

1978 Present: Pathirana, J., Weeraratne, J., and
Sharvananda, J.

ASUMA LEBBE ABDUL SATHIR, Plaintiff-Appellant

and

RAFAID UMMUM NAJEARE and ANOTHER,

Defendants-Respondents

S.C. 547/75 (F)—D.C. Negombo 387/RE

*Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of
1968—Vesting Order made under section 70(C) (3) thereof—
Tenant in occupation of premises in respect of which vesting*

order is made—Notice that authorised officer would take the possession of such premises on behalf of Bank—Is tenant liable to be evicted—Whether protected by provisions of Rent Act and Protection of Tenants (Special Provisions) Act—Title created by vesting order—Whether referable to any previous ownership or not—Meaning of term “free from all encumbrances” in section 70 (C) (3)—Rent Act No. 7 of 1972, sections 16, 17, 22—Protection of Tenants (Special Provisions) Act, No. 28 of 1970, sections 2, 4, 5.

Where residential premises are vested in the Ceylon State Mortgage Bank under a vesting order published under section 70 (C) (3) of the Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of 1968, a tenant in occupation of such premises under the purchaser in execution of a mortgage decree against the original owner of the premises is not entitled to the protection of the Rent Act No. 7 of 1972 and the Protection of Tenants (Special Provisions) Act, No. 28 of 1970. The bank or any person authorised under the said Act can take possession of such premises under the vesting order which gives the bank a title paramount against the whole world.

Cases referred to:

Britto v. Heenatigala, 51 N.L.R. 327.

Jayasinga v. Roslin Hamy, 78 N.L.R. 214.

Cur. adv. vult.

APPEAL from a judgment of the District Court, Negombo.

E. D. Wikremanayake, for the plaintiff-appellant.

J. A. L. Cooray, with Lalith Gamlath, for the 2nd defendant-respondent.

April 7, 1978. PATHIRANA, J.

Under section 70 (C) (3) of the Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of 1968 (which will be referred to hereafter as “The Act”) consequent to a determination by the 2nd defendant, the Ceylon State Mortgage Bank, that the premises in question be acquired for the purposes of Chapter VA of the Act, a vesting order was published by the Minister in the Gazette on 16.3.73 vesting in the 2nd defendant Bank the premises in question with effect from 8.3.73. Acting under section 70 (C) the Bank gave the required notice that an authorized officer would take possession of such premises for and on behalf of the Bank on a specified date, i.e. on 20.12.73. The plaintiff who was admittedly from December 1971 the tenant of the 1st defendant who was the purchaser in execution of a mortgage decree against the owner of the premises in question which are situated within the Municipal limits of Negombo and to which the Rent Act No. 7 of 1972 applies, resisted the claim of the bank and claimed the protection of the Rent Act against being evicted.

He instituted the present action for a declaration—

- (1) that he is the lawful tenant of the premises in question,
- (2) for a permanent injunction restraining the defendants from evicting him from the premises.

The 1st defendant to the action was the landlord and the 2nd defendant was the Bank. The learned District Judge rejected the plaintiff's contention and dismissed the action. The plaintiff appeals against this judgment and decree.

At the argument before us it was not disputed that the premises in suit were sold in execution of a mortgage decree entered against the original owner and was purchased by the 1st defendant and that the latter after his purchase had rented the premises to the plaintiff in December 1971. The validity of the vesting order in favour of the Bank under section 70(C) (3) is also not disputed. It was also conceded at the argument that the purpose of the property being acquired was to give possession thereof to the original owner and that the Bank was satisfied that the premises were reasonably required for his occupation as residence for himself or any member of his family in terms of section 70 (B) (2) (d) of the Act.

