JOSEPH
v.
ARUMUGAM

COURT OF APPEAL
WEERASURIYA, J. AND
DISSANAYAKE, J.
CA NO. 299/92 (F)
DC COLOMBO NO. 7010/RE
MARCH 08, 2000
APRIL 27, 2000
MAY 26, 2000 AND
AUGUST 30, 2000

Rent Act, No. 7 of 1972 – Section 2 (4) excepted premises – Doctrine of Crown exemption – Applicability of doctrine in respect of subletting with a third party by a tenant of the Crown – Interpretation Ordinance, Section 3.

The plaintiff-respondent instituted action against the defendant-appellant seeking his ejectment from the premises in question. It was the position of the plaintiff-respondent that the premises were excepted premises as the Commissioner of National Housing (CNH) was the landlord and also the owner for and on behalf of the State.

The District Court held that the Commissioner of National Housing was not the landlord but as the Commissioner was the owner of the premises for and on behalf of the State the premises are excepted premises.

On appeal –

Held:

(1) The Commissioner of National Housing had let the premises to the plaintiff-respondent who in turn had sublet to the defendant-appellant. "Crown exemption" in respect of subletting with a third party by a tenant of the crown is not permissible.

(2) Exemption available under section 3 of the Interpretation Ordinance from the operation of the Rent Act applies only to a contract of tenancy between the State and a tenant when rights of the State are directly affected. This exemption cannot be extended to a sub-tenant to benefit a tenant of the state *vis-a-vis* his own tenant on a contract of subletting.

Per Weerasuriya, J.

> "Upon an overall consideration of the provisions of the Rent Act it is not possible to give undue prominence to sections dealing with premises and conclude that the Rent Act operates in respect of premises *(in rem)*."

APPEAL from the judgment of the District Court of Colombo.

Cases referred to :

1. *Davith Appu v. Attorney-General* – 49 NLR 350.
2. *Fonseka v. Wanigasekara* – 65 NLKR 552.
3. *Nandias Silva v. Unambuwa* – 72 NLR 382.
4. *Clark v. Downes* – 1931 145 LT 20.
5. *Wirral v. Shaw* – *1932* – 2 KB 274.
6. *Clark v. Mawby* – *1931* – 145 LJ.
7. *Imbuldeniya v. De Silva* – *1987* – 1 – 367.

Gamini Jayasinghe with *P. P. de Silva* for defendant-appellant.

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

Cur. adv. vult.

December 08, 2000

WEERASURIYA, J.

The plaintiff-respondent by his plaint dated 20. 12. 1987, instituted 1
action against the defendant-appellant seeking his ejectment from the premises bearing No. 19, Left Circular Road, Battaramulla, morefully described in the schedule to the plaint and damages. The defendant-appellant in his answer, whilst denying averments in the plaint, prayed for dismissal of the action. This case proceeded to trial on 9 issues and at the conclusion of the case, learned District Judge by his judgment dated 02. 11. 1992, entered judgment for the plaintiff-respondent. It is from the aforesaid judgment that this appeal has been preferred. 10

At the hearing of this appeal, learned counsel appearing for the defendant-appellant contended that learned District Judge had misdirected himself in holding that the defendant-appellant was not entitled to the protection of the Rent Act since the premises were owned by the State.

At the commencement of the trial before the District Court on 10. 02. 1992, the tenancy of the defendant-appellant under the plaintiff-respondent and the receipt of the notice terminating the tenancy were admitted.

The claim of the plaintiff-respondent that the premises were excepted premises was based on two legal positions, namely –

(*a*) That the Commissioner of National Housing was the landlord of the said premises within the meaning of Regulation 2 of the schedule to the Rent Act, No. 7 of 1972, and

(*b*) That the Commissioner of National Housing was the owner of the premises for and on behalf of the Democratic Socialist Republic of Sri Lanka.

The agreement between the Commissioner of National Housing and the plaintiff-respondent was produced at the trial, marked P1.

The learned District Judge came to a finding that the Commissioner of National Housing was not the landlord of the premises in suit. Nevertheless, he came to a finding that the Commissioner of National Housing was the owner of the premises for and on behalf of the government and therefore, premises are excepted premises. The learned trial Judge's finding that premises were excepted premises was on the basis of the reasoning in the following judgments. *Davith Appu v. Attorney-General,*[1] *Fonseka v. Wanigasekera,*[2] and *Nandias Silva v. Unambuwa.*[3]

In *Davith Appu v. Attorney-General* (*supra*) it was held that the right of the Crown to eject an overholding tenant of the Crown property is not affected by the limitations placed on a landlord by section 8 of the Rent Restriction Ordinance.

In *Fonseka v. Wanigasekera* (*supra*) it was held that the Rent Restriction Act does not apply to premises belonging to the Crown.

In *Nandias Silva v. Unambuwa* (*supra*) it was held that the plaintiff was entitled to sue the defendant for ejectment on the basis of a monthly tenancy and the Rent Restriction Act is not applicable.

In the instant case, the Commissioner of National Housing had let the premises in suit to the plaintiff-respondent, who in turn had sublet premises to the defendant-appellant. Therefore, it is necessary to examine the position whether exemption of the Crown from the operation of the Rent Act would extend to a sub-tenancy with a third party.

