

1971 Present : Weeramantry, J., and de Kretser, J.

R. WEERAKOON, Petitioner, and I. A. C. FERNANDO
(Commissioner of National Housing) and 2 others, Respondents

S. C. 413/71—Application for Writs of Certiorari and Prohibition

Protection of Tenants (Special Provisions) Act, No. 28 of 1970—Inquiry held under s. 5 by Commissioner—Scope of Commissioner's jurisdiction—Status of a person as tenant—Duration—Section 14—" Person in occupation "

Where a tenant makes a complaint to the Commissioner of National Housing that he has been wrongfully ejected by his landlord otherwise than upon an order of Court, and the Commissioner proceeds then to hold an inquiry under the Protection of Tenants (Special Provisions) Act for the purpose of deciding whether the tenant's complaint is true, the mere fact that there is a return from the Fiscal that the tenant was ejected by him in consequence of a writ issued by Court in favour of the landlord is not sufficient to preclude the Commissioner from inquiring into the genuineness and conclusive effect of the Fiscal's Certificate.

A person who has ceased to be a common law tenant in consequence of service of a notice to quit continues nevertheless to be a " tenant " for the purpose of seeking relief from the Commissioner of National Housing, even when a judgment entered for his ejection is pending in appeal in the Supreme Court. The law protects a tenant until the final determination of a Court of law that he be ejected. Till such time, he is in lawful possession of the premises within the definition of the term " person in occupation " in section 14 of the Ordinance.

APPPLICATION for Writs of Certiorari and Prohibition.

E. R. S. R. Coomaraswamy, with *L. V. R. Fernando*, *C. Chakradaran*, *D. P. S. Gunasekera*, *M. B. Jayasinghe*, *P. B. Dillimuni* and *S. C. B. Walgampaya*, for the petitioner.

Sunil de Silva, Crown Counsel, for the 1st and 2nd respondents.

H. W. Jayewardene, Q.C., with *Gamini Dissanayake* and *D. P. Mendis*, for the 3rd respondent.

Cur. adv. vult.

August 13, 1971. WEERAMANTRY, J.—

This is an application by a landlord seeking to restrain the Commissioner of Housing from taking further proceedings in terms of the Tenants (Special Provisions) Act No. 28 of 1970, upon a complaint made to the Commissioner by the tenant.

The tenant's complaint to the Commissioner was that he had been forcibly ejected by the landlord otherwise than by due process of law, and in terms of the Act he prayed that the Commissioner of Housing should hold an inquiry into the question whether he (the tenant) had been wrongfully dispossessed.

For this purpose the tenant filed an affidavit in which he alleged that he had been ejected and dispossessed by the landlord acting through his brother-in-law and about 20 to 25 thugs whose names had yet not been ascertained, and that loss and damage was caused to the personal effects of the tenant and other occupants of the house. In this affidavit it was further alleged that on the day in question, that is 17th June 1971, between 3 and 3.30 p.m. the persons referred to had forcibly removed the gates and forced open the doors of the house and taken possession of it. Complaint had been made to the Borella Police in respect of this the very same day and the brother-in-law of the landlord had been arrested that night and held in custody.

The position of the petitioner on the other hand is that on 16th June 1971, he had obtained judgment to eject the defendant from the premises, that on the 17th of June he had obtained writ for this purpose and that on the same day the writ of ejectment was duly executed through the Fiscal's officer. In support of this contention the petitioner has produced the report of the Fiscal to court wherein the Fiscal has stated that on 17th June in the company of the plaintiff, a police sergeant and a police constable, he had proceeded to the premises in question for the execution of the writ of possession. He stated in his report to court that when he reached the premises the front gate was padlocked and the front door was closed. At the request of the plaintiff who informed him that the defendant was away and would return in a little while, the Fiscal's officer adjourned to the Police Station and returned to the premises some time later in the company of Police officers. At that time the gates and the front door of the premises were open. The tenant was also

present. According to the petitioner the Fiscal's officer duly handed over possession in these circumstances. It is the petitioner's contention that inasmuch as there has been a due return to court by the Fiscal's officer stating that he has executed writ and handed over possession to the plaintiff, this is not a matter in which the Commissioner is entitled to proceed to inquiry in terms of the Act. In brief the position of the petitioner is that the ejection of the defendant from the premises has been an ejection under an order of court and that under the act the Commissioner can only inquire into cases of ejection otherwise than upon an order of court.

It is on this basis that the petitioner has filed application in this court asking that the Commissioner should be restrained from taking further proceedings in the manner contemplated by him pursuant to the complaint of the defendant tenant.