The question for decision of this appeal is whether a tenant of residential premises who is entitled to the protection of the Rent Act and the Protection of Tenants (Special Provisions) Act, No. 28 of 1970, is liable to be evicted or his occupation interfered with when a vesting order in respect of the premises is made under section 70(C) (3) vesting "absolutely in the Bank free from all encumbrances" the premises in question and an authorized officer of the Bank thereafter takes steps to take possession of the premises for and on behalf of the Bank under section 70(C) of the Act. In other words, whether the tenant's "statutory right of irremovability" in respect of the said premises under the Rent Act is automatically extinguished when the premises are acquired for the purpose of the Act followed by a vesting order which vests the premises "absolutely in the Bank free from all encumbrances" in terms of section 70(C) (3) of the Act. Under section 70(C) any person specially or generally authorized by the Bank is entitled to take possession of any premises vested in the Bank by a vesting order by giving notice to the person in occupation or in possession of such premises that such authorized officer intends to take possession of such premises for and on behalf of the Bank. Any person interested or his authorized agent is required to allow and assist such authorized officer to take possession of such premises for and on behalf of the Bank.

The main submission of Mr. Wikremanayake, learned Counsel for the plaintiff-appellant, was that under section 22 of the Rent Act except on certain permitted grounds (which do not apply in this case) no action or proceedings for the ejection of the

tenant of any premises shall be instituted in or entertained by any Court "notwithstanding anything in any other law." Therefore he contended that notwithstanding the provisions of the Act the plaintiff who is a tenant protected by the Rent Act cannot be evicted from the premises or his occupation interfered with.

I do not think this argument merits any consideration if it is confined exclusively to section 22 of the Rent Act. Even if I were to assume that the Bank after the vesting order stepped into the shoes of the plaintiff's landlord, the 1st defendant, the proceedings contemplated in the Act whereby the authorized officer is entitled to take possession of the premises vested in the Bank are not proceedings for the ejection of the tenant consequent to an action instituted in or entertained by Court under section 22 of the Rent Act. The proceedings contemplated in section 70(C) of the Act at this stage are extra-judicial proceedings and the order that is sought to be enforced is not an order of the Court but an order made by the Bank, after the premises are vested in the Bank, directing the specially or generally authorized person to take possession of the premises for and on behalf of the Bank.

It could, however, be argued that if a tenant who is entitled to the protection of the Rent Act contravenes under section 70(C) (7) of the Act any requirements of any notice given to him under subsection (5) or obstructs, or resists whether directly or indirectly any other person from taking possession of the premises, on a charge before a Magistrate for having committed an offence under that subsection, he is entitled to take up the defence that he is a protected tenant under the Rent Act and as such he is entitled to obstruct and resist any invasion of his right of occupation. It is therefore open to the argument that at this stage these proceedings are in effect proceeding for the ejection of the tenant instituted in or entertained by a Court or which seek to interfere with his right of occupation of the premises.

In order to consider learned Counsel's submission it is also necessary to take into consideration sections 16 and 17 of the Rent Act and certain provisions of the Protection of Tenants (Special Provisions) Act particularly as the plaintiff has prayed for a permanent injunction restraining the defendants from evicting him from the said premises.

Under section 16 of the Rent Act no landlord of any premises or other person shall, either by himself or through any other person, directly or indirectly, make use of or threaten to make use of

any force, violence, or restraint, or inflict or threaten to inflict, any damage, any harm, or loss upon or against the tenant of, or any person in occupation of such premises in order to induce, compel, or prevail upon, such tenant or person to vacate such premises.

Under section 17 of the Rent Act no landlord of any premises or other person shall, either by himself or through any other person interfere or attempt to interfere in any manner in the occupation or use of any premises by the tenant of, or the person in occupation of such premises, or in any manner prevent access to such premises by such tenant or person. In section 17(2) the words "person in occupation" in relation to any premises mean a person in occupation of the premises with the consent, express or implied, of the landlord of the premises.

Sections 16 and 17 of the Rent Act are in fact similar to sections 2 and 4 respectively of the Protection of Tenants (Special Provisions) Act, No. 28 of 1970.

