

**DE SILVA**  
**v.**  
**WEERASINGHE**

SUPREME COURT

SAMERAWICKREMA, J., ISMAIL, J. AND WANASUNDERA, J.

S.C. 22/79.

C. A. (S. C.) No. 588/74

C. R. COLOMBO 3584/ED

MARCH 19, 1980.

*Landlord and Tenant—Non-occupation by tenant for six months—Rent Act, No. 7 of 1972—Residential premises—Conversion into business premises by tenant—Retrospective operation.*

The defendant took the premises on rent as residential premises in 1954. From 1st February 1962 his daughter ran a Montessori school on the premises. Plaintiff contended this was a conversion of the premises into business premises but defendant pleaded it was done with the plaintiff's knowledge and consent and the plea of non-occupation is not available to plaintiff.

**Held :**

Section 28(1) of the Rent Act refers to non-occupation for a continuous period of not less than six months. The Rent Act came into operation on 01.03.1972. Plaintiff in this case was filed on 13.7.1972 (less than six months after the Rent Act came into force).

Section 28 cannot be given a retroactive operation. Hence the plea of non-occupation on the ground of conversion fails.

**Case referred to :**

(1) *Samarawickrema v. Senanayake* — S. C. 21/73 — D. C. Kandy 22104 — S.C. Minutes of 24.1.1977

**APPEAL** from judgment of Court of Appeal.

*A. C. Gooneratne Q.C.* with *D. R. P. Gunatillake, C. Kadiramanpulle* and *K. S. Tillekaratne* for plaintiff-appellant.

*E. S. Amerasinghe* with *N. S. A. Goonetilleke, N. Mahendra* and *Miss D. Guniyangoda* for defendant-respondent.

*Cur. adv. vult*

MAY 27, 1980

**WANASUNDERA, J.**

This is an appeal from the judgment of the Court of Appeal which, reversing the judgment of the District Court, has dismissed with costs an action filed by the plaintiff-appellant for the ejection of the defendant-respondent from certain premises. The matter comes before us with leave from the Court of Appeal.

The plaintiff-appellant alleged in his plaint that the premises, the subject-matter of this action, had been let as residential

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premises to the defendant-respondent and that the defendant-respondent had ceased to occupy the premises, without reasonable cause, for a continuous period of not less than six months. The plaintiff-appellant therefore claimed that he was entitled, in terms of section 28(1) of the Rent Act, No. 7 of 1972, to have the defendant-respondent evicted from the premises.

These premises had been let to the defendant-respondent in 1954 as residential premises. The evidence for the defendant-respondent however shows that from 1st February 1962 to the date of this action the defendant-respondent's daughter had been conducting a Montessori school on the premises. It is this change in the use of these premises—which the plaintiff-appellant considers as the conversion of the premises into business premises—that has given rise to the cause of action on which the plaintiff-appellant bases his claim. The defendant-respondent however claimed that this change in the use of the premises was effected with the knowledge and consent of the appellant landlord. The defendant-respondent contended that, on a proper interpretation of the law, the premises ceased to be "residential premises" within the meaning of the Rent Act and that the allegation of non-occupation is negated by the fact that the premises are being used as a school and continue to be in the occupation of the defendant-respondent.

All these matters were decided against the defendant-respondent both in the trial court and in the Court of Appeal, but the Court of Appeal allowed the defendant-respondent's appeal on another issue to which I shall presently refer. Mr. Amerasinghe, while supporting the judgment, however, sought to canvass the decision of the Court of Appeal regarding the interpretation of the expression "residential premises" in the Rent Act, with reference to the facts of this case, and sought a ruling from us, lest it be used against him. Since we propose upholding the decision of the Court of Appeal on the main issue, which alone is adequate to dispose of this action, and the defendant-respondent would accordingly succeed in this action, we consider it unnecessary to express a view one way or the other regarding the correctness of the view taken by the Court of Appeal on that matter.

