

SIVARAJASINGHAM
v.
SIVASUBRAMANIAM

SUPREME COURT

SAMARAWICKRAME, A. C. J., THAMOTHERAM, J. AND ISMAIL, J.

S.C. 21/79; C. A. (SC) 95/78 (F)

D. C. MOUNT LAVINIA 229/RE

FEBRUARY 12, 1980.

Landlord and Tenant — Letting of portion of premises — Proportionate rent — Date from which proportionate rent will apply.

In respect of the part of the premises that is sub-let or let prior to the date of the commencement of the Rent Act the proportionate rent fixed by the Board will apply as from the date of enactment of the Act (i.e. 1.3.1972).

Cases referred to :

(1) *Ranasinghe v. Jayatillaka* 72 NLR 126

(2) *Ranasinghe v. Fernando* 53 NLR 163

APPEAL from Judgment of the Court of Appeal.

H. L. de Silva with *K. Shanmugalingam* for plaintiff-appellant.

A. C. Gooneratne Q.C. with *D. R. P. Goonetilleke, M. F. Miskin, Mrs. H. Jayalath* and *K. S. Tillekeratne* for defendant-respondent.

Cur. adv. vult

June 17, 1980

SAMARAWICKRAME, A. C.J.

The plaintiff-appellant let on 1.9.71 a portion of premises No. 40/1, Janaki Lane to the Defendant-Respondent on a monthly rental of Rs.100/-. The defendant-respondent had paid the monthly rental regularly for a period of six months up to the end of February 1972. Since March 1972, the defendant-respondent deposited with the Municipal Council rent at Rs. 50/-per month for a period of nine months. Thereafter, the defendant-respondent had applied to the Rent Control Board to fix the proportionate rent and the Board had, on 31.8.74, fixed such rent at Rs. 23/- per month.

After giving notice to quit, the plaintiff-appellant instituted this action on 24.3.75 for the ejectment of the defendant-respondent on the ground that the defendant-respondent had been in arrears of rent. The defendant-respondent took up the position that the monthly rental payable by him in respect of a part let to him from the date of the letting is only the sum of Rs. 23/- as determined by the Rent Control Board. He further averred that he is entitled to set off the sum paid by him over and above the said amount at 23/- per month and that, therefore, he is not in arrears of rent.

The learned trial Judge accepted the position that the monthly rental payable by the Defendant from the commencement of the tenancy was the sum of Rs. 23/- per month and held that the defendant-respondent had overpaid the plaintiff-appellant the sum of Rs. 84/-. He accordingly dismissed the plaintiff-appellant's action with costs. On appeal to the Court of Appeal, the judgment of the learned trial Judge was affirmed.

The main question that arises for consideration is whether the monthly rental payable by the defendant right from the commencement of the tenancy was only Rs. 23/-. The answer to this question depends on whether the determination made by the Rent Control Board on 31.8.74 was retrospective up to the date of the letting on 1.9.71.

It has been held in decisions on the Rent Restriction Act of 1948 that where the Rent Board determines what the authorised rent of the premises is under Section 16A, it ascertains what has already been laid down by the earlier provisions of the Act and is, therefore, ordained by law. The Board's determination is, therefore, prima facie evidence of what the authorised rent is, even in respect of a period prior to such determination, vide *Ranasinghe v. Jayatillaka*, (1); but where the Rent Board fixes the rent in terms of the power conferred on it by Section 5(2) of the Rent Restriction Act, it does not decide in accordance with what has been laid down by law but fixes the amount by reference to what it considers reasonable and proper. The order of the Board fixing the rent is not retrospective but comes into force only when it is made, vide *Ranasinghe v. Fernando*, (2). It is, however, open to the Legislature to provide in a Statute dealing with rent restriction that the order of the Board fixing the rent is to operate retrospectively. It is, therefore, necessary to consider the relevant provisions of the Rent Act No. 7 of 1972 relating to the fixing of proportionate rent by the Rent Board in respect of parts of premises let or sublet.

The position in respect of the subletting or letting of parts of premises made after the commencement of the Act appears to be clear on the face of the provisions. In either case, whether of subletting or letting, the provisions applicable provide —

- (1) that a tenant or landlord shall not sublet or let any part of the premises unless prior to so subletting or letting he had applied to the Board to fix the proportionate rent.
- (2) immediately after the Board has fixed the proportionate rent the tenant or the landlord shall inform the subtenant or the

tenant of the amount fixed as proportionate rent and refund any sum received as rent in excess of the proportionate rent fixed by the Board.

