

APPUHAMY
v.
SENEVIRATNE

SUPREME COURT
WANASUNDERA, J., WIMALARATNE, J., AND SOZA, J.
S.C. 42/81
C.A. 98/80
D.C. AVISSAWELLA 15294/RE
JULY 16, 1982.

Landlord and tenant - Rent and ejection - Rent Act, No. 7 of 1972 (as amended by Law No. 10 of 1977), section 22(1) (1A) and (1C) - Settlement by parties in Court - Waiver of statutory requirement by tenant - Validity of waiver.

The landlord filed action for ejection of tenant on the grounds that the tenant was in arrears of rent for three months and that the premises were reasonably required for the occupation of the landlord.

The standard rent of the premises was below Rs. 100/- p.m. and therefore the landlord in accordance with section 22(1) (1A) caused notice to be served on the Commissioner of National Housing.

However at the trial on 16.1.80 the parties entered into a settlement viz. "Both parties state that they have arrived at a settlement of this case. The defendant consents to hand over possession of the premises to the plaintiff on or before 31.12.81. The defendant will not be paying rent to the plaintiff during this period ..." Judgment was entered in terms of this settlement.

On 25.2.80 before decree was entered the defendant moved the Court of Appeal to have the judgment revised on the grounds that the District Judge had no power to dispense with a statutory requirement that the Commissioner of National Housing should find him alternative accommodation before the tenant is ejected.

Held -

It was open to the tenant to waive the requirement and to agree to vacate the premises even before the Commissioner was able to provide him with alternative accommodation. The maxim "*quilibet potest renuntiare juri pro se introducto.*" applies here.

Cases referred to:

- (1) *Nugera v. Richardson* (1949) 51 N.L.R. 116.
- (2) *Dep v. Nagaratnam* (1954) 56 N.L.R. 262.
- (3) *Smith v. Poulter* (1947) 1 All. E.R. 216.
- (4) *Peachy Property Corporation v. Robinson* (1966) 2 All. E.R. 981.
- (5) *Nai Bahu v. Lala Ram Narayana* (1978) A.J.R. (S.C.) 22.
- (6) *Park Gate Iron Co. v. Coates* (1870) L.R. 5, 634.

APPEAL from judgment of the Court of Appeal.

W.P. Gunatilake with Rohan Jayawardena and Miss Thalatha Wickremasinghe for defendant-appellant

P.A.D. Samarasekera with Upali de Almeida for plaintiff-respondent.

Cur. adv. vult.

August 11, 1982.

WIMALARATNE, J.

The object of Rent Restriction legislation has mainly been to control the amount of rent recoverable by a landlord from his tenant and to place limitations on the jurisdiction of the Court to eject the tenant by specifying the grounds on which ejectment could be obtained. But ever since Rent Restriction legislation was introduced into this country forty years ago, these restrictions have not in any way fettered the right and the duty of the Court to give effect to lawful compromises willingly entered into in a pending action between a landlord and his tenant. That the provisions of section 408 of the Civil Procedure Code (Cap. 101) relating to lawful compromises still remain intact notwithstanding these restrictions contained both in the Rent Restriction Ordinance of 1942 and the Rent Restriction Act of 1948 has been recognised by our courts in several decided cases, principally in *Nugera Vs. Richardson* (1), and *Dep Vs. Nagaratnam* (2). In the former case Gratiaen, J. considered it "monstrous to contend that the defendant who, in a tenancy action, has entered into an unobjectionable bargain to give up an advantage in consideration of obtaining some other benefit should be relieved from his bargain after he has received in full measure the benefit accruing from the compromise"; at page 118.

The question is whether this principle has to any extent been eroded by the Rent Act, No.7 of 1972 or by Law No.10 of 1977 amending it; and also whether the principle is yet applicable where the tenant seeks to repudiate the settlement before he has enjoyed any benefit accruing from the compromise.