Section 5(c) of the Protection of Tenants (Special Provisions) Act further enacts that no landlord of any premises or other person, by himself or through any other person, shall eject or cause to be ejected from such premises, otherwise than on an order of a competent Court, the tenant of, or the person in occupation of, such premises notwithstanding anything to the contrary in any oral or written agreement by which such premises were let.

These are prohibitions and restrictions placed on the landlord of any premises or on any other person from taking the law into his own hands in order to interfere with the occupation of the tenant of the premises without resort to the Courts. Under the Protection of Tenants (Special Provisions) Act, the Commissioner of National Housing is empowered to investigate into a complaint of the tenant or the person in occupation if the landlord or any other person interferes with his occupation. Summary procedure is available for the Commissioner to restore an ejected tenant or person in occupation to the occupation of the premises through the Magistrate's Court. This Act in addition provides for penal consequences.

The question therefore arises whether despite the provisions of the Protection of Tenants (Special Provisions) Act and the Rent Act, the Bank after the vesting order under the Act is entitled through an authorized person to take possession of the premises which are in the occupation of the tenant who is entitled to the protection of these Acts.

Mr. J. A. L. Cooray, learned Counsel who appeared for the Bank submitted that when a vesting order is made under section 70 (C) (3) its effect is to vest the premises absolutely in the bank free from all encumbrances. The words "absolutely" and "free from all encumbrances" are words of wide amplitude and will cover the rights, privileges and immunities of a tenant who is in occupation of premises subject to the Rent Act, notably the right against eviction or interference with his occupation. The effect of a vesting order in the result would be to wipe out all rights of such a person occupying the premises.

Mr. Wikremanayake for the plaintiff-appellant, however, submitted that the words "free from all encumbrances" do not refer to the rights of a protected tenant to whom the Rent Act applies. Although the word "encumbrances" is not defined in the Act, he argued by a devious process, that the word "encumbrances" would not include the rights of a protected tenant under the Rent Act. For this purpose he drew our attention to section 70 (E) which relates to persons who are entitled to make claims for compensation payable under the Act in respect of any premises vested in the Bank. Under this section where the premises are vested in the Bank, the Bank shall by notice published in the Gazette "direct every person who was interested" in such premises immediately before the date on which such premises were vested to make claims for compensation. He next referred to the definition of "person who was interested" in section 70 (E) (c) as a person who "has an interest in such premises as owner, co-owner, mortgagee, lessee or otherwise whether absolutely for himself or in trust for any other person". His argument was that as these are the only persons who are entitled to claim compensation, therefore, the word "encumbrances" would exclude all other categories of persons and would therefore exclude a tenant of premises who is entitled to the protection of the Rent Act and the Protection of Tenants (Special Provisions) Act, against eviction or interference with his occupation.

While appreciating the ability and force with which this argument was presented, I am far from convinced of its soundness. An examination of an analogous statute, the Land Acquisition Act, which enables the Minister on behalf of the State to acquire property for a public purpose, which also contain provisions similar to section (70) (C) (3) of the Act that the vesting order in respect of the property acquired vests the property "absolutely" in the State "free from all encumbrances", would demonstrate that if this argument is accepted it would fail to achieve the manifest purpose of the Act and reduce it to a futility.

Section 40 of the Land Acquisition Act states that when the order of the Minister called a "vesting order" is published in the Gazette and where that order is in regard to the taking of possession of a particular land, that land shall by virtue of that order vest "absolutely" in the State "free from all encumbrances". The Land Acquisition Act also does not define the word "encumbrances" unlike for example the Partition Act No. 16 of 1951 which by section 48(1) gives finality to a partition decree "free from all encumbrances whatsoever other than those specified in the decree". "Encumbrances" is defined to mean "any mortgage, lease, usufruct, servitude, fidei commissum, life interest, trust, or any other interest whatsoever, however, arising except a constructive or charitable trust, a lease at will or for a period not exceeding one month, and the rights of a proprietor of a nindagama". In the result under the Partition Act the word "encumbrances" will exclude a monthly tenant who is protected by the Rent Act or the Protection of Tenants (Special Provisions) Act.