It is clear, therefore, that, though a tenant or landlord may let a subtenant or tenant into occupation of a part of the premises after he has applied to the Board, the receipt of any sum as rent by him will be provisional and liable to be refunded in part if it proves to be in excess of the proportionate rent that is fixed by the Board. It is clear, therefore, that in these cases an order of the Board fixing a proportionate rent will in effect come into force as from the date of the subletting or letting.

In respect of the part of a premises that had been let or sublet prior to the date of the Act, there can in the nature of things be no provision that prior to the subletting or letting, there must be an application to the Board to fix the proportionate rent and no such provision exists. In respect of such a part, Section 10(4) has a provision to the effect that it shall be the duty of the tenant and subtenant and of the landlord and tenant to make an application to the Board within 30 days of the date of commencement of the Act to fix the proportionate rent of the part sublet or let and that the Board shall fix such rent. The obligation to make the application is cast not only on the party that has let or sublet the premises, but also on the party to whom it has been let or sublet, that is to say, on both parties to a transaction. The application has to be made shortly after the Act comes into operation and the Board is required to fix the rent. The requirements of the provision appear to me to indicate that in respect of a part of the premises let or sublet prior to the date of the commencement of the Act, there is to be a proportionate rent fixed by the Board applicable to it just as there is under the Act an authorised rent or receivable rent in respect of the entire premises. Other provisions appear to support this view. For example, Section 10(14) seems to assume that in respect of premises let or sublet prior to the Act in separate parts there will be a proportionate rent fixed by the Board. That provision deals with premises which are let or sublet prior to the date of the commencement of the Act in separate parts but which have, however, subsequent to the date on which it was sublet or let been separately assessed and provides that the rent that may be received shall not be in excess of the proportionate rent fixed by the Board. It appears to me that in respect of the part of a premises that is sublet or let prior to the date of the commencement of the Act the proportionate rent fixed by the Board will apply as from the enactment of the Act.

There is no indication that it is to apply as from any time prior to the enactment of the Act. Apart from the fact that the provision does not expressly provide for the proportionate rent fixed by the Board for such part to apply before the date of the enactment of the Act, there is a rule of interpretation that generally an enactment would apply to facts and events that come into effect after it has become law. Maxwell, Interpretation of Statutes, 12th Edition, page 215 states :—

“ They (Statutes) are construed as operate only in cases or on facts which come into existence after the Statutes are passed unless a retrospective effect is clearly intended. It is a fundamental rule of English Law that no Statute shall be construed to have a retrospective operation unless such a construction appears very clear in the terms of the Act or arises by necessary and distinct implication.”

Upon these considerations, it appears to me that an order of the Board fixing the rent for part of a premises let or sublet prior to the date of the commencement of the Act in terms of Section 10(4) will have force as and from the date of the enactment of the Rent Act and not from any date prior to that.

Learned Counsel for the defendant-respondent contended that sub-section 10 of section 10 applied and supported the position of the defendant-respondent. Prima facie it would appear that sub-section 10 can only be read along with sub-section 9. Sub-section 10 reads as follows :—

“(9) No landlord of any premises shall let any part of such premises to any other person unless prior to so letting he had applied to the board to fix the proportionate rent of such part, and had informed the board the name of the person to whom he proposes to let such part.

(10) As soon as may be after the board has fixed the proportionate rent of the part of the premises let by the landlord, the landlord shall in writing intimate to the tenant the amount fixed by the board as the proportionate rent. Any sum received as rent which is in excess of the proportionate rent fixed by the board shall be refunded by the landlord to the tenant or set off against the rent payable thereafter by the tenant.”

There is force in the contention of learned counsel for the defendant-respondent that on the face of it, sub-section 10 applies even to the letting of the part of a premises made by a landlord prior to the Act and that accordingly it has application in the present case. But one of the reasons why it is possible to take the view that in respect of a letting of part of the premises, to which sub-sections 9 and 10 apply, the fixing of the proportionate rent dates back to the date of the letting is because of the provisions in sub-section 9 that the landlord should not let such a part unless prior to so letting he had applied to the Board to fix the rent. In the absence of a provision that is applicable similar to that contained in sub-section 9, sub-section 10 would not have this result. The terms of sub-section 10 indicates that the fixing of a proportionate rent by the Board is to operate retrospectively but it does not indicate as to the date from which it is to operate, or if an application to the Board may be made after a part is let, the fixing of the rent may relate back to the date of the application and not to the date of letting. Further, a sum received as rent may be regarded as being in excess of the proportionate rent fixed by the Board only where there is an order in force at the date when such sum is received as rent. Hence, without an order in force in any period, there is no proportionate rent fixed by the Board for that period and no question of the receipt of rent in excess of the proportionate rent. I have, for the reasons set out above, made a finding that upon the provisions an order fixing the proportionate rent in respect of the part of a premises let or sublet prior to the date of the commencement of the Act will not operate in respect of any period prior to the enactment of the Rent Act. Again, the words "any sum received as rent" in sub-section 10 must be taken to mean any sum received as rent after the enactment of the Act because there is no reason to treat sub-section 10 as retrospective so as to apply to facts and events that took place before the enactment of the Act. For these reasons, it appears to me that sub-section 10 read with sub-section 4 can only refer to and apply to sums received as rent after the enactment of the Act.

