

KITHSIRI
v
GAMALATH

COURT OF APPEAL
UDALAGAMA, J. AND
NANAYAKKARA, J.
C.A. NO. 896/92 (F)
D.C. MATUGAMA 183/RE
JUNE 14, AND
JULY 17 AND 24, 2002

Rent Act, No. 7 of 1972 – Regulations 3 and 4 – Excepted premises – Town Council ceased to exist – District Development Council – Pradeshiya Sabha – What is the local authority within which the premises were situated? Pradeshiya Sabha Act, section 221 – Were the requirements relating to Town Councils in the schedule to the Rent Act kept alive?

The plaintiff respondent instituted action seeking ejection on the ground of arrears of rent and contended that the premises were excepted premises. The defendant appellant whilst denying arrears of rent contended that the premises were governed by the provisions of the Rent Act. It was contended by the defendant-appellant that the Town Council within which the local limits of the premises were situated had been replaced by the District Development Council (D.D.C.) of Kalutara at the time action was instituted. As the D.D.C. has not been recognised as one of the local authorities for the purpose of Regulation 3, Regulation 4 would apply.

The trial judge held in favour of the plaintiff-respondent holding that the premises were excepted premises.

Held:

- (i) It is clear that for any business premises to be brought within the meaning of excepted premises – Regulation 3 – it has not only to be situated in one of the areas stipulated but also it should have an annual value exceeding the amount set out.
- (ii) It is clear that the provisions of section 221 of the Pradeshiya Sabha Act have kept the requirements relating to Town Councils in the schedule to the Rent Act alive, in spite of the fact that the Town Council has ceased to exist at the time of the institution of the action.

APPEAL from the District Court of Moratuwa.

Case referred to:

1. *Owen de Silva v K.M. N. Rani* - CA 259/94

P.A.D. Samarasekera, P.C., with *T.B. Dillimuni* for defendant-appellant.

A..K. Premadasa, P.C., with *C.E. de Silva* for plaintiff-respondent.

Cur.adv.vult.

October 16, 2002

NANAYAKKARA, J.

The plaintiff-respondent instituted action against the original 01
defendant seeking ejectment of the defendant-appellant and all
those holding under him from the premises fully described in the
schedule to the plaint on the ground of arrears of rent and dam-
ages.

The defendant-appellant in response to the averments con-
tained in the plaint filed his answer admitting tenancy and receipt of
the notice to quit but pleaded that the premises in suit were gov-
erned by the provisions of the Rent Act, No. 7 of 1972.

The case proceeded to trial on the basis of 10 issues of 10
which, seven were formulated on behalf of the plaintiff-respondent
while the rest were framed on behalf of the defendant-appellant.

At the commencement of the trial the following admissions
were recorded:

- (1) Tenancy.
- (2) The receipt of the notice to quit as pleaded in the plaint.
- (3) That the premises in suit are business premises.
- (4) The agreed rent is Rs. 125/- per month.

At the conclusion of the trial the learned District Judge
entered judgment in favour of the plaintiff-respondent.

It is from the aforesaid judgment that the defendant-appellant has preferred this appeal.

During the pendency of this appeal, as both the original plaintiff-respondent and the defendant-appellant passed away, the present plaintiff-respondent and the defendant-appellant were substituted as substituted plaintiff-respondent and substituted defendant-appellant for the purpose of the prosecution of the appeal.

At the hearing of the appeal it was contended on behalf of the defendant-appellant that the premises in suit were rent controlled and governed by the provisions of Regulation 4 to the Schedule of the Rent Act. It was also contended that the Town Council within the local limits of which the premises in suit were situated, had been replaced by the District Development Council of Kalutara at the time the action was instituted. As the District Development Council has not been recognised as one of the local authorities, within which the premises in suit should be situated for the purpose of application of Regulation 3 to the Schedule of the Rent Act, it was contended that Regulation 4 of the Schedule to the Act should apply to the facts of the present case.