The main issue argued before us was the question whether or not section 28 of the Rent Act, No. 7 of 1972, could be given retroactive operation. Section 28 (1) is worded as follows:-

"Notwithstanding anything in any other provisions of this Act, where the tenant of any residential premises has ceased

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to occupy such premises, without reasonable cause, for a continuous period of not less than six months, the landlord of such premises shall be entitled in an action instituted in a court of competent jurisdiction to a decree for the ejection of such tenant from such premises."

This refers to the non-occupation of the premises for a continuous period of not less than six months. The question is whether the date of the inception of this period can extend to a point of time beyond the date of the coming into operation of this enactment.

Section 28(1) was enacted by Rent Act, No. 7 of 1972, and came into operation on the 1st of March 1972. The plaint in this action was filed on the 13th July 1972 and it would be seen that between the coming into operation of this law and the date of the plaint, a period of six months has not yet elapsed. Mr. Gooneratne for the plaintiff-appellant has however argued that section 28 is retrospective in operation and that this would enable the plaintiff-appellant to take advantage of an admitted period of "non-occupation" prior to March 1972.

The Court of Appeal has held that the provisions of section 28 are prospective in nature and that there is nothing in the Act to indicate that this provision should be applied retroactively. Mr. Gooneratne has submitted that, since the fact of non-occupancy could have been made use of for the eviction of a tenant even prior to the introduction of section 28, therefore the provisions of section 28 could have and ought to be given antecedent or retrospective operation. He relied on certain *dicta* in *Samerawickrema v. Senanayake* (S.C. 21/73 D.C. Kandy 22104 - S.C. Minutes of 24.11.1977). In that case the precise ruling of the court was that the concept of non-occupancy did not obtain under our law prior to the enactment of section 28. The court drew a clear distinction between the statutory grounds (of which non-occupancy was not one) and such other matters which the Rent Control Board was entitled to take into consideration in granting or withholding its permission for the landlord to file action to evict his tenant. What the Rent Control Board would consider are such matters (among such multifarious matters, non-occupancy may be one), which would be essentially different from the statutory legal grounds and which a lay tribunal would consider relevant to the question whether or not the landlord should be granted permission to file action against his tenant. There was therefore no finding in that case that non-occupancy in

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anyway approached the concept of a statutory ground which the Act recognised. That there is little basis for Mr. Gooneratne's contention is seen when his argument is examined in practical terms. It would be legitimate to ask whether in the circumstances of this case—namely, having regard to the fact that the Montessori school was run for a period of 10 years with the knowledge and consent of the landlord—any tribunal, acting reasonably and fairly, would have given the landlord the required permission to sue his tenant on the ground of the change in the use of the premises?

The principles of interpretation relating to the retrospective operation of a statute are of a complex nature. We were referred by counsel to the well-known passage from Maxwell's *Interpretation of Statutes* (12th Edn., p. 215):

Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were 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 clearly in the terms of the Act, or arises by necessary and distinct implication."

Further elaboration of these principles are found in Craies' *Statute Law*, 7th Edn., p. 387. He states:

"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing'."

We also find a distinction drawn between statutes altering substantive law and those altering procedural or-adjectival law. As Maxwell states at page 222—

"The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts."

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The cases cited by counsel illustrate some of these several principles.

The Court of Appeal has drawn attention to the fact that certain provisions of the Act have expressly provided for retroactive application while section 28 contains no such indication. There are cases which reveal that in construing Rent laws, courts have sometimes shown less resistance to the application of the principle of retrospectivity than in other types of situations. The courts have inclined to a construction favouring the tenant, on the assumption that the dominant intention of the Rent laws is the protection of the tenant.

A retrospective application of section 28 would undoubtedly be to the detriment of the tenant and not to his advantage. The bringing in of material anterior to 1st March 1979 will have the effect of making this law essentially retroactive in nature. It would be more than a prospective application merely drawing part of the requisites of its action from a time antecedent to its passing.

Upon a careful consideration of section 28 and the scope and purview of the Act, and in the light of the principles enunciated earlier, I am unable to hold that these provisions should be given retroactive application. For these reasons I would dismiss this appeal with costs.

**SAMARAWICKREMA, J.** — I agree.

**ISMAL, J.** — I agree.

*Appeal dismissed*