Learned counsel for the defendant-appellant submitted that the part of the building of which the defendant is in occupation fell within the definition of premises in the Act. Premises are defined in the Act to mean, "any building or part of a building together with the land appertaining thereto". Section 2 (4) provides that the Act would apply to all premises in any area in which the Act is in operation which are not excepted premises. The criterion of a premises being excepted premises is the assessment of an annual value over a certain amount. As the part of the building which the defendant is in occupation has no annual value, it is submitted by learned counsel for the defendant-appellant that they are not excepted premises and are therefore premises to which the Act applies. The reference in the proviso to s. 5 (2) to premises which are "first separately assessed after the appointed date" supports this position. I was attracted by the argument of the learned counsel for the defendant-appellant. If the position is as contended for by him, it has the merit of preventing a possible abuse by owners or tenants of excepted premises letting to others a small part of the premises which if they were separate premises would clearly fall within the Act at rents quite out of proportion to rents chargeable in terms of the Act. It may however be that the remedy against such an abuse is for the Local Authority to make a separate assessment in respect of any such parts of premises let and the local authority no doubt does generally do so.

Learned counsel for the plaintiff-respondent submitted that if a premises are excepted premises the Act would not apply to any part of them. It was the intention of the Legislature not to exercise control over a certain category of premises. In respect of such premises an annual value in

excess of the amount set out in the schedule is assessed by the local authority and that annual value is in respect of the entirety of such premises and therefore covers and applies to each and every part of the premises.

After careful consideration I have come to the view that to accept the position of learned counsel for the appellant would be to give to the provisions of the Act a meaning which they were not intended to bear. The scheme of the Act suggests that it was intended that the criterion for deciding whether premises were excepted premises was to be the amount of the annual value assessed by the local authority. Once a premises were excepted premises on the application of that test there is no support to be found in the Act for the position that a part of those premises could be premises to which the Act applies unless that part was separately assessed. Section 7 provides for the aggregate rent which may be charged where premises to which the Act applies are let or occupied in separate parts which are *not separately assessed for the purpose of rates.*

There are also anomalies that will arise if parts of excepted premises which are not separately assessed are regarded as premises to which the Act applies. As there is no annual value in respect of the part, the landlord and the tenant may legally agree upon any rent and therefore at a rent even in excess of the annual value of the entire premises. This appears untoward in respect of premises governed by the Act. A part of excepted premises may be able to command a rent of over Rs. 500 per month and would, therefore, if separately assessed, be excepted premises. Merely because the assessment made by the Local Authority is in respect of the entire premises it will be protected premises. The part of the excepted premises occupied by the defendant-appellant is an instance of such a case. The monthly rental of that part of the premises is Rs. 600·25 and if the annual value of this part of the premises was assessed on that footing separately it would be excepted premises.

Learned counsel for the defendant-appellant submitted that for the purposes of the Act it was the unit of letting that should be the premises. The definitions of residential and business premises show that the nature of the occupation is relevant and is to be taken into account. There is nothing in the Act to suggest that the unit of letting is to be the premises. On the other hand the references in sections 7 and 9 to premises let in parts or in part suggest otherwise.

I am therefore of the view that the finding of the learned District Judge that the subject matter of the action was excepted premises is correct and that the order for ejectment was rightly made. The rent paid was Rs. 600·25 per month but the plaintiff claimed damages at Rs. 1,200·50 per month. The learned District Judge has granted the damages claimed. Learned counsel for the defendant-appellant submitted that there was no evidence to prove the damages and learned counsel for the plaintiff-respondent stated that he could not support the award of damages at that figure. He was content that damages should be at the rate of

Rs. 600·25 per month. The damages for the period 1.3.61 to 30.6.62 amounts to Rs. 9,604·00. It is stated in the plaint that the defendant had paid a sum of Rs. 8,403·50. The plaintiff-respondent will therefore be entitled to Rs. 1,200·50 as balance arrears of damages up to 30th June, 1962, together with further damages at Rs. 600·25 per month from 1st July, 1962, until the plaintiff is restored to possession. The defendant appellant will be entitled to credit for all other payments in respect of damages made by it. The decree entered in this case will be varied in regard to the award of damages accordingly. Subject to such variation of the decree the appeal is dismissed with costs payable to the plaintiff-respondent.

H. N. G. FERNANDO, C.J.—I agree.

ALLES, J.—I agree.

Appeal mainly dismissed.