[IN THE COURT OF APPEAL OF SRI LANKA]

1973 *Present:* **Fernando, P., Sirimane, J., and Siva Supramaniam, J.**

PLATÉ LIMITED, Appellant, *and* CEYLON THEATRES LIMITED, Respondents

APPEAL No. 7 of 1972

S. C. 326 (F)/66—D. C. Colombo, 56449/M

Rent Restriction Act (Cap. 274)—Sections 2 (4), 2 (5), 5 (2), 7 (1), 9—"Excepted premises" under the Schedule—Tenant of a portion of the premises—Whether he can claim protection of the Act—Meaning of word "premises"—Rent Restriction (Amendment) Act No. 10 of 1961, s. 11.

When a portion of certain "excepted premises" is let as a separate entity but has not been separately assessed under the provisions of the Municipal Councils Ordinance, such portion also falls under the category of "excepted premises" within the meaning of the Schedule to the Rent Restriction Act (Cap. 274).

APPEAL from a judgment of the Supreme Court reported in *(1971) 75 N. L. R. 128.*

H. W. Jayewardene, with *M. L. de Silva, Miss Ivy Marasinghe* and *J. C. Ratwatte,* for the defendant-appellant.

S. Nadesan, with *A. K. Premadasa* and *W. P. Gunatilake,* for the plaintiffs-respondents.

Cur. adv. vult.

April 5, 1973. SIVA SUPRAMANIAM, J.—

The question that arises for decision on this appeal is whether a part of larger premises which is let as a separate entity but has not been separately assessed falls within the category of "excepted premises" within the meaning of the Rent Restriction Act (Cap. 274) (hereinafter referred to as the Act) when the larger premises is "excepted premises" by reason of its annual value as assessed by the local authority.

The appellant company is the tenant of the ground floor and certain other portions of premises No. 267, Galle Road, Colombo, of which the respondent company is the landlord. The appellant carries on the business of a photographer in that part of the premises. The upstair portion of the said premises is occupied by an employee of the respondent. It is common ground that the

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whole of premises No. 267 is excepted premises within the meaning of the Act, the annual value of the said premises as assessed by the Colombo Municipality being Rs. 12,000 up to 1962, and Rs. 13,500 thereafter. In terms of the Act all premises within the Colombo Municipality the annual value of which exceeds Rs. 6,000 are "excepted premises", irrespective of whether they are residential premises or business premises. The portion of the premises No. 267 let to the appellant has not been separately assessed by the Municipality for the purpose of rates.

The respondent, after terminating the tenancy by giving due notice, instituted this action to eject the appellant from the portion of the premises that had been let to it and to recover damages. The trial judge gave judgment in favour of the respondent as prayed for. A Divisional Bench of the Supreme Court consisting of three judges affirmed the judgment and decree in regard to the ejectment of the appellant but reduced the amount decreed as damages. The appellant was granted leave to appeal to this Court.

It is urged on behalf of the appellant that the portion of premises No. 267 let to the appellant is a separate entity which is the subject matter of the contract of tenancy between the appellant and the respondent and that that separate entity is "premises to which the Act applies" within the meaning of section 2 (4) of the Act. If that argument is accepted the respondent must fail in this action so far as the ejectment of the appellant is concerned.

Section 2 (4) of the Act is as follows:

> "So long as this Act is in operation in any area, the provisions of this Act shall apply to all premises in that area not being excepted premises; and the expression "premises to which this Act applies" shall be construed accordingly."

The contention of the appellant is that the word "premises" in this section should be construed to mean the "entity which is the subject matter of the contract of tenancy" and where that entity has not been separately assessed by the local authority for the purpose of rates, it will not fall within the category of "excepted premises" and will therefore be "premises to which the Act applies". In such a case, according to counsel, the provisions of Section 5 (2) of the Act would become applicable to fix the standard rent. He cited a large number of decisions of the Supreme Court in which that Court had occasion to examine the contract of tenancy and the subject matter of the tenancy to determine whether the Act was applicable or not.

In the cases of *Packiadasan v. Marshall*[1] and *Nanayakkara v. Illangakoon*[2], the Court considered whether the Act applied to bare land or to agricultural land on which there was no building. In *Nallathamby v. Leitan*[3] the question for consideration was whether in a case where a property consisting of a house and garden had been let as one unit, it was open to the landlord to claim subsequently that the standard rent should be calculated on the basis that the premises let consisted of two parts and that only the portion on which the house stood was subject to the Act to the exclusion of the remaining bare land. At the date of these decisions there was no definition of the word "premises" in the Act and the questions that had to be resolved by the Court arose from the absence of a definition. This question was however set at rest by the legislature by enacting section 11 of the Amending Act No. 10 of 1961 which defined "premises" to mean "any building or part of a building together with the land appertaining thereto." In *Nicholashamy v. Jamis Appuhamy*[4] the Court had to consider whether what was let under the contract of tenancy was a building or a business. Similar questions arose in the cases of *Charles Appuhamy v. Abeysekera*[5], *Peries v. Jafferjee*[6], and *Sediris Singho v. Wijesinghe*[7]. In *Hepponstall v. Corea*[8], *Standard Vacuum Oil Co. v. Jayasuriya*[9] and *Hussein v. Ratnaike*[10] the Court had to determine whether the subject of the contract of tenancy had been let as a residence or for business purposes.

