

1968

Present : Sirimane, J.

Mrs. N. E. BROHIER, Appellant, and H. M. S. A. SAHEED,
Respondent

N. C. 21/1967—C. R. Galle, 34282

Conciliation Boards Act, No. 10 of 1968, as amended by Act No. 12 of 1963, ss. 2, 3, 6, 14 (a)—Civil dispute—Averment that a certain area falls within the operation of the Act—Proof—Jurisdiction of Conciliation Board in a tenancy action—Scope.

In a civil case it is not necessary to produce the *Gazette* which contains the Minister's Order bringing an area within the operation of the Conciliation Boards Act, when the other evidence led by the party which avers that fact is not disputed.

An action instituted by a landlord to have his tenant ejected from the rented premises falls within the ambit of section 6 of the Conciliation Boards Act. The provisions of section 14 (1) (a) of the Act would be applicable to the case if the tenancy agreement was entered into prior to the date when the Act came into operation in the area in question but the dispute in respect of the contract arose after that date.

APPEAL from a judgment of the Court of Requests, Galle.

H. W. Jayewardene, Q.C., with L. W. Athulathmudali and Ben Eliyatamby, for the plaintiff-appellant.

W. D. Gunasekeru, for the defendant-respondent.

Cur. adv. vult.

September 19, 1968. SIRIMANE, J.—

This is an action filed by a landlord (the plaintiff) for ejection of his tenant (the defendant) from certain premises situated in Ward number 1 of the Galle Municipal Council. The defendant resisted the plaintiff's claim, mainly on three grounds :

- (a) that the notice to quit was invalid in law,
- (b) that he was protected by the provisions of the Rent Restriction Act, which he alleged applied to these premises.
- (c) that the plaintiff could not maintain this action as she had not obtained a certificate from the Chairman of the Panel of Conciliators as required by section 14 (1) (a) of the Conciliation Boards Act 10 of 1958 as amended by 12 of 1963, hereinafter referred to as the Act.

The learned District Judge held against the defendant on the first two grounds set out above but in his favour on the third ground, and dismissed the action.

The plaintiff has appealed.

Mr. Jayewardene, for the plaintiff, urged firstly, that there was no proof that the premises were situated in an area where the Act was in operation,—as the plaintiff had failed to produce the *Gazette* in which the Minister's Order under section 2 of the Act had been published. In the answer, the defendant pleaded that the provisions of section 14 of the Act had to be complied with by the plaintiff, and at the trial raised an issue based on that plea. The plaintiff did not raise an issue as to whether or not that Act applied to the area in which these premises are situated. The defendant called as a witness the Chairman of the Conciliation Board who said that Ward number 1 was within his jurisdiction. This evidence was not challenged. A Panel of Conciliators is constituted by a Ministerial Order under section 3 of the Act. It is obvious that a panel is constituted for a Conciliation Board area, after that area is determined by an order under section 2 of the Act. The defendant, in fact, produced the *Gazette* containing the Order by which the Panel of Conciliators was constituted for Ward number 1 and certain other wards which Order referred by number and date to the *Gazette* in which the Order under section 2 had been made. The plaintiff herself stated in cross-examination that there was "a Conciliation Board in Galle", meaning obviously that the area in which the premises were situated was one in which a Conciliation Board functioned.

Though no express admission had been recorded, I think it is quite clear that the parties proceeded to trial on the basis that the premises were situated in an area to which the Act applied, and the evidence on the point was not challenged.

In a civil case it is not necessary to produce the *Gazette* which contains the Minister's Order bringing an area within the operation of the Act, when the other evidence led by the party which avers that fact is not disputed. The first submission on behalf of the plaintiff, therefore, fails.

The second ground urged by Mr. Jayewardene was that this dispute was not one to which section 6 of the Act applied.

For the purposes of this appeal it is only necessary to notice that section 6 applies to—

- (a) any dispute in respect of any immovable property wholly or partly situate in a Conciliation Board area;
- (b) any dispute in respect of any matter that may be a cause of action arising in that Conciliation Board area for the purpose of the institution of an action in a civil court;
- (c) any dispute in respect of a contract made in that Conciliation Board area.

Mr. Jayewardene submitted that (a) and (c) did not apply, and that the dispute between the parties was in regard to the validity of the notice to quit, and the question whether the defendant was protected by the Rent Restriction Act and that neither of these was "a matter that may be a cause of action" as stated in section 6 (b). I cannot agree. The dispute between the parties was the *refusal* of the tenant to quit the premises and the landlord's demand that he should do so. The tenant's reasons on which he sought to justify his refusal to quit do not constitute the dispute itself.

I am also inclined to agree with the submission of Mr. Gunasekera for the defendant, that the action is one to recover possession of immovable property and the dispute would also fall under section 6 (a). In the case of *Samarasinghe v. Samarasinghe*¹ this Court was of the view that in a tenancy action the dispute was one falling within one or more or all of the classes (a), (b) and (c) set out above.

The tenancy agreement in this case was entered into in 1963, and the Act came into operation in the area in question in 1964. But the *dispute* in respect of the contract of tenancy admittedly arose only in 1966. This case, therefore, can be distinguished from the case of *E. Coates & Co., Ltd. v. A. N. Jones & Co., Ltd.*² where the dispute had arisen before the wards of the Galle Municipal Council were declared to be a Conciliation Board area.

I think the learned District Judge was right in holding that the plaintiff could not maintain this action as she had failed to comply with the provisions of section 14 (1) (a) of the Act.

The appeal is dismissed with costs.

Appeal dismissed.

¹ (1967) 70 N. L. R. 276.

² (1968) 70 N. L. R. 359.