OWER SILVA

v

RANI SARAM

COURT OF APPEAL
UDALAGAMA, J.
WIJEYARATNE, J.
CA 259/94(F)
D.C.COLOMBO 7873/RE
JULY 17, 19, 2002

Rent Act, No.7 of 1972 – Excepted premises – Pradeshiya Saba Act, No. 15 of 1987 – Section 221 – Transitional provisions – Intention of legislature to keep alive the previous provisions – Notice to quit – Proof of Service? – Evidence Ordinance S.114 - Question of fact.

The plaintiff-respondent prayed for the ejection of the defendant-appellant. It was averred that, the said premises were excepted premises. The defendant-appellant denied that the premises were excepted premises and claimed protection under the Rent Act.

The District Court held with the plaintiff-respondent.

On Appeal

Held:

(i) The subject matter of the suit was originally within the Town Council limit of Dalugama, and are presently within the limits of the Kelaniya Pradeshiya Sabha.

(ii) When the Pradeshiya Sabha Act came into operation in 1987 and when a reference was made to the Town Councils same would necessarily be deemed to have been a reference to a Pradeshiya Sabha. The fact of the transistional provision of section 221, include the earlier limits of a Town Council – Regulation 3 is applicable and not Regulation 4.

Per Udalagama, J.

"The intention of the legislature by specifically enacting section 221, would have been to keep alive the previous provisions on the basis that the premises were within a Town Council even if it amounted to a legal fiction"

On a balance of probability the plaintiff-respondent had adequately proved that the defendant-appellant did in fact receive the Notice to quit (S.114(e) Evidence Ordinance.

APPEAL from the Judgment of the District Court of Colombo.

Cases referred to:

1. *Nathurmal Gran Chand* v *Makety* – 47 NLR 376.
2. *Wijesinghe* v *The Incorporated Council of Legal Education* – 65 NLR 364.
3. *Saverimuthu* v *Edwin de Silva* – 75 NLR 394.

A.K.Premadasa P.C., with *T.B.Dillimuni* for defendant-appellant

P.A.D. Samarasekera P.C., with *Keerthi Gunawardena* for plaintiff-respondent.

Cur.adv.vult

August 27,2002

UDALAGAMA, J.

The plaintiff (respondent) in D.C.Colombo case No.7873/RE prayed for the ejection of the defendant (appellant) from the premises in suit and for recovery of damages and cost of action.

The plaintiff (respondent) vide paragraph 8 of his plaint has averred that the said premises were business premises with an annual value of over Rs.1000/- and "excepted premises" in accordance with the provisions of the Rent Act, No.7 of 1972. Additionally, vide paragraph 4 of the plaint the plaintiff (respondent) also had stated that notice to quit dated 24.01.91 was duly served on the defendant (appellant) notwithstanding which the latter continued in unlawful occupation and claimed damages as enumerated in paragraph 5 of the plaint.

By way of answer the defendant (appellant) while admitting the tenancy specifically denied that the premises, the subject matter of the suit, were excepted premises and insisted that regulation 4 of the schedule to the Rent Act referred to above applied and claimed protection under the provisions of the said Act. The defendant (appellant) also denied the fact of due termination of tenancy and moved *inter alia* for a dismissal of the action.

At the trial 2 admissions appear to have been recorded whereby the situation of the premises had been admitted to have been within the limits of the Kelaniya Pradeshiya Sabha and that the defendant (appellant) was a monthly tenant of the plaintiff (respondent). Although 12 issues were admittedly raised at the trial, the 2 main issues appear to be, firstly as to whether the premises were excepted premises within the meaning of the provisions of the Rent Act referred to above, and secondly as to whether due notice of termination of the tenancy had been given by the plaintiff (respondent), the landlord, to the defendant (appellant), the tenant.

At the end of the trial subsequent to a consideration of the evidence of the plaintiff (respondent), an Officer of the Kelaniya Pradeshiya Sabha, another from the Kelaniya Post Office and the defendant (appellant) and thereafter court having called for written submissions of both parties, by the impugned judgment of the learned District Judge dated 13.05.94 the latter pronounced judgment in favour of the plaintiff (respondent) as prayed for.

Aggrieved, the defendant-appellant appeals therefrom.

The learned President's Counsel appearing for the defendant-appellant before this court reiterated the argument before the court below that the learned District Judge erred in applying the provisions of regulation 3 of the schedule to the Rent Act to the facts of this case, and secondly that the learned District Judge erred in failing to consider the non establishment by proof, the proper service of the document P7, the notice to quit.

It is apparent on a consideration of the evidence of the Revenue Inspector Gunasena and the documents P1 and P1A that the premises, the subject matter of the suit, was originally within the Town Council limits of Dalugama, and that they are presently within the limits of the Kelaniya Pradeshiya Sabha. It is also conceded that the

Town Council ceased to exist from 1981 and that in its place was established the District Development Council and that in the year 1988 the Kelaniya Pradeshiya Sabha was established in place of the District Development Council referred to above.

