

1962

Present : Herat, J.

D. GUNARATNE, Appellant, and U. L. P. PERERA, Respondent

*Application in Revision in C. R. Colombo, 72154**Rent Restriction (Amendment) Act No. 10 of 1961—Section 13(3)—“ Proceedings ”—
Inapplicability of the term to an application for a writ of ejectment.*

Where a landlord applied on 14th September 1961 for a writ of ejectment in respect of a decree entered in an action which was instituted by him on 31st January 1959 for recovery of possession of certain rent-controlled premises on the ground that the tenant was in arrears of rent for more than one month after such rent fell due—

Held, that the application for writ of ejectment could not come within the phrase “ proceedings instituted after the 20th of July, 1960 ” in section 13 (3) of the Rent Restriction (Amendment) Act, No. 10 of 1961.

Held further, that the application for writ made on 14th September 1961 could not come within the words “ is or are pending on the day immediately preceding the date of commencement of this Act ”, which would be either 30th April 1961 or 19th July 1960.

APPPLICATION to revise an order of the Court of Requests, Colombo.

D. R. P. Goonetilleke, for the Defendant-Petitioner.

C. Ranganathan, with *M. L. de Silva*, for the Plaintiff-Respondent.

February 1, 1962. HERAT, J.—

In this case action was filed for the recovery of possession of certain premises coming within the Rent Restriction Law on the ground that the tenant was in arrears of rent for more than one month after such rent fell due. The action was filed on the 31st of January, 1959. Decree

was entered in favour of the landlord and from that decree the tenant appealed and the appeal was dismissed on the 13th of September, 1961. In the meantime Act No. 10 of 1961 (Rent Restriction Amendment) had, come into force. The Act came into operation on the 1st of May, 1961 but with regard to section 13 of that Act, that section came into operation on the 20th of July, 1960, having retrospective effect granted to it. The landlord applied for writ on the 14th of September, 1961. The tenant raised certain objections, but the learned Commissioner of Requests allowed the application for writ. This application by way of revision by the tenant to this Court is for an order to revise the refusal to stay writ made by the learned Commissioner.

The legal grounds on which the tenant-petitioner asks for relief are based on an interpretation of section 13(3) of the aforesaid Rent Restriction (Amendment) Act No. 10 of 1961. Mr. Goonetilleke's argument is placed on a two-fold basis. He says that the application for writ comes under the word "proceedings" in sub-section 3 of section 13 and also argues that section 13(3) applies.

Now, sub-section 3 of section 13 reads as follows :—

"Where any action or proceedings instituted in any Court on or after the 20th day of July, 1960, for the ejection of a tenant from any premises to which the principal Act applies on any ground other than a ground specified in sub-section 1 of this section is or are pending on the day immediately preceding the date of commencement of this Act such action or proceedings shall be deemed at all times to have been and to be null and void."

Mr. Goonetilleke's argument is that the application for the writ comes under the term "proceedings" and was made on the 14th of September, 1961. Those proceedings were instituted after the 20th day of July, 1960, and void under sub-section 3, and therefore the order granting writ and the refusal to stay writ are bad. But even accepting Mr. Goonetilleke's argument that the application for writ made on the 14th of September, 1961, constitutes "proceedings" within the meaning of sub-section 3 of section 13 and were instituted after the 20th of July, 1960, sub-section 3 requires a further condition before it can be said that they are null and void within the meaning of that sub-section. That further condition is laid down in the words "is or are pending on the day immediately preceding the date of commencement of this Act". Now, as I said earlier, the Act itself commenced on the 1st of May, 1961, and this sub-section is effective from the 20th of July, 1960. Whichever date is taken, it cannot be said that the application for writ made on the 14th of September, 1961 comes within the words "is or are pending on the day immediately preceding the date of commencement of this Act", which would be either the 30th of April, 1961, or the 19th of July, 1960. Therefore, even assuming that the application for writ comes

under the term "proceedings instituted after the 20th of July, 1960", sub-section 3 cannot be availed of and it cannot be said that the application for writ is null and void as stated in sub-section 3 aforesaid.

Mr. Renganathan for the landlord-respondent has brought to my notice the judgment delivered by His Lordship, Mr. Justice Weerasooriya in *S.C. No. 166/60 (R/E) C. R. Colombo No. 72808* (vide Supreme Court Minutes of 17th January, 1962)¹, where His Lordship says, referring to the Interpretation of section 13, "In my opinion, neither proceedings at the trial nor at the stage when the decree is sought to be executed are proceedings of the kind contemplated under section 13(1) as requiring the authorization of the Board." No doubt, His Lordship was dealing with the interpretation of sub-section 1 of section 13, but nevertheless the point made in the judgment was that an application for writ was not "the institution of either an action or a proceeding" but the continuation of something already commenced. I would respectfully follow the same reasoning, and as a further ground for rejecting this application hold that the application for writ of ejectment made in the instant case does not come within the phrase "proceedings instituted after the 20th of July, 1960".

The application is dismissed with costs.

Application dismissed.