It seem to us that the mere fact that there is a return from the Fiscal showing that there had been a delivery of possession in terms of the writ issued by court, is not sufficient to preclude the Commissioner from holding an inquiry under the relevant section, where the allegation is made to him that there has been a dispossession otherwise than upon an order of court. The truth or otherwise of the allegation so made is indeed a matter which the Commissioner would be called upon to determine, but the fact that such an allegation has been made places upon the Commissioner the duty to hold an inquiry into the matter and determine whether there has been a dispossession or not in the manner alleged. No doubt the fact that the plaintiff has in his favour a return from the Fiscal showing that there has been an execution by due process of law is a matter which the Commissioner would take into account at the inquiry, but where these facts are disputed, the mere circumstance that such a certificate exists is not conclusive, nor does it in any way deprive the Commissioner of his jurisdiction to inquire into the matter.

These are all questions of fact on which we are not called upon in these proceedings to express an opinion and whatever views we indicate in the course of this order do not in any way affect the Commissioner's undoubted jurisdiction to inquire into the merits himself.

The only other question for determination is the submission of learned counsel for the petitioner that the Commissioner is without jurisdiction to inquire into this matter unless the person dispossessed is a tenant or person in possession, for those are the persons referred to in section 5 as being entitled to the very special relief afforded by the Act. In regard to the person in possession there is also a definition clause in the Act which states that a person in possession means a person in lawful possession.

It is submitted on behalf of the petitioner that the 3rd respondent is not a tenant on the basis that his status of tenant had been terminated by the judgment entered by court. It is submitted also that he is not a person in possession, on the basis that once judgment was entered by court, he was no longer a person in lawful possession of the premises.

It is consequently submitted to us that the 3rd respondent, at the time he made application to the Commissioner, lacked the necessary capacity to make such application.

These submissions do not however commend themselves to us.

In the first place, if a person's status of tenant is brought to an end by a decree of a court of law granting ejectment to the landlord, still where the judgment of the court is itself under appeal, there is no final determination of the rights of parties. It cannot therefore be said that if there had been a status of tenancy that status had been finally brought to an end by the judgment. In this case a petition of appeal had been filed on the day subsequent to the date of judgment, that is on 17th June 1971, the very date on which the ejectment is alleged to have taken place, and there is thus no final determination of this matter.

Moreover it would not be correct to state in any event that it is by the judgment that the status of tenancy is determined, for a tenancy comes to an end not upon the judgment of the court but upon the determination of the common law tenancy by a notice to quit. Thereafter the contractual relationship is at an end, and the creation of this result is not postponed till a court grants a plaintiff a decree of ejectment.

If therefore one views the matter strictly legalistically, any tenant whose tenancy has been determined by a notice terminating the tenancy is no longer a tenant strictly so-called.

Such a view would however render manifestly unworkable the statutory provisions which the legislature has specially enacted for the protection of tenants. No tenant under notice to quit would then be able to invoke these provisions as a "tenant", and the very object of the legislature would thereby be defeated. Conscious of the injustices that would result from such a strict interpretation, the Courts have in other statutory provisions as well, adopted an interpretation of the word "tenant" so as to achieve the object of the legislature in granting relief to the tenant rather than defeat such object by too technical an interpretation. Many of the provisions of the Rent Restriction Act, which speak of a tenant are in fact provisions referring to a person who has once enjoyed the status of a tenant but has ceased to be a common law tenant whereupon the law looks upon him as nevertheless a tenant in the eye of the statute and calls him a statutory tenant in order that the Act may be rendered workable. Reference to this matter would be found in a series of judgments of this court and I need only refer in this connection to the judgment of Keuneman J. in *Gooneratne v. Thelenis*¹ wherein he held that the word "tenant" in proviso B to section 8 (now section 13) of the Act must be taken to cover not only a tenant who is in fact so at the time but also a person who had at one time occupied the position of a tenant even though at the time of action the tenancy was no longer in existence.

¹ (1946) 47 N. L. R. 433.

Similar interpretations had been given to the word "tenant" in England under the Rent Restriction Acts and Banks L.J. in *Remon v. City of London Real Property Company Limited*¹ has expressed the views as early as 1921 that in all the Rent Restriction Acts the expression "tenant" has been used in a special or peculiar sense as including a person who might be described as an ex-tenant and who had continued in occupation without any legal right to do so.

Following this line of authority we would reject the first of the contentions by which it is sought to remove the respondent from the circle of those entitled to seek relief from the Commissioner.

In regard to the second contention, that the respondent is no longer a person in lawful possession, it becomes clear again that the law protects a tenant until the final determination of a court of law that he be ejected. Till such time he is in lawful occupation of the premises. It is true he is not in occupation upon a contract of tenancy but his continued occupation till final judgment is one which the law expressly protects and is by no means an illegal occupation.

The second submission must also therefore fail.

It follows that no adequate ground has been made out before us for restraining the Commissioner from taking further proceedings.

Having regard to these considerations we dismissed this application with costs and now set out our reasons for doing so.

DE KRETZER, J.—I agree.

Application dismissed.
