

1957

Present: H. N. G. Fernando, J.

P. CORNELIS, Appellant, and THE URBAN COUNCIL, DEHIWELA-MT. LAVINIA, Respondent

S. C. 149—C. R. Colombo, 57,219

Landlord and tenant—Test as to whether a person is a licensee or a tenant—Rent Restriction Act.

Upon a non-notarial permit issued by the plaintiff, the defendant occupied a bare land and erected buildings thereon though he was expressly prohibited from erecting buildings. Thereafter the plaintiff issued similar permits to the defendant to occupy the land and the buildings at a yearly rental, payable in monthly instalments, upon the agreement that the buildings should become the property of the plaintiff without payment of any compensation. The amount of the assessment rates levied upon the buildings was also paid by the defendant.

Held, that the defendant was not a mere licensee, but became a month to month tenant of the plaintiff and was entitled to the protection of the Rent Restriction Act.

APPPEAL from a judgment of the Court of Requests, Colombo.

Sir Lalita Rajapakse, Q. C., with *O. M. da Silva* and *D. C. W. Wickremasekera*, for the defendant-appellant.

G. T. Samerawickreme, for the plaintiff-respondent.

Cur. adv. vult.

May 29, 1957. H. N. G. FERNANDO, J.—

The only question which arises in this appeal is whether the defendant is a "tenant" within the meaning of the Rent Restriction Act; if so the plaintiff's action for ejectment must necessarily fail.

In 1937 the plaintiff (the Urban Council, Dehiwela) according to its witness "wanted to let out on rent" a piece of bare land and the defendant entered into occupation of the land on the document P. 15 described on its face as a "permit for occupation of small lots". The permit was dated April 2nd 1937 and provided for rent of Re. 1 per month reserving to the Council the right to terminate the permit by one Calendar month's notice. The permit prohibited the defendant from erecting any permanent buildings on the land and also denied to the defendant any right to compensation for improvements.

It is common ground that the defendant did in fact erect buildings on the land sometime after the issue of the original permit. Subsequently another permit P2 was issued to the defendant in 1939 for a period of three years at a rental of Rs. 30 per year payable in monthly instalments of Rs. 2.50. This permit provided that at the end of the three years the building erected by the defendant should automatically pass to the ownership of the Council without the payment of compensation. At the end

of each three-year period similar permits were again issued to the defendant, the only variation being increases in the rate of the rental. The permits issued after 1939 did not reserve to the Council a general right of revocation within the three-year period, but did provide for the right to revoke in the event of rent being in arrears. To all appearances therefore the permits purported to give the defendant a right to occupy the land and the buildings erected thereon for each of the three-year periods subject to his obligation to pay the monthly instalments of rent. A further feature which to my mind indicates the intention of the parties is revealed in the fact referred to by the learned Commissioner in his Judgment that the defendant paid to the Council from time to time the amount of the assessment rates levied upon the buildings erected by the defendant.

I should refer now to one further reservation, namely that the defendant did not have the right to the produce of the trees on the land but that this right was separately sold by the Council from time to time by auction and was usually purchased by the defendant as the highest bidder.

The permits not having been notarially executed were clearly not admissible to establish the tenancy, but it would seem upon the authority of *Wambeek v. Le Mesurier*¹ that the defendant can claim that he did become the tenant from month to month. If the documents have to be ignored, then the facts establish that the defendant was in occupation paying rent from month to month and that the Council accepted the payments of rent. These facts are in my opinion quite sufficient to negative the correctness of the Commissioner's finding that the defendant was a lessee at will. Even, however, if that finding were correct, then the defendant was a tenant and therefore protected by the Rent Restriction Act. The only possible answer therefore to the defendant's claim could be that he was only a licensee and not a tenant.

If the documents are to be ignored, it follows that the Council had, despite the terms of the permits, the right to recover possession of the premises from the defendant upon giving him one month's notice, but the existence of that right does not by itself mean that the defendant was a mere licensee since the right is one which exists in the case of all monthly tenancies. It seems to me therefore that a different test has to be applied in order to determine whether or not the defendant was a licensee and that the proper test is to pose the question whether the grantee of a right is or is not bound to carry out his part of an agreement irrespective of whether he actually exercises the right. If he is so bound, then, in my view, he is not a licensee. The clearest example of a licence would be a case where an owner of land permits another to occupy the land or to take produce therefrom without any payment whatsoever. A case where a person is permitted to exercise some right on another's land if he wishes to do so may also be an example of licence despite the fact that the person is bound to make payment if and when he does exercise the right. But if the grantee of a right has no mere option to exercise the right but binds himself to make a payment in consideration of an agreement by the other party to confer the right on him, then it would seem that the

¹ (1898) 3 N. L. R. 105.

grantee is not merely a licensee but a person who is obliged to perform his part of the agreement so long as neither party does not renounce the agreement.

Applying this test to the present case the defendant, so long as the agreement between him and the Council was not terminated by notice on either side, was bound to pay rent in monthly instalments to the Council whether or not he actually enjoyed the occupation of the premises and he was therefore not a licensee. That being so, it does not matter whether he was a lessee at will or can rightly claim to be regarded as a tenant from month to month.

For these reasons I would hold that the defendant was from 1939 onwards the tenant both of land belonging to the Council and of buildings belonging to the Council and that therefore the right of the Council to institute proceedings for ejection was qualified by the Rent Restriction Act.

The appeal must therefore be allowed and the plaintiff's action dismissed with costs in both Courts.

Appeal allowed.