In the case of premises the standard rent of which is below Rs. 100/- (as in the present case) section 22(1) of the Rent Act prescribes the grounds on which a landlord may eject a tenant. One of the grounds is that rent has been in arrears for three months or more after it has become due (section 22(1) (a)). Another is that the premises are reasonably required for occupation as a residence by the landlord or a member of his family (section 22(1)(b)). This latter ground was available only if the premises had been let after the date of operation of the Act. The amending law of 1977 extended its scope to residential premises let before the Act as well. (section 22(1) (b)). The premises in question had been let to the tenant before the main Act came into force, and the landlord therefore had the right to ask for the ejection of the tenant on the ground of reasonable requirement too. But the amendment stipulated in section 22(1) (1A) that the landlord of such premises shall not be entitled to avail himself of this provision if he is the owner of more than one residential premises and unless he has caused notice of such action to be served on the Commissioner of National Housing.

In instituting the present action the landlord prayed for the ejection of the tenant from the premises *and* for the recovery of rent and damages. He caused notice of the action to be served on the Commissioner of National Housing as required by law. The tenant denied that he was in arrears for more than three months after it became due denied also that the premises were required for the occupation of the landlord or his family, and pleaded further that the landlord was the owner of more than one house. At the trial held on 16.1.80 the parties were represented by lawyers. A settlement was recorded in Sinhala in these terms:- "Both parties state that they have arrived at a settlement of this case. The defendant consents to hand over possession of the premises to the plaintiff on or before 31.12.81. The defendant will not be paying rent to the plaintiff during this period. The plaintiff consents to this. The defendant undertakes not to sublet the premises or to cause any damage to it. Judgment was entered in terms of this settlement, with a further clause that if possession was not handed on the due date the plaintiff would be

entitled to take out writ of ejectment without notice to the defendant and recover arrears of rent in terms of the plaint. Both parties signed the record consenting to these terms.

Before decree was entered (on 25.2.80) the defendant moved the Court of Appeal to have the judgment revised on the ground that the District Court had no jurisdiction to enter judgment for ejectment dispensing with the statutory requirement that once action is filed in terms of the amending law the tenant could not be ejected until alternative accommodation is provided by the Commissioner of National Housing.

The pleadings have been subject to careful analysis by the Court of Appeal, which has found that the averment in the plaint (dated 10.1.79) that all rents had been paid up to 30.9.78 does not necessarily lead to the inference that the rent was not in three months arrears when the tenancy was terminated, because "there had been a recurring backlog of three months arrears of rent at any given point of time". There does not appear to be sufficient grounds, therefore, to disturb the finding of the Court of Appeal that the present action is one for ejectment on both grounds of reasonable requirement as well as arrears of rent. A lawful compromise entered into in an action instituted on the ground that rent has been in arrears for the stipulated period has always been recognised and given effect to notwithstanding the restrictions contained in the Rent Act.

It has been submitted by learned Counsel for the appellant that the trial Judge has not considered the existence of any of the grounds under section 22 which are prerequisites for the institution of an action in Court. He has referred us to certain decisions of the Courts in England *Smith Vs. Poulter* (1947) (3), and *Peachy Property Corporation Vs. Robinson* (4) in terms of which the Court has no power to make an order for possession of a dwelling house unless the Court considers it reasonable to do so, and that it is the duty of the Court to see whether the conditions required by the Rent Act are satisfied, even though not pleaded or raised by the tenant. There is a requirement under section 3 of the English Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, that when a house is one to which the Rent Restriction Acts apply, then the court has no power to make an order or judgment for possession "unless the court considers it reasonable" to do so. Such cases are easily distinguishable because there is no provision similar to the above section 3 in our Rent Act.

