

1969 *Present* : H. N. G. Fernando, C.J., and Samerawickrame, J.

D. MARLIN PERERA, Petitioner, and  
K. D. S. JAYAWARDENA, Respondent

*S. C. 590/68—Application for Conditional Leave to appeal to the  
Privy Council in S. C. 87/67 C. R. Colombo 93679/RE*

*Privy Council—Application for conditional leave to appeal—Petitioner a monthly tenant of premises let—Valuation of subject matter—Effect of Rent Restriction Act—Appeals (Privy Council) Ordinance (Cap. 100), Schedule, Rule 1 (a).*

Where a monthly tenant, who had erected a temporary building upon bare land let to him by the landlord, sought leave to appeal to the Privy Council as of right against a decree for ejection—

*Held*, that the application should be refused. In such a case it is the tenancy right, and not the rented premises, which requires to be valued for the purpose of determining whether the tenant can claim leave as of right under Rule 1 (a) of the Privy Council Rules. However wide the protection which the Rent Restriction Act affords to tenants, there is nothing in the Act which even purports to affect the rules which regulate the right of appeal to the Privy Council.

**A**PPPLICATION for conditional leave to appeal to the Privy Council.

*Colvin R. de Silva*, with *Miss Maureen Seneviratne* and *Justin Perera*, for the defendant-petitioner.

*C. Ranganathan, Q.C.*, with *B. J. Fernando*, for the plaintiff-respondent.

*Cur. adv. vult.*

December 17, 1969. H. N. G. FERNANDO, C.J.—

This was an application for conditional leave to appeal to the Privy Council from a judgment of this Court. The application was dismissed after the hearing on 17th December 1969, and I now state the reasons.

The plaintiff had in an action in the Court of Requests sued the present petitioner, hereinafter referred to as the "defendant", for ejection from a certain land, averring that the defendant had entered into possession of the land as a tenant of the plaintiff at a rental of Rs. 2.50 per month. The defence pleaded was that the premises to which the action relates are governed by the Rent Restriction Act, and that the defendant cannot be ejected therefrom. This defence was rejected on the ground that the subject of the tenancy was bare land, and did not include any building, and are not "premises to which the Rent Restriction Act applies". It would appear that the only building on the land was a small temporary structure which the defendant had erected and which he uses for the purpose of his business as a repairer of motor vehicles. The

decree of the Commissioner of Requests for ejection was affirmed by the judgment of the Supreme Court in appeal, and the present application is for leave to appeal from that judgment.

The defendant claimed to be entitled to appeal as of right in terms of Rule 1 (a) of the Privy Council Appeals Rules, and furnished an affidavit from an approved valuer estimating that the land occupied by the defendant is worth about Rs. 30,000, and assessing the "occupancy value" at over Rs. 5,000. Counsel for the plaintiff in appeal conceded that if the value of the land is the proper criterion to be applied in this case, an appeal will lie as of right; he contended, however, that the proper criterion is not the capital value of the land and that the value of the defendant's claim or right must depend on the value of the tenancy together with the value of his right to compensation for the building. The building itself has been valued at Rs. 150.

The criterion for which the plaintiff's Counsel contended was accepted by the Privy Council as being the right test in a case from Palestine (1948 A.C. 1), in which also a tenant had erected a building upon land let to him by the landlord. On the application of this test, the defendant's application must clearly fail, since the rent in this case was a paltry Rs. 2.50 per month, and the value of the building is only Rs. 150.

In the cited case, the judgment of the Privy Council stated that what had to be determined was the value to the appellant "that the Rent Restriction Ordinance should be held to give him protection against an order to vacate the land leaving on it a building which cost £450 to erect". Counsel for the defendant argued before us that this dictum means that account must be taken of the profits which a tenant can reasonably be expected to derive from the business which he carried on in the rented premises. While I agree that the dictum is capable of such a meaning, what was determined in the case was that the "value to the appellant" was made up of the value of the tenancy right, estimated by reference to the actual rent, plus the value of the building erected by the tenant. If a tenant's profits be taken into account, there would result the inconsistency that different premises having the same capital value and commanding the same amount of rent can yet be held to have for their respective tenants values which vary according to the differences in the business profits derived by the tenants. I am unable to accept as valid a test which can allow a right of appeal to one tenant of a shop in a row of identical shops, while denying a right of appeal to another such tenant.

In *Kaliappa Pillai v. Cassim*<sup>1</sup> T. S. Fernando J. reluctantly held that in the case of an appeal to the Privy Council by the tenant of rent-controlled premises, the value of the property (i.e., the capital value of the premises) is the determining factor. He purported to follow the decision of the Privy Council in an appeal from East Africa (1954 A.C. 80). But in that case, it was the landlord, and not the tenant, who sought leave to appeal

<sup>1</sup> (1961) 63 N. L. R. 199.

in an ejection action. Their Lordships explicitly stated that "looked at from the angle of the landlords, the value of the property, vacant possession of which they were claiming, was correctly taken on a capital value basis"; and they added that "it by no means necessarily follows that the result would have been the same if the tenants had been the applicants". These observations were cited in the judgment in *Kaliappa Pillai v. Cassim*, but it seems to me with respect that the force of these observations was not appreciated. Their implication is that when a tenant seeks leave to appeal against a decree for ejection, the value of the claim must be "looked at from the angle of the tenant". From that angle, it is the tenancy right, and not the rented premises, which require to be valued; and the value of the tenancy right must surely bear some relation to the term of the contract of tenancy and to the amount of the rent. To hold that the value of the tenancy right in rent-controlled premises must be equated to the value of the premises, or to Rs. 5,000, is not to determine the value of the right, but instead to assign quite arbitrarily to that right a value requisite to entitle the tenant to a right of appeal against a decree of this Court. However wide the protection which the Rent Restriction Act affords to tenants, there is nothing in the Act which even purports to affect the rules which regulate the right of appeal to the Privy Council. On a proper application of those rules, the petitioner in this case is clearly not entitled as of right to appeal to the Privy Council. No other ground was urged in support of his application.

For these reasons, the application for leave to appeal was dismissed with costs.

SAMERAWICKRAME, J.—I agree.

*Application dismissed.*

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