

1957

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

M. V. FERNANDO *et al.*, Appellants, and REUBEN PERERA *et al.*,  
Respondents

S. C. 62—C. R. Colombo, 59,351

*Rent Restriction Act—Business premises—"Reasonable requirement"—Tenant not a citizen of Ceylon—Expiration of his temporary residence permit—Is it a factor to be considered?*

When considering under the Rent Restriction Act whether or not it is reasonable for the tenant to insist on the continuance of his tenancy for the purposes of a business which he has carried on at the premises in question, the circumstance that the tenant is not a citizen of Ceylon and that his temporary residence permit has expired should not be taken into account if there is no provision of law which prohibits non-residents from carrying on business in Ceylon and in the absence of evidence that it is necessary for the tenant to reside in Ceylon in order to carry on the business.

**A**PPPEAL from a judgment of the Court of Requests, Colombo:

*H. V. Perera, Q.C.*, with *C. Chellappah* and *A. S. Vanigasooriyar*,  
for the defendants-appellants.

*H. W. Jayewardene, Q.C.*, with *C. G. Weeramantry* and *E. B. Vannitamby*,  
for the plaintiffs-respondents.

*Cur. adv. vult.*

November 28, 1957. H. N. G. FERNANDO, J.—

Decree for ejection of the defendants has been entered on the ground that the plaintiffs who are the landlords of the premises in question, No. 136 Dam Street, Colombo, reasonably require the premises for the purposes of their business. The findings of the learned trial Judge in regard to the requirements of the plaintiffs are as follows:—

(a) They have carried on business for about twenty years as dealers in rubber and other Ceylon produce but are not direct shippers.

(b) If the premises in suit can be occupied by the plaintiffs they will probably be able to obtain a licence from the Rubber Commissioner to export rubber as shippers. Their application for such a licence was refused on the ground that the premises they now occupy are not sufficiently large.

On these findings I agree with the learned Commissioner that the plaintiffs will be able to launch out into the new business of shipping rubber if they succeed in the action, and that their desire to so launch out is a reasonable one.

The position of the defendants is that they are partners in a business in bone manure which their father had started several years ago and which they have carried on after the death of their father in 1947. The effect of the Zoning By-Laws is that at present a business in bone manure can only be carried on in Mattakuliya but that the defendants, since they had a business in Dam Street prior to 1948, can continue the same business in the same premises notwithstanding the Zoning By-Laws. Eviction from these premises might well compel the defendants to stop business. If these are the only matters which required consideration, it seems to me that considerable hardship would be caused to the defendants if they have now to vacate these premises. One further matter which the learned Commissioner took into consideration against them is that they let out a portion of No. 136 to some other persons. In paying regard to this matter the Commissioner has ignored the fact that the portion sub-let must be very small indeed compared to that which the defendants continue to occupy. Whereas No. 136 has an annual value of Rs. 1,200 and the rates on it are Rs. 90 per quarter, the sub-let portion has an annual value of Rs. 60, the quarterly rates being Rs. 4.50. There was clearly a misdirection in holding that the sub-letting indicates that the defendants can well afford to vacate No. 136.

A further matter taken into account by the Commissioner is that the defendants are not citizens of Ceylon, the 2nd defendant being non-resident in Ceylon, and the 1st defendant a holder of a temporary residence permit which has now expired. Counsel for the plaintiff has argued that since the permit has expired, and since the 1st defendant is accordingly a person who is committing an offence under the Immigrants and Emigrants Act by continuing to remain in Ceylon, it would be contrary to public policy to accord to him the benefits conferred on tenants by the Rent Restriction Act. It is unnecessary for me to consider whether this argument would avail against a defendant who invokes the protection of the Act in order to continue in possession of a *place of residence*. But I was not referred to any provision of law which prohibits non-residents from *carrying on business* in Ceylon and there is no evidence that it is necessary for the 1st defendant to reside in Ceylon in order to carry on his present business. The circumstance that the 1st defendant is probably a person whose residence in Ceylon constitutes an offence under the Immigrants and Emigrants Act was therefore improperly taken into account in considering

whether or not it is reasonable for the defendants to insist on the continuance of their tenancy for the purposes of the business which has for many years been carried on at the premises in question.

I am satisfied that the hardship which the plaintiff may suffer through inability to open a new business is not comparable to the sacrifice which the defendants will be compelled to make if they are now ejected.

The appeal is allowed and the plaintiffs' action is dismissed with costs in both Courts.

*Appeal allowed.*

