

1952

Present : Swan J. and L. M. D. de Silva J.

G. W. N. HEPPONSTALL, Appellant, and MRS. PEARL  
COREA, Respondent

S. C. 429—D. C. Colombo, 22,738

*Rent Restriction Act, No. 29 of 1948—Section 27—“ Business premises ”.*

Premises taken on rent for the purpose of keeping a boarding house and used in fact for that purpose and also to serve as a residence for the tenant are “ business premises ” within the meaning of section 27 of the Rent Restriction Act.

**A**PPPEAL from a judgment of the District Court, Colombo.

*C. Thiagalingam, Q.C.*, with *V. Arulambalam*, for the plaintiff appellant.

*H. V. Perera, Q.C.*, with *A. M. Charavanamuttu*, for the defendant respondent.

*Cur. adv. vult.*

December 9, 1952. L. M. D. DE SILVA J.—

In this case it is conceded that the decree of the learned District Judge must stand if we are of the opinion that the premises in respect of which this action has been brought are found by us to be “ business premises ” within the meaning of the Rent Restriction Act, No. 29 of 1948. We are of that opinion and therefore no other questions need be considered.

The learned District Judge has found on the facts that the respondent took the premises on rent for the purpose of running a boarding and that she has in fact used the premises for that purpose from the time she took it. He has accepted her evidence to the effect that in the course of negotiations she told the appellant “ that she wanted the house to run a boarding for university students and that from the start he was aware that she was going to run a boarding house ”. These facts are not contested on this appeal. It is also a fact that she lived on these premises.

At the outset we would like to say that the English cases are not helpful because the English statutes which they apply to various sets of facts have no resemblance to the local ordinance. To attempt to gain guidance from them for the purposes of this case would be dangerous. The learned District Judge holds on the authority of *Tompkins v. Rogers*<sup>1</sup> that the premises in question are business premises. But the statutes

<sup>1</sup> (1921) 2 K. B. 94.

there considered and the considerations that there arose are vastly different from the ones that are relevant in this case, and that case was no authority for the proposition that the premises under consideration were business premises within the meaning of the Rent Restriction Act, No. 29 of 1948. With all respect to the learned District Judge we feel that he has erred in relying on the English case mentioned but the conclusion he has arrived at is right for other reasons.

Residential premises are defined in section 27 thus :—

“ Any premises for the time being occupied wholly or mainly for the purpose of residence ”.

Business premises are defined thus :—

“ Any premises other than residential premises as hereinafter defined ”.

Consequently it is the duty of a Court first to decide whether the premises come within the definition “ residential premises ”. If they do not, then they are “ business premises ”. In our opinion in order to do this the character of the physical occupation of the premises judged by the use to which they are put by the tenant must be examined. If the character of the occupation so judged is “ wholly or mainly for residential purposes ” then the premises are “ residential premises ”.

The premises in question were used by the respondent to run a hostel and also to serve as a residence for herself. There can be no doubt that the main use to which they were put was the running of a hostel. It is clear therefore that the premises were not occupied “ wholly or mainly for residential purposes ” and therefore they are not “ residential premises ” within the meaning of the ordinance. Consequently they are “ business premises ”.

In the case of *Standard Vacuum Oil Company v. Jayasuriya*<sup>1</sup>, the court had under consideration premises taken on rent by a firm in the course of its business for what, from the point of view of the business, could truly have been called business purposes or even wholly business purposes. They were used as a residence for one of the managers of the firm and the provision of a residence for the manager was a business purpose. But the character of the occupation of the premises was found to be mainly residential, because although a few incidents connected with the business took place on the premises, the chief use to which the house was put to was residence. Consequently the premises were held to be residential premises although they may have been described, apart from the narrow question as to what was the character of the occupation (as judged by the use to which it was put), as having been rented by the firm for wholly business purposes.

A notable difference between the facts of this case and the reported case is that in this case business was conducted on the premises, and was the main purpose of its occupation by the respondent. In the reported case only a very small amount of business was conducted on the premises and the main purpose of occupation was residence.

<sup>1</sup> (1951) 53 N. L. R. 22.

It should be added that it is a fortuitous circumstance in this case that the business purpose of the respondent involved residence by boarders. The ordinance has, by reference to the rent paid, given protection to persons who occupied buildings for residential or business purposes. The higher limit of Rs. 6,000 placed on the rental of business premises which receive protection (as against the limit of Rs. 2,000 for residential premises) indicates that the ordinance intended to protect a more valuable class of building where the sole or main purpose of occupation was business. We feel it difficult to take the view that this more extensive measure of protection is not available merely because the business carried on happens to be that of keeping a boarding house. We do not think that residence by the boarders is relevant to the determination of the character of occupation by the respondent.

For the reasons we have given we would dismiss the appeal with costs.

SWAN J.—I agree.

*Appeal dismissed.*

