

1948

*Present : Basnayake J.*PEIRIS, Appellant, *and* RATNABARTHI ARATCHY, Respondent*S. C. 255—C. R. Panadure, 11,203*

Rent Restriction Ordinance—Commencement of tenancy before Ordinance came into operation—Rent agreed on in excess of authorised rent—Landlord cannot recover excess—Ordinance No. 60 of 1942, Sections 3 (1) and 3 (1A).

Under sections 3 (1) and 3 (1A) of the Rent Restriction Ordinance a landlord cannot recover any rent in excess of the rent authorised by the Ordinance on or after the day on which the Ordinance came into operation in any area regardless of the time at which the tenancy commenced.

APPPEAL from a judgment of the Commissioner of Requests, Panadure.

E. B. Wikramanayake, K.C., with *H. Wanigatunge* and *P. E. de Silva*, for defendant, appellant.

M. D. H. Jayawardene, for plaintiff, respondent.

Cur. adv. vult.

¹ (1911) 14 N. L. R. 496.

² (1885) 12 Calcutta 140.

³ (1930) L. J. Prob. Div. 52.

December 20, 1948. BASNAYAKE J.—

The defendant-appellant (hereinafter referred to as the defendant) is the tenant of the plaintiff-respondent (hereinafter referred to as the plaintiff). By deed No. 8153 dated May 25, 1942, the plaintiff purchased the premises from one Madappulla Arachchige Mercy Harriet Fernando, whose tenant the defendant was at the time. After the plaintiff became the owner, and before the Rent Restriction Ordinance, No. 60 of 1942 (hereinafter referred to as the Ordinance) came into operation in the area where the house was, a rental of Rs. 12 per mensem was agreed on. That rental is in excess of the standard rent, which is Rs. 3 per mensem.

The learned Commissioner holds that, as the agreement to pay Rs. 12 per mensem was made on a date prior to that on which the Ordinance came into operation in that area, the plaintiff is entitled to continue to receive rent at the agreed rate. He regards the Ordinance as applying only to contracts of tenancy made after the Ordinance has come into operation in any area.

I am unable to agree with the learned Commissioner. I think it is clear from sections 3 (1) and 3 (1A) of the Ordinance¹ that regardless of the time at which the tenancy commenced it is unlawful for any landlord to demand, receive, or recover, and for any tenant to pay, or offer to pay, in respect of a period commencing on or after the day on which the Ordinance comes into operation in any area, any rent in excess of the rent which may lawfully be received or paid under the Ordinance.

A retrospective statute is a statute that has effect from a date anterior to that on which it becomes law. If, for instance, section 3 (1) (a) of the Ordinance had the words "in respect of any period commencing on or after September 3, 1939", it would be retrospective and not prospective as at present. The fact that the Ordinance interferes with the future operation of existing contracts does not make it retrospective. Where a statute affects an existing contract the contract must yield to the statute.

In the case of *Wijemanne & Co. Ltd. v. Fernando*² the argument that the plaintiff now puts forward was advanced in respect of a notarially attested lease but was rejected by this Court. It does not appear that that case was cited to the learned Commissioner.

The other cases³ cited by the learned counsel for the plaintiff have no application to the instant case, and I do not propose to discuss them.

¹ Sections 3 (1) and 3 (1A) of the Rent Restriction Ordinance, No. 60 of 1942 :—

" 3 (1). It shall not be lawful for the landlord of any premises to which this Ordinance applies—

(a) to demand, receive or recover as the rent of such premises, in respect of any period commencing on or after the appointed date, any amount in excess of the authorised rent of such premises as defined for the purposes of this Ordinance in section 4; or

(b) to increase the rent of such premises in respect of any such period to an amount in excess of such authorised rent.

(1A) It shall not be lawful for the tenant of any premises to which this Ordinance applies to pay or offer to pay, as the rent of such premises, any amount in excess of the authorised rent of such premises as defined for the purposes of this Ordinance in section 4."

² (1946) 47 N. L. R. 62.

³ *Edmund v. Jayewardene* (1945) 46 N. L. R. 306; *De Silva v. Siriwardene* (1946) 47 N. L. R. 487.

I uphold the defendant's contention that the Ordinance applies to the tenancy in question. He is entitled to a refund of all payments in excess of the rent that may lawfully be recovered under the Ordinance. The case will go back for the determination of the respective rights of parties on that footing. The defendant will be entitled to the benefit of the learned Commissioner's finding in his favour in regard to the repairs effected by him.

The appeal is allowed with costs.

Appeal allowed.