If this argument is upheld it must follow that when residential premises subject to these Acts with a protected tenant in occupation are acquired under the Land Acquisition Act for a public purpose, e.g. to run a Home for Elders, then the State is powerless to give effect to the acquisition and thereby realize the purpose for which the premises were acquired as the rights of the protected tenant must prevail and the person authorized to take possession cannot do so on behalf of the State. The answer to this contention is that the legislature has advisedly both in the Act and the Land Acquisition Act not defined the word "encumbrances" but has instead invested the vesting order with title of the widest amplitude possible, viz. "absolutely" and "free from all encumbrances". In the context of the Act in considering the purpose for which it has been enacted the word "encumbrances" must be construed in its widest possible amplitude so as to include all persons in occupation or in possession of the premises by whatever right or otherwise and this will include a tenant in occupation protected by the Rent Act and the Protection of Tenants (Special Provisions) Act.

A further examination of the Act supports the conclusion I have reached. To begin with, the word "absolutely" is associated with the words "free from all encumbrances". "Absolutely" means without condition or limitation. *Vide* the following comment in Stroud's Judicial Dictionary, 4th Edition, Volume 1 at page 13 on the word "absolutely".

“The ordinary meaning is “without condition or limitation.” And it is commonly used with regard to vesting as meaning “indefeasibility.”

Secondly, I find that under section 70(C) (5) the person authorized to take possession on behalf of the bank can do so by notice given to the “person in occupation or in possession” of such premises informing him that such authorized officer intends to take possession of such premises for and on behalf of the Bank on a specified date. Thereafter section 70(C) (7) reads :

“ (7) Every person—

(a) who contravenes any requirement of any notice given to him under subsection (5) ; or

(b) who—

(i) prevents, obstructs or resists, or

(ii) directly or indirectly causes anyone to prevent, obstruct or resist,

any other person from or in taking possession under the preceding provisions of this section of any premises for and on behalf of the bank,

shall be guilty of an offence under this Chapter and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a period not exceeding one year or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.”

“Every person” would include any person who is “in occupation or in possession of the premises” referred to in section 70(C) (5) and therefore would include even a tenant in occupation entitled to the protection of the Rent Act and the Protection of Tenants (Special Provisions) Act.

If one considers the purpose for which the Act has been enacted the restricted interpretation sought to be placed on the word “encumbrances” to exclude a protected tenant would defeat the manifest purpose of the Act and fail to bring about an effective result. Under the Act, the Bank is authorized to acquire residential premises, as in the present case, for the purpose of the Act if only the Bank is satisfied that the premises are reasonably required for occupation as a residence for the original owner of those premises or any member of the family of such owner. The original owner is the person whose property was sold or transferred in terms of section 70 (B) (1) (a), or (b) or (c) (d) of the Act. The legislature in enacting this Act had a social object

in view, viz. to redeem lands which had been sold in execution of a mortgage decree or which had been transferred or sold in satisfaction of such a decree or which had been transferred or sold under circumstances which indicated that it was done for the purpose of obtaining a loan of money. After such property is vested in the Bank provision is made in the Act for restoring possession of such property to the person who is entitled to make an application to the Bank for the acquisition of such premises or where such person is dead, to the surviving spouse, if any, or any descendant of such person.

The object of the legislature will be defeated if a tenant who claims protection under the two Acts I have mentioned is entitled to resist the taking of possession of such premises after the vesting order made under the Act.

In my view the narrow restricted construction that is sought to be put on the word "encumbrances" would fail to achieve the manifest purpose of the Act. In dealing with statutes of this nature a construction should be avoided which would reduce the legislation to a futility and in order to do so we should accept a bolder construction based on the view that the parliament only legislates for the purpose of bringing about an effective result in order to achieve the manifest purpose for which the Act was enacted and not reduce it to a futility. The words "absolutely" and "free from all encumbrances" would therefore include the rights of a tenant who is entitled to the protection of the Rent Act and the Protection of Tenants (Special Provisions) Act.