The plaintiff-respondent on the other hand had contended that the premises in question were excepted premises within the meaning of Regulation 3 in the Schedule to the Rent Act and prior to the date material to the action, the original respondent let the premises in suit to the deceased defendant at a monthly rental of Rs. 125/- and in spite of the notice to quite terminating the tenancy of the defendant-appellant, continued to be in wrongful and unlawful possession of the premises causing loss and damages to the original respondent.

It appears from a careful consideration of the issues formulated and arguments advanced by the respective parties that the decision of this case depends entirely upon the answer provided to the crucial issue No. 1 framed by the plaintiff-respondent. The said issue is, "Are the premises in suit excepted premises in terms of the provisions of Regulation 3 in the Schedule to the Rent Act No. 7 of 1972?"

Therefore in order to arrive at a correct determination it would be pertinent to examine the evidence that has been led in this case

having regard to the relevant Regulations in the Schedule to the Rent Act.

It was the position of the witness Piyasena, the Revenue Inspector of Matugama Development Council, who gave evidence in this case that the Town Council within the local limits of which the premises were situated ceased to exist in the year 1961, and thereafter the premises had come within the purview of the Kalutara District Development Council for seven years before it came under the present Matugama Pradeshiya Sabha. Therefore, it is apparent that the assessment of this witness's evidence would be more important and relevant than the evidence of the other witnesses to the determination of the most fundamental issue in this case.

At this stage, it would also be helpful, if the attention is focussed on Regulation 3 of the Schedule to the Rent Act. It provides thus:

“3. Any business premises (other than premises referred to in regulation 1 or regulation 2) situated in any areas specified in column 1 hereunder shall be excepted premises for the purposes of this Act if the annual value thereof as specified in the assessment made as business premises for the purposes of any rates levied by any local authority under any written law and in force on the first day of January, 1968, or where the assessment of the annual value thereof as business premises is made for the first time after the first day of January, 1968, the annual value as specified in such assessment, exceeds the amount specified in the corresponding entry in Column 11

(1) <i>Area</i>	(11) <i>Annual Value</i>
Municipality of Colombo	Rs. 6000/-
Municipality of Kandy, Galle or any other municipality	Rs. 4000/-
Town within the meaning of the Urban Councils Ordinance	Rs. 2000/-
Town within the meaning of the Town Councils Ordinance	Rs. 1000/-

From a careful reading of the above mentioned regulation it becomes clear that for any business premises to be brought within the meaning of excepted premises in terms of Regulation 3 to the Schedule to the Rent Act it has not only to be situated in one of the areas stipulated but also it should have an annual value exceeding the amount set out in the regulation. But this regulation has to be considered in conjunction with the express provisions of section 221 of Pradeshiya Sabha Act, No. 15 of 1987 which explicitly provide thus: 100

221. A reference to any written law in operation on the date appointed under section 1 of the Act
(a) to a Town Council shall be deemed to be a reference to a Pradeshiya Sabha.

Therefore the fact that the Matugama Town Council within the local limits of which premises were originally situated ceased to exist in the year 1981 and at the time material to the action the premises in suit had been situated within the local limits of the District Development Council of Kalutara, as transpired in the course of the evidence, is not material to the determination of the crucial issue in the case. Accordingly the argument of the defendant-appellant that all questions relating to the applicability of Schedule 3 of the Rent Act in this instance have to be determined on the basis of the local authority within which the premises were situated at the time of the institution of action, cannot be sustained in the instant case. 110

The reasoning adopted in the case of *Owen de Silva v Kulatunge M. Noeline Rani*,¹ by this very court would be pertinent to this case as the facts in the present case are on all fours with the facts of that case. 120

Therefore it is clear, that the provisions of section 221 of the Pradeshiya Sabha Act have kept the requirements relating to Town Councils in the Schedule to the Rent Act alive, in spite of the fact that the Town Council has ceased to exist at the time of the institution of the action.

For the foregoing reasons, I would not disturb the judgment of the learned District Judge, and dismiss this appeal with costs.

UDALAGAMA, J. - I agree.

Appeal dismissed.