More relevant are Counsel's submissions based on the provisions of the Civil Procedure Code of India relating to compromise of suits (o 23 R3). In *Nai Bahu Vs. Lala Ram Narayana* (5) the Supreme Court summed up the position thus:- "It is well settled that where the Rent Control and Restrictions Acts are in operation, a landlord cannot obtain eviction of the tenant unless he satisfies the requirement of the provisions of those Acts. It is also well settled that if the Court does not find the permissible ground for eviction disclosed in the pleadings and other materials on the record no consent or compromise will give jurisdiction to the Court to give a valid decree for eviction". This appears, with respect, to be an unexceptional exposition of the law applicable to compromises entered into in actions to which the Rent Act applies. In the present case the permissible grounds for eviction were disclosed in the pleadings. Hence a compromise entitling the Court to make an order for possession without inquiry was lawful and within the Court's jurisdiction.

It is significant that the amending law does not impose any prohibition against the entering of a simple decree for ejection even in an action instituted on the ground of reasonable requirement, without containing a clause that the decree is being entered on that ground. The prohibition contained in section 22(1) (1C) is against the issue of a writ of ejection until the Commissioner of National Housing has notified the Court that he is able to provide alternative accommodation for the tenant *only in cases where the decree has been entered on the ground that such premises are reasonably required* as a residence for the occupation of the landlord or for a member of his family. The reason for this is manifest in that the legislature had no intention for prohibiting lawful compromises between landlord and tenant even where the pending action is one instituted under the amending law.

It seems clear that the Rent (Amendment) Law, No.10 of 1977 has been enacted for the benefit of the owners of single houses, the standard rent of which is below Rs.100/- and which had been let to the tenant prior to the date of commencement of the main Act. If such an owner is able to satisfy the Court that such premises are reasonably required as a residence for his occupation he is entitled to a decree for ejection in his favour. If the decree is entered on the ground of reasonable requirement, then no writ of execution of *such decree* shall be issued by Court until after the Commissioner of National Housing has notified Court that he is able to provide

alternate accommodation for such tenant. This latter requirement is however, a concession included for the benefit of the tenant, who in spite of the reasonable requirement of the landlord, is not to be ejected without being provided a house for his occupation by the State. It is, however, open to the tenant to waive this requirement and to agree to vacate even before the Commissioner of National Housing is able to provide alternative accommodation, for "quilibet potest renuntiare juri pro se introducto" – the conditions prescribed by a statute are not considered as being indispensable if the thing which is to be done is for the benefit of a particular person or class of persons. *Craies on Statute Law* (6th Ed.) 269. Expanding on this principle Montague Smith J. observed, in *Park Gate Iron Co. Vs. Coates* (6), that if the objection goes to the jurisdiction of the Court, the requirement cannot be waived; but if it be a condition inserted entirely for the respondent's security (such as proper notice of appeal and security) it may be waived. The object of the requirement contained in section 22(1C) of the Rent (Amendment) Law, No. 7 of 1977, that no writ in execution of decree entered for the ejection of the tenant of residential premises, the standard rent of which is below Rs. 100/-, on the ground that such premises are reasonably required for occupation by the landlord or by a member of his family, shall be issued until after the Commissioner of National Housing has notified the Court that he is able to provide alternative accommodation for such tenant seems to be a requirement inserted solely for the benefit and security of a class of tenants. It is therefore one which may be waived by the tenant; for it may sometimes be more advantageous to a tenant to compromise with the landlord on favourable terms rather than to avail himself of alternate accommodation made available by the Commissioner. If the settlement between landlord and tenant in *Nugera's case* (above) was "eminently satisfactory", the tenant in the present case seems to have obtained terms far more favourable, for he was permitted to remain in occupation for two years without payment of any rent.

The circumstance that a tenant who is a party to a lawful compromise which permits him to remain in occupation for a stipulated period seeks to have the settlement vacated before he has enjoyed the fruits of the compromise would not, in my view, effect the above principle. If, however, the settlement had been induced by fraud, mistake, duress or other vitiating factor, then there is no impediment in the way of his having it set aside. But there is no proof of them in the present case.

The appeal is accordingly dismissed with costs.

WANASUNDERA, J. – I agree.

SOZA, J. – I agree.

Appeal dismissed.