In view of the conclusion I have reached nothing turns therefore on the contention put forward by Counsel for the appellant that under section 22 of the Rent Act no action or proceeding for the ejectment of the tenant of any premises to which the Rent Act applies shall be instituted in or entertained by any Court except under the permitted grounds "notwithstanding any thing in any other law." The submission is that this should be construed to mean "notwithstanding anything in the Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of 1968."

The decisions of this Court have laid down that the Rent Act does not give any protection to a tenant against a person who is not his landlord. The Rent Act only applies if a landlord or a person in the position of a landlord brings an action against the tenant. Gratiaen, J. in *Britto v. Heenatigala*, 57 N.L.R. 327 at 330, states :

".....it would be quite wrong to include within the definition of a "landlord" any person other than the original

lessor or someone who derives his title from the original lessor. If, therefore, the true owner of the leased premises vindicates his title against the tenant's contractual lessor, the statutory protection which the tenant enjoyed against the lessor would not be available against the true owner."

Tennekoon, C.J. in *Jayatunga v. Rosalinhamy*, 78 N.L.R. 214, following *Britto v. Heenatigala* states at page 215 :

"Under the common law applicable in this branch of our law, the relationship between a landlord and a tenant is a contractual one; the landlord and the tenant, each enjoys under such contract certain rights and obligations. The contract of letting is ordinarily unrelated to the ownership of the property being in the landlord, for a valid lease may be granted by the owner or by a person having no right to the property. It seems to me therefore that when the Rent Restriction Act defines the term "landlord" as the person for the time being entitled to receive the rent of such premises, it is referring in the first place to the person entitled under the contract of tenancy to receive the rent and not necessarily to the true owner who may not, in relation to a particular tenancy of the premises in question, have been the person who let the premises."

The only basis, therefore, on which the argument of Counsel for the appellant can succeed is that notwithstanding the vesting order made by the Minister in favour of the Bank under section 70 (C) (3) of the Act, the title that the Bank is vested with is a derivative title from the 1st defendant who was the owner and the landlord of the premises prior to the vesting order and therefore by operation of law the Bank had stepped into the shoes of the 1st defendant as landlord receiving all his rights and become subject to all his obligations so that the Bank is bound to the tenant and the tenant is bound to the Bank in the relation of landlord and tenant. This contention is not well founded as the title of the Bank is not a derivative title from the 1st defendant. The Bank claims the premises against the 1st defendant free from any encumbrances created by him.

In view of the conclusion I have reached that the Bank gets title "absolutely" and "free from all encumbrances" the vesting order in favour of the Bank snaps the link of ownership with persons who were entitled to the land prior to the acquisition or who claim rights thereto. It creates a new independent title in the Bank not referable to any previous ownership or right at the same time wiping out all other rights, title and interests in the land. The title of the Bank to the premises in question is clearly

a title paramount. Therefore there can be no conflict between the Rent Act and this Act for the reason that the Bank is not the landlord of the premises in question. Section 22 of the Rent Act cannot therefore be construed to prevail over the provisions of this Act on the ground urged that section 22 of the Rent Act contains the words "notwithstanding anything in any other law."

In the result as the bank is not the landlord of the premises in question the prohibitions and restrictions which apply to the landlord under the Protection of Tenants (Special Provisions) Act and the Rent Act will not apply to the Bank which has been vested with title to the premises by a vesting order under the Act. It must also follow that the words "other persons" in sections 16 and 17 of the Rent Act and sections 2, 4 and 5(1) of the Protection of Tenants (Special Provisions) Act would not include the Bank or any person authorized under the Act to take possession of such premises under the vesting order in terms of section 70(C) (3) of the Act which gives the Bank a title paramount against the whole world.

The plaintiff-appellant's appeal is, therefore, dismissed with costs.

WEERARATNE, J.—I agree.

SHARVANANDA, J.—I agree.

Appeal dismissed.