Learned counsel for the defendant-respondent also relied on Section 32. That provision reads :—

"Where any tenant of any premises has paid by way of rent to the landlord, in respect of any period any amount in excess of the authorised rent, or the receivable rent, or the proportionate rent, as the case may be, of the premises or part thereof, such tenant shall be entitled to recover the

excess amount from the landlord, and may, without prejudice to any other methods of recovery, deduct such excess amount from the rent payable by him to the landlord."

Counsel stressed the words "in respect of any period" and contrasted them with the words "in respect of any period commencing on or after the appointed date" which appear in the corresponding provision of the Rent Restriction Act of 1948, namely Section 15. He accordingly submitted that Section 32 applied even in respect of a period prior to the enactment of the Act and covered payments in excess of the proportionate rent made in such period. Assuming that section 32 does apply to a period prior to the enactment of the Act, yet the amount in excess of the authorised rent or the receivable rent or the proportionate rent referred to in the Section must refer to the amount in excess of the authorised, the receivable and proportionate rent in force at that period. For example, it would be an amount in excess of the authorised rent as provided for by Rent Act No. 7 of 1972 that would be caught up in respect of a period after the enactment of the Act but in respect of a period prior to the enactment of the Act it would be an amount in excess of the authorised rent that was imposed under the Rent Restriction Act of 1948. Accordingly, the question turns on whether the order of the Board fixing the proportionate rent for a part of the premises let or sublet prior to the Act has retrospective effect and applies to a period prior to the Act. I have already examined this question and have not been able to find any justification for holding on a consideration of the relevant provisions that an order of the Board fixing the rent in respect of a part under Section 10(4) has retrospective effect, so as to apply before the passing of the Act. The learned Judge of the Court of Appeal thought that the concept of proportionate rent was unknown before the Rent Act No. 7 of 1972 but in fact Section 9(4) (b) of the Rent Restriction Act (Cap. 274) contemplates the Board fixing an amount as proportionate rent of a part of a premises sublet. The learned Judge of the Court of Appeal also addressed his mind only to the question whether the fixing of proportionate rent of part of a premises let or sublet prior to the date of the Act had any retrospective effect and correctly held that it would have retrospective effect. He failed, however, to consider whether the retrospective effect of the order was to make the determination date back to the letting. He appears to have assumed that it did. For the reasons that I have given, I am unable to take the view that the determination dates back to the date of the letting.

On the basis that the order of the Rent Board fixing a proportionate rent for the part of the premises let to the defendant was operative from the date of the commencement of the Rent Act, 1st March, 1972, the position is as follows :—

Rent due from September 1971 to February 1972	
at Rs 100/- p.m. = Rs 100/- × 6	Rs. 600.00
 Rent due from March 1972 to February 1975	
at Rs 23/- p.m. = Rs 23/- × 36	Rs. 828.00
Total due at date of notice to quit	Rs. 1428.00
Payments made Rs. 600/- + Rs. 450/-	<u>1050.00</u>
Arrears exceeding three months at date of action	<u><u>Rs. 378.00</u></u>

As the defendant-respondent was in arrears of rent for a period exceeding three months at the date of action, plaintiff-appellant is entitled to succeed in his appeal.

I would, therefore, allow the appeal of the plaintiff-appellant with costs fixed at Rs. 750/- and I set aside the judgment appealed from and direct judgment to be entered for the ejection of the defendant-respondent for the payment of Rs. 378/- as arrears of rent as at the date of the action and for continuing damages at Rs. 23/- per month from the date of action until the plaintiff is restored to possession. Plaintiff-appellant will also be entitled to taxed costs in the trial Court and the Court of Appeal.

THAMOTHERAM, J. — I agree.

ISMAL, J. — I agree.

Appeal Allowed.