In examining this question it is vital to bear in mind that, in *Davith Appu v. Attorney-General* (*supra*) the issue that came up for consideration was a direct tenancy between the Crown and Davith Appu. It was held that the Crown's right to eject its tenant was not affected by the provisions of the Rent Restriction Ordinance, applying section 3 of the Interpretation Ordinance which embodied the English doctrine that no enactment shall, in anyway, affect the right of the Crown unless it is therein expressly stated or appears by necessary implication. At page 157 Gratien, J. observed that : "It has been held that the Rent Restriction Act of England does not bind the Crown" and referred to "*Clark v. Downes*[4] and *Wirral v. Shaw*".[5]

Upon a close examination of the judgment of *Davith Appu v. Attorney-General* (*supra*) it would be apparent that the two English cases had been quoted in support of the proposition of law contained in our Interpretation Ordinance to deal with a case of direct tenancy under the Crown.

Therefore, the question would be, whether the above proposition of the law of Crown exemption from the operation of the Rent Act could be extended as applying to a tenant of the Crown in respect of his separate contract of subletting with a third party.

In the case of *Fonseka v. Wanigasekera* (*supra*) it was observed that, facts of that case were stronger than House of Lords case in that Crown had even parted with the title when the plaintiff filed action against the tenants and still it was held the Rent Restriction did not apply. Thus, there was a brief reference to *Clark v. Downes* (*supra*) and *Clark v. Mawby.*[6] It is significant to note that, the case of *Davith Appu v. Attorney-General* (*supra*) had not been cited in that case.

In the case of *Nandias Silva v. Unambuwa* (*supra*) the judgment in *Fonseka v. Wanigasekera* (*supra*) was followed, on the basis that facts were analogous to the facts of that case. Therefore, the judgments in *Fonseka v. Wanigasekera* (*supra*) and *Nandias v. Silva Unambuwa* (*supra*) cannot be relied upon as authorities to extend the Crown exemption as set out in section 3 of the Interpretation Ordinance to a contract of subletting with a third party by a tenant of the Crown.

In the circumstances, it is necessary to briefly refer to the facts of *Clark v. Downes* (*supra*) and *Clark v. Mawby* (*supra*).

His Majesty's Office of Works built huts for munition workers during the war in 1915. They became vacant after 1923 but were re-let to tenants in 1924-25. In 1926 the Crown sold the property to the Whitmore Park Estate Limited who in turn leased the property to the plaintiff who thereafter sought possession of the premises occupied by Downes and Mawby. The County Court Judge dismissed the claim, holding that the premises were controlled and the plaintiff appealed. This appeal was decided in favour of the appellant Clark, on the basis that Rent Acts of England operated *in rem.* It may be noted the case of *Wirral v. Shaw* (*supra*) referred to in *Davith Appu*

v. Attorney-General (*supra*) whittled down to some extent the application of the doctrine of Crown privilege in that it was held that upon a sale or assignment by the Crown this prerogative comes to an end save only that where premises are once sold subject to an existing tenancy that exemption continues until that tenancy is determined.

It is to be noted that in England in 1952 Crown exemption was abolished except where the Crown was directly affected.

Meggary in The Rent Acts (11th edition, volume 1, 1980 – at page 145) under subhead "Abolition of Crown Exemption for Third Parties"; 110
The Act of 1952 states that : "the broad effect of the Act of 1952 was to abolish Crown exemption except where the Crown was directly affected. Thus, the Crown was free from the Acts in relation to Crown tenants, but those tenants were subjected to the Acts in relation to their sub-tenants".

Therefore, the application of the doctrine of Crown exemption as stated in *Clark v. Downes* (*supra*) and *Clark v. Mawby* (*supra*) in respect of subletting with a third party by a tenant of the Crown is not permissible.

Learned President's Counsel appearing for the plaintiff-respondent 120
contended that in terms of section 2 (4) of the Rent Act, that so long as the Act is in operation in any area, the Rent Act applies to all premises in that area other than premises mentioned in (*a*), (*b*), (*c*), (*d*) and (*e*). Therefore, he contended that protection in terms of the Rent Act applies to premises (*in rem*) and not to contracts.

There is no doubt that the rights and duties of a landlord and tenant and the determination of the statutory rent have to be considered with reference to the premises but the Rent Act as a whole refers to the rights and duties of a landlord, tenant and other incidental matters. Thus, upon an overall consideration of the provisions of the 130

Rent Act, it is not possible to give undue prominence to sections dealing with premises and conclude that Rent Act operate in respect of premises (*in rem*).

In *Imbuldeniya v. D. de Silva,*[7] it was held that the entity of protection granted by the provisions of the Rent Act is the contract of tenancy and not the premises.

In the light of the foregoing, it would be clear that the exemption available to the State under section 3 of the Interpretation Ordinance from the operation of Rent Act applies only to a contract of tenancy between the State and a tenant where rights of the State are directly affected.

This exemption cannot be extended to a sub-tenancy to benefit a tenant of the State *vis-a-vis* his own tenant on a contract of subletting.

For the above reasons, it seems to me that learned District Judge had erred in holding that the sub-tenancy sued upon by the plaintiff-respondent in this action was exempted from the operation of the Rent Act on the basis that State owned the said premises.

Therefore, I set aside the judgment of the District Judge dated 02. 11. 1992 and allow this appeal with costs.

DISSANAYAKE, J. – I agree.

Appeal allowed.