

1960

Present : Sansoni, J.

K. A. MARTIN APPUHAMY, Appellant, and URBAN COUNCIL,
GAMPAHA, Respondent

S. C. 101—C. R. Gampaha, 7656

*Rent Restriction Act, No. 29 of 1948—Section 13 (1) (c)—“ Reasonable requirement ”
for purposes of business—Requirement must not be remote—Must business be
already in existence ?*

To establish that premises are reasonably required for the purpose of the landlord's business in terms of section 13 (1) (c) of the Rent Restriction Act, it is a necessary condition that the landlord's requirement is not remote, in the sense that it must be a present requirement, even though not an immediate one.

The plaintiff, an Urban Council, sought to have its tenant, the defendant, ejected from the premises let on the ground that the premises were reasonably required for the purposes of its business, namely, a proposed Free Medical Hall. There were, however, many things that needed to be done before the Medical Hall could become a reality. Financial provision had to be made, staff had to be recruited, by-laws and regulations had to be passed, before the Council could entertain a reasonable prospect of seeing their hope fulfilled.

Held, that, assuming that the running of a Medical Hall fell within the term “ business ”, the plaintiff was not entitled to a decree in its favour before the preliminary procedural stages for the establishment of the Medical Hall were attended to.

Obiter : It is open to a landlord to claim back his premises under section 13 (1) (c) of the Rent Restriction Act for the purpose of establishing a business which is not yet in actual existence at the time of the institution of the action.

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

H. W. Jayewardene, Q.C., with *A. C. M. Uvais*, for Defendant-Appellant.

H. V. Perera, Q.C., with *G. T. Samerawickreme*, for Plaintiff-Respondent.

Cur. adv. vult.

April 11, 1960. SANSONI, J.—

The plaintiff in this action, the Urban Council of Gampaha, has sued its tenant the defendant to have him ejected from premises No. 1, Bazaar Street, Gampaha, on the ground that these premises are reasonably required for the purposes of its business within the meaning of section 13 (1) of the Rent Restriction Act, No. 29 of 1948.

There is an alternative claim, made apparently on the basis that the Act does not apply to these premises, but such a claim seems to me to be unsustainable because this is not a case where a bare land was let to the defendant. It is clear from the evidence of the Council's witness that when the agreement D1 was executed between the Council and the defendant there was already a building on the land which the defendant had erected.

The defendant resisted the claim on the grounds that the premises were not reasonably required by the plaintiff, and that the intended business which the Council proposed to carry on in the premises was not a business within the meaning of section 13. The business which the Council proposes to carry on, if and when it obtains possession of the premises, is described as a Free Medical Hall. A motion in the following terms was carried at a meeting of the Council held on 27th January 1956 : " That it is proposed that a Free Medical Hall be opened at Gampaha town ". It will be noticed that the resolution makes no mention of these premises and was quite general in its terms.

The defendant was given permission under the agreement D1 to occupy the premises for 10 years commencing from 1st January 1949, and that period expired on 31st December, 1958. He has been running a textile business there with a stock in trade which is now worth about Rs. 180,000. The business has been growing steadily and the nett profit has grown from Rs. 32,900 in 1953 to Rs. 74,270 in 1958. Both parties claim that although they had searched for other premises they have not been able to find any. The learned Commissioner on this aspect of the case held that there was not the slightest doubt that the defendant is carrying on a very big textile business in Gampaha and that his business would suffer if he were to be ejected. He also held that the defendant had not made a genuine effort to obtain possession of certain other premises bearing assessment No. 16, Main Street, Gampaha, but it would seem from the evidence that no share of those premises belongs to the defendant. The Commissioner appears to have attached great consideration to the interests of the community and thought that the community would lose a free Ayurvedic Dispensary if this action were to be dismissed. He gave the Council judgment as prayed for.

At the hearing of the appeal, the arguments ranged over a wide field. The plaintiff naturally had to satisfy the Court that it had power under the Urban Councils Ordinance No. 62 of 1939 to open a free Medical Hall, and several sections of the Ordinance were referred to, but I do not consider it necessary to decide this question, nor the question whether the establishment of such a Medical Hall would constitute a business within the meaning of section 13. I shall assume, without deciding, that the Council has the required power and that the running of a Medical Hall falls within the term " business " in section 13.

It would still be necessary, however, for the Council to show that these premises are reasonably required for the purposes of its business. In my opinion, it has failed to show that. I do not say so on the ground that the business is not in existence, for on this point I agree with the view taken by Nagalingam, J. in *Hameedu Lebbe v. Adam Saibo*,¹ and Gratiaen, J. in *Andree v. De Fonseka*,² in preference to that of Basnayake, C.J. in *Mamuhewa v. Ruwanpatirana*³ and *Nanayakkara v. Pawlis Silva*⁴. I think there is much to be said for Mr. Perera's argument that

¹ (1948) 50 N. L. R. 181.

² (1950) 51 N. L. R. 213.

³ (1948) 50 N. L. R. 184.

⁴ (1959) 60 N. L. R. 490.

the word " the " in the phrase " the trade, business, profession, vocation or employment of the landlord " does not point to a particular existing business, but refers to business as a genus or type; in other words, the phrase may be construed as " for the landlord's business purposes " : I also find that according to the Concise Oxford Dictionary the word " the " can be applied to a thing actually or potentially existent. But it is, in my view, a necessary condition that the landlord's requirement is not remote, in the sense that it must be a present requirement, even though not an immediate one. On applying this test, I do not think that the Council has made out a case for the ejection of the defendant. It is clear that no steps whatever have been taken to implement the resolution P9 which was passed on 27th January 1956. Obviously there are many things that needed to be done before the free Medical Hall could become a reality. Financial provision must be made, staff must be recruited, by-laws and regulations must be passed, before the members of the Council can entertain a reasonable prospect of seeing their hope fulfilled. It is obvious that these steps cannot be completed overnight, especially where they have to be taken by a statutory body like an Urban Council. This building may well have to lie unoccupied for many months while all the preliminary procedural stages are gone through. I can see no reason why the defendant should be ejected before these preliminary matters have been attended to, assuming that they will at some time be attended to.

I therefore hold that the premises are not reasonably required for the purposes of the Council's business, and the action must fail on this ground. I allow the appeal and dismiss the plaintiff's action with costs in both Courts.

Appeal allowed.