Learned Counsel's argument was that the above decisions showed that the Courts in Ceylon had consistently applied what he described as "the contract of tenancy test" to determine whether a particular premises was subject to the operation of the Act or exempt therefrom. Section 2 (5) of the Act provides that "the Regulations in the Schedule shall have effect for the purpose of determining the premises which shall be excepted premises for the purposes of the Act." He submitted that in applying the regulations in the Schedule, in terms of the aforesaid subsection, to determine whether any entity let is excepted premises, the Court should not proceed to apply the test of annual value under column 3 before deciding upon the nature of the premises under column 2 and that this can be done only with reference to the entity let.

[1] *(1951) 52 N. L. R. 335.*
[2] *(1959) 61 N. L. R. 211.*
[3] *(1956) 58 N. L. R. 56.*
[4] *(1950) 52 N. L. R. 137.*
[5] *(1954) 56 N. L. R. 243.*
[6] *(1959) 57 C. L. W. 30.*
[7] *(1965) 70 N. L. R. 185.*
[8] *(1952) 54 N. L. R. 214.*
[9] *(1951) 53 N. L. R. 22.*
[10] *(1967) 69 N. L. R. 421.*

A tenancy action must necessarily relate to the subject matter of the tenancy and in order to decide whether the entity let is excepted premises or not the Court must, of course, consider the nature of the premises let. But it does not follow that the word "premises" in the Act is equivalent to "the entity let". None of the cases cited is authority for such a proposition. On the other hand, the provisions of section 7 (1) as well as the whole scheme of the Act militate against such a construction.

Section 7 (1) is in the following terms:

> "Where any premises to which this Act applies are let or occupied in separate parts (whether furnished or unfurnished), which are not separately assessed for the purpose of rates, and the aggregate of the amount demanded or received as the rent for such separate parts exceeds the authorised rent of the premises, the landlord shall be deemed to have contravened the provisions of Section 3 of this Act."

It will be seen that this section envisages parts of "any premises" being let separately and where such premises is one to which the Act applies a prohibition is imposed on the landlord against recovering as rent from the tenants of the various parts a total sum in excess of the authorised rent of the whole premises. It would follow by implication that where the premises are "excepted premises" the landlord is entitled to charge any rent from the tenants of parts of the premises. Section 9 of the Act envisages any premises to which the Act applies being sublet in separate parts by a tenant and provides that, where such subletting is with the landlord's written consent, the tenant shall, in relation to each of the subtenants, be deemed for all purposes of the Act to be the landlord of the premises. The provisions of this section have no application where the premises are outside the ambit of the Act. If it was the intention of the Legislature that where any premises whether excepted premises or not, are let in parts not separately assessed, each such part should be deemed to be premises to which the Act applies, one would have expected express provision to be made to that effect.

Where the Act refers to "premises to which the Act applies" and to those which are "excepted premises", it does so with reference to the annual value as assessed by the local authority for the purpose of levying rates. In respect of premises situated in any area which is not under a local authority, the question whether the Act applies to those premises or not is determined with reference to the rent paid for the premises, subject to the

right of the rent board to declare any premises not excepted on the ground that the fair rental for the premises is below the prescribed limit.

In the case of premises situated within a Municipal area, the assessment of the annual value is done in terms of the provisions of the Municipal Councils Ordinance (Cap. 252). Under that Ordinance, " annual value " is the " annual rent which a tenant might reasonably be expected ..... to pay for any house, buildings, land or tenement ".

The contention of learned counsel for the appellant that the entity which was let to the appellant was " separate premises " which should be treated as premises which had not been assessed by a local authority for the purpose of rates, is untenable since what was let to the appellant was a portion of premises No. 267 and that portion had been included in the assessment for rates when premises No. 267 was assessed for rates. Section 5 (2) of the Act would therefore have no application to the entity let to the appellant, as no part of premises No. 267 remained unassessed. If the portion let to the appellant had been separately assessed by the Municipality, there would have been a proportionate reduction of the annual value of the premises No. 267. If the appellant company had desired to treat the portion let to it as separate premises it was open to it to have applied to the Municipality under the provisions of the Municipal Councils Ordinance to assess it separately on the basis of the use to which that part was put, namely, whether it was used for residential or business purposes. So long as the appellant failed to pursue that course, it was the main use to which the premises as a whole was put that would have determined the character of the premises for the purpose of column 2 under Regulation 2 of the schedule to the Act. In terms of column 3 the annual value of the premises would determine whether the premises is one to which the Act applies or not. In the instant case, it was immaterial whether premises No. 267 was used for the purpose of residence or for business purposes, since in either event, it was excepted premises as the annual value exceeded Rs. 6,000. Every part of premises No. 267, inclusive of the portion occupied by the appellant, was therefore excepted premises.

We are of opinion that the trial judge as well as the Supreme Court correctly decided that the entity let to the appellant was excepted premises. We dismiss the appeal with costs.

Appeal dismissed.

1** K——22375 (5/73)