

1951

*Present : Gratiaen J.*

RANASINGHE, Appellant, and FERNANDO, Respondent

*S. C. 172—C. R. Colombo, 29,691**Rent Restriction Act, No. 29 of 1948—Section 5 (2) (c)—Construction—Arrears of rent—Computation.*

No order of a Rent Control Board or of a Board of Review constituted under the provisions of the Rent Restriction Act, No. 29 of 1948, fixing the rental for any premises at a sum different from the rental previously fixed by agreement between the parties can operate retrospectively.

**A**PPPEAL from a judgment of the Court of Requests, Colombo.

*H. W. Tambiah*, for the defendant appellant.

*C. E. Jayewardene*, for the plaintiff respondent.

*Cur. adv. vult.*

November 21, 1951. GRATIAEN J.—

This appeal relates to an action against a tenant for the recovery of alleged arrears of rent and also for ejection from certain premises to which the provisions of the Rent Restriction Act, No. 29 of 1948, are admittedly applicable.

The plaintiff let a portion of a building in Hulftsdorp to the defendant with effect from April 1, 1945, at an agreed monthly rental of Rs. 25. It is not suggested that this sum exceeds the authorised rent for the premises within the meaning of the Act.

<sup>1</sup> (1950) 51 N. L. R. 381.

<sup>2</sup> (1950) 52 N. L. R. 91.

On some date in 1948 the plaintiff desired to increase the rental to an amount which would not offend the provisions of the Act. The defendant retaliated by claiming a reduction. The dispute was accordingly referred to the decision of a Rent Control Board constituted under the Act and vested with jurisdiction under Section 5 (2) (c) to vary (subject to confirmation, variation or annulment by the Board of Review) the rent fixed by agreement between the parties.

Parliament has in its wisdom decided that disputes of this kind between landlords and tenants are of such urgency that they can be settled more expeditiously and conveniently by extra-judicial tribunals established for the purpose. It is therefore legitimate to express the hope that the history of the present dispute before these tribunals is not characteristic of the experience of persons who resort to the machinery set up by the Rent Restriction Act.

On October 21, 1948, the Colombo Rent Control Board investigated the dispute and made order reducing the rent to Rs. 15 per mensem. The plaintiff appealed to the Board of Review which on January 15, 1949, allowed the appeal and remitted the matter for a fresh inquiry, in conformity with certain specified directions, by the tribunal of first instance. This second inquiry took place on July 7, 1950, when the Rent Control Board purported to make order fixing the monthly rental at Rs. 20. The plaintiff again appealed. On September 30, 1950, the Board of Review once more set aside the order under appeal and ordered yet another inquiry *de novo* by the Rent Control Board. In the result, although two years had now elapsed, the settlement of the dispute, in the manner contemplated by the Act, had made no progress, and there was no binding order fixing the rental payable by the defendant to the plaintiff at a sum different to that fixed by the parties in terms of their original agreement.

The plaintiff instituted the present action on September 22, 1950, and the rights of the parties must be considered with reference to the position as it stood at that date. The main cause of action on which the plaintiff relied in claiming a decree for ejectment was that the defendant was in arrears of rent within the meaning of proviso (a) to Section 13 (1) of the Act.

The facts relating to this issue are not in dispute. After the first abortive order was made by the Rent Control Board on October 1948, the defendant repudiated liability to pay the previously agreed monthly rental of Rs. 25. He tendered instead Rs. 15 each month on the assumption that this sum now represented the rent fixed by the Board within the meaning of Section 5 (2) (c) of the Act. Payment on this basis was rejected by the plaintiff. When the Board made its second order on July 7, 1950 (which in due course proved equally abortive), the defendant increased the amount of his offer to Rs. 20 per mensem. This tender was also refused.

The learned Commissioner of Requests has upheld the plaintiff's contention that, on the facts of this case, no valid and binding order has been made by either Board fixing the rental at any amount in substitution

for the sum fixed by agreement between the parties when the tenancy commenced. Mr. Thambiah has conceded that, if this view of the legal position be justified, the judgment under appeal was correct.

It seems to me that the learned Commissioner's decision is unanswerable. Under the common law it is of the essence of a contract of tenancy that there should be a definite agreement regarding rent. The rent payable at any particular point of time must *either* be a precise amount fixed by agreement or at least a sum capable of precise ascertainment in accordance with the terms of the contract. The Rent Restriction Act is not designed to alter the nature of a contract of tenancy but merely varies in some respects the contractual rights and obligations of the parties. It prohibits, for instance, the recovery of the agreed rental in excess of the authorised rent as defined in the Act. It also vests the Board in certain cases with jurisdiction to make an order which, on reaching the stage of finality, will operate to vary the terms of the contract by fixing for the future a rental in substitution for the rental previously payable according to law. No rental fixed by a Rent Control Board or by a Board of Review in the exercise of its appellate jurisdiction operates retrospectively. Nor is it legitimate to construe the Act as contemplating any period of time during which the amount of rental payable under the contract of tenancy is left for ascertainment at some future date. Indeed, it is for this very reason that the jurisdiction of the tribunals established under the Act requires to be exercised with due regard for urgency.

Section 5 (2) (c) applies to the premises which form the subject matter of the present contract. In such cases, the rent fixed by agreement between the landlord and tenant continues—subject of course to the restrictions contained in Section 3—to be the measure of the landlord's rights until a different rental has been fixed *either* by a binding order made by a Rent Control Board under Section 5 (2) (c) or by a binding order made by the Board of Review under Section 21. If no appeal is preferred against an order made by the Rent Control Board, it comes into immediate operation and regulates the *future* rights of the parties. If, on the other hand, the party aggrieved by such an order duly exercises his right of appeal under Section 21 (4), it cannot be said that a new rental has been finally substituted for the old until the order under appeal has been confirmed by the Board of Review. The Board of Review, in disposing of the appeal, is vested with jurisdiction, should it think proper, to fix the rent at some different amount. Where, as has happened here in respect of two successive appeals, the Board of Review merely sets aside the order made by the Rent Control Board and orders a fresh investigation into the dispute, the rental originally fixed by the contract continues for the time being to be the operative figure.

For the reasons which I have set out I affirm the judgment under appeal. Mr. Thambiah has pleaded that his client should be even at this stage given a short time within which to find alternative accommodation. Mr. Jayawardene very rightly points out that the plaintiff has been deprived of his lawful rent for a considerable period of time, but he ultimately agreed that the defendant might, as an indulgence, be granted

some slight concession subject to such conditions as I might think appropriate to the case. I accordingly vary the decree entered in the lower Court by directing that writ of ejectment should not issue until January 31, 1952, provided that the defendant pays to the plaintiff on or before December 15, 1951, a sum not less than Rs. 500 in part-payment of the arrears of rent, damages and costs calculated in accordance with paragraph (b) of the prayer to the plaint. If the sum of Rs. 500 be not paid on or before December 15, 1951, writ of ejectment may issue on December 16, 1951, without further notice to the appellant. Subject to this variation, the defendant's appeal is dismissed with costs.

*Appeal dismissed.*

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