

1971

*Present : Weeramantry, J.***M. ASILIN NONA, Appellant, and K. DON WILLIAM, Respondent***S.C. 188/69—C.R. Colombo, 93890/RE*

*Rent-controlled premises—Conviction of tenant for unlawful possession of arrack—
Whether the tenant can be held to have used the premises for an immoral or
illegal purpose—Rent Restriction Act.*

Where a tenant of rent-controlled residential premises has been convicted once of unlawful possession of arrack, he is not liable to be evicted by the landlord on the ground of user of the premises for an immoral or illegal purpose.

APPPEAL from a judgment of the Court of Requests, Colombo.

A. Sivagurunathan, for the defendant-appellant.

S. Parameswaran, for the plaintiff-respondent.

Cur. adv. vult.

November 10, 1971. WEERAMANTRY, J.—

The plaintiff sues the defendant in ejectment on the basis *inter alia* of user by the defendant of the premises for an illegal or immoral purpose, namely, the illicit sale of arrack.

In the course of trial it was suggested to the defendant that she had been convicted on many occasions in connection with possession of arrack. The plaintiff however, as the learned judge has observed, did not produce any records to prove these allegations and they remained unproved save for the admission of the defendant in her original answer that she had on one occasion been convicted on a charge of possession of arrack which had been brought by her for a house party. It should be added that there was an amended answer admitting this and furthermore that at the trial the defendant took up the somewhat different position that she had been asked to pay Rs. 15 to charity as she had pleaded guilty to carrying two bottles of arrack.

The defendant's version seems therefore somewhat lacking in candour, but at the same time where an allegation is made by a landlord that the premises are being used by a tenant for an illegal or immoral purpose the burden lies upon the landlord of establishing this fact. The landlord has in this case not been ready with the requisite proof of his allegations and we are left only with the evidence of a conviction for an offence the details of which are not clear but which certainly is not an offence of sale but only one of possession.

The question then arises whether such a single conviction may be the basis on which it can be held that the defendant has used the premises for an unlawful or illegal purpose.

In the case of *Abraham Singho v. Ariyadasa*¹ I had occasion to hold that an illegal sale of arrack on the premises in contravention of the provisions of the Exoise 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.

¹ (1968) 71 N. L. R. 138.

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. Moreover the premises in question were, according to the evidence, used by the defendants as a residence although they had originally been used for business purposes. Had the premises been a tea kiosk and had the charge been one of sale, one might more readily arrive at the conclusion that the premises had been taken advantage of for committing the offence.

Furthermore, in the present case there appears to be some doubt as to whether the tenant was detected having the arrack on the premises or outside them, for her version as given in her evidence is that the offence she committed was the carrying of two bottles of arrack. If this be so, the use of the premises did not constitute a material factor in the commission of the offence at all. There is in the present case not even the basic evidence that the offence did in fact take place upon the premises.

For these reasons I consider that the landlord has failed to place before the Court adequate evidence in support of his contention that the premises were used for an illegal or immoral purpose.

In view of these conclusions it does not become necessary for me to consider the further point taken on behalf of the tenant regarding the legal validity of the notice to quit.

For these reasons I would allow the appeal and dismiss the plaintiff's action with costs both here and in the court below.

Appeal allowed.
