

WEERAKOON
v.
WEERAPANA AND ANOTHER

COURT OF APPEAL.

S. N. SILVA, J.

C. A. No. 210/89.

July 10, 1990.

Rent Act - Landlord and tenant - Permission to demolish - Demolition order - Rent Act s. 18 A (i) as amended by Act No. 55 of 1980 - Compensation - Certiorari.

Permission to demolish was granted because the premises were 50 years old and needed for more efficient utilization of the land for its development. On the question of compensation.

Held:

Under section 18 (A) (2) (b) (ii) the minimum compensation that should be ordered is 3 years authorised rent of the premises.

APPLICATION for writ of *certiorari* to quash the order permitting demolition made by the Commissioner for National Housing.

W. P. Gunatilake with *C. Gamage* for the petitioner.

Bimal Rajapakse with *Yasalal Kodituwakku* for 2nd respondent.

July 10, 1990.

S. N. SILVA, J.

The Petitioner has filed this application for a Writ of Certiorari to quash the order dated 10.11.88 (marked P3 made by the 1st Respondent). By the said order the 1st Respondent permitted the owner of the premises (the 2nd Respondent) to demolish the premises subject to the terms and conditions that are contained in that order.

The 2nd respondent to this application being the owner of premises No. 252, 254 and 256, Hospital Road, Kalubowila made an application to the 1st Respondent in terms of section 18 (A) (i) of the Rent Act, No. 7 of 1972 as amended by Act No. 55 of 1980. The application was made on the basis that the premises has been constructed at least 50 years prior to the date of the application and an order should be made authorising its demolition.

Persuant to the said application being made, the Commissioner held an inquiry at which the owner of the premises and the 3 tenants were permitted to lead evidence and to make representations. Inquiry was held on 10 days from 17.2.86 to 9.1.87. Thereafter the order marked P3 was made permitting the demolition subject to the conditions that are stipulated. One condition is that each tenant be paid compensation in a sum of Rs. 10,000/-. The 2nd condition is that, the applicant owner, should construct residing units according to the plan that had been submitted, within a period of one year.

Two of the tenants affected by the order who were in occupation of premises No. 254 and 256 accepted the compensation that was ordered and vacated their premises. The petitioner is tenant of premises No. 252 and he has challenged the order by way of this application.

Mr. W. P. Gunatilake, Senior Counsel appearing for the petitioner did not dispute that the premises are 50 years old. It was also not disputed that the premises should be demolished for re development and for the more efficient utilization of the land. Mr. Gunatilake relied on 2 grounds to challenge that order.

- (1) that the Commissioner's order does not specify the number of residing units that should be constructed as required by section 18 (A) (2) (a) of the Act.
- (2) that the Commissioner's order directing that a sum of Rs.10,000/- be paid as compensation is unreasonable.

Counsel for the Respondent submitted that in terms of section 18 (A) (6) the decision of the Commissioner shall not be called in question in any Court in proceedings under that section.

I have considered the 2 grounds that were urged by learned Counsel for the petitioner. As regards the 1st ground that the Commissioner has failed to specify the number of residing units that should be constructed; I note that the Commissioner's order is that residing units should be constructed according to the plan that was submitted. The plan was produced in evidence marked P7 and was available to the Petitioner. (Page 14 of the proceedings of 13.10.86). According to the evidence the plan was for 3 residing units. In these circumstances I do not see any merit in the submission of the learned Counsel.

The second ground is with regard to the reasonableness of the compensation that had been ordered. It is conceded the authorised rent of the premises is Rs. 40/- per month. On that basis the compensation that has been ordered exceeds 20 years of the authorised rent. It is to be noted that Section 18(A) (2) (b) (ii) has laid down a minimum of the compensation to be ordered. The minimum is 3 years authorised rent of the premises. Therefore in my view the reasonableness of the compensation ordered should be considered in relation to the minimum specified by law. In this case I note that the compensation ordered is about 7 times the minimum specified by law. Therefore, basically, it could never be considered as being unreasonable.

Mr. Gunatilake submitted that reasonableness should be considered in relation to the cost of the petitioner to secure alternative accommodation. In this regard I have to note that the petitioner has not given evidence as to what it would cost him to secure alternative accommodation. The petitioner has merely claimed compensation in a sum of Rs. 100,000/- without stating the basis upon which that figure was determined. Since the petitioner did not adduce any evidence as to what it would cost him to secure alternative accommodation the Commissioner cannot be faulted for not considering that aspect.

It is also to be borne in mind that the other two tenants occupying similar premises accepted the compensation ordered and vacated their respective premises.

In the circumstances I see no merit in the two grounds urged by the learned Counsel for the petitioner.

The application is accordingly dismissed without costs.

Application dismissed without costs.