It is also manifest by the provisions of the Rent Act referred to above that business premises situated within a Town Council in accordance with the provisions of the Town Council Ordinance were excepted premises if the annual value of the said premises on 01.01.68 exceeded Rs.1000/-. That the premises, the subject matter of this action, was assessed on an annual value exceeding Rs.1000/- is clearly established from the extract of the assessments as filed of record admittedly pertaining to the aforesaid premises (facing page 238 of the brief)

The contention of the learned President's Counsel for the appellant that in view of the premises being situated within the limits of a Pradeshiya Sabha and as a Pradeshiya Sabha is not named in regulation 3 referred to above, that accordingly regulation 4 of the schedule to the Rent Act ought to apply, is in my view untenable, primarily due to the express provisions of the Pradeshiya Sabha Act, No.15 of 1987 which unequivocally, when dealing with the transitional arrangement necessitated by the enactment of the Act, No.15 of 1987, in particular provisions of section 221 of the said Act which *inter alia* provides as follows:-

> 221 .... a reference to any written law in operation on the date appointed under section 1 of this Act.
>
> (a) to a Town Council ..... shall be deemed to be a reference to a Pradeshiya Sabha".

The provisions of the Rent Act, No.7 of 1972 would undoubtedly be included "in any written law in operation" as referred to above.

In the circumstances I would hold the view that the intention of the legislature by specifically enacting section 221 aforesaid would have been to keep alive the previous provisions on the basis that the premises were within a Town Council even if it amounted to a legal fiction.

I am of the view that the Pradeshiya Sabha Act came into force in the year 1987 and thereafter when a reference was made to Town

Councils same would necessarily be deemed to have been a reference to a Pradeshiya Sabha. The fact of the transitional provision of section 221 referred to above include the earlier limits of a Town Council as for instance the Town Council of Dalugama as referred to in the instant case.

I am also of the considered view that the learned District Judge gave effect to the provisions of section 221 and came to a finding that the regulation 3 to the Rent Act referred to above was therefore applicable and not regulation 4 as contended to by the learned Counsel for the defendant-appellant and that the learned District Judge was correct in coming to that finding.

Accordingly I would not venture to disturb the finding of the learned District Judge in respect of issues 4 and 5 where he held in favour of the plaintiff-respondent.

The next matter for determination is the question of the receipt by the defendant-appellant of the notice to quit. That the landlord is bound to terminate the tenancy by a valid notice to quit is not denied. In fact such notice to quit is a condition precedent for a successful action for ejectment. It is settled law that such notice be addressed to the party to whom it is due or to any person entitled to receive it on behalf of that party, *Nathurmal Gianchand* v *Makaty* (1).

It was also held in *Wijesinghe* v *The Incorporated Council of Legal Education* (2), that such notice need not be proved if same had been given by an Attorney-at-Law appearing for the plaintiff landlord if the authority to represent the latter is not questioned. In the instant case the Attorney-at-Law admittedly appearing for the plaintiff-respondent who took steps to send the notice to quit testified before court as to the usual practice followed by him in dispatching a registered letter. He detailed in evidence the procedure to the acquisition of the "pink receipt" which evidence was corroborated by the Post Master.

The submission on behalf of the defendant-appellant was that the address on the notice was inadequate, in that same did not contain the assessment number. Apart from the fact that the notice to quit was addressed to the same address as that appeared in the caption to the plaint and as summons had been admittedly served on the same address, I am of the view that as stated by the learned President's Counsel for the plaintiff-respondent that it was clear from

the evidence of the appellant himself, that an assessment number of the premises was not needed for letters to be delivered to the premises, the subject matter. as the tenanted business premises was admittedly well-known. (p. 148 of the brief).

In any event the delivery of a postal article is reasonably established by the production of the "pink receipt" (P8) referred to above and apparently acknowledged by the defendant-appellant himself. Accordingly I am of the view that the learned District Judge was correct in his finding on a balance of probability to issue No. 5 that the plaintiff-respondent had adequately proved that the defendant-appellant did in fact receive the notice to quit.

I would also venture to reiterate the fact that the provision of section 114 of the Evidence Ordinance too *inter alia* provides for the ingredients necessary as to the burden of proof in the matter of notice by registered post and would refer to the illustration to section 114(e) aforesaid whereby the question as to the letter being received could be established if it is shown to have been posted and the court is entitled to presume the existence of a fact that would have likely happened in the common cause of business.

In *Saverimuttu* v *Edwin de Silva,*[3] Samerawickrema, J. held that in determining the question as to whether a notice to quit was given to the defendant by the plaintiff's Proctor who gave evidence that he sent the notice to quit by registered post and that same was returned with the endorsement that the recipient 'refused' to accept the letter that it gave rise to a presumption that the notice to quit was served on the defendant having regard to section 16 and section 114(e) of the Evidence Ordinance.

In any event the burden of proof as to the delivery of the notice to quit is a question of fact to be determined on a balance of probability and I see no reason to interfere with the finding of fact of the learned District Judge in respect of the receipt by the defendant-appellant of the notice to quit.

In all the attendant circumstances I would not disturb the judgment of the learned District Judge and dismiss this appeal with costs.

WIJERATNE, J. - I agree.

Appeal dismissed.