1953 *Present:* **Gratiaen J. and K. D. de Silva J.**

ABDUL W. M. N. HAMEEN, Appellant, *and* H. S. P. SUGATHADASA, Respondent.

S. C. 120—D. C. Colombo, 25,523.

Rent Restriction Act—Business premises—"Reasonable requirement" of landlord—Section 13 (1).

In a tenancy action, the landlord obtained a decree for his tenant's ejectment on the ground that he "reasonably required" the premises in question for his own business within the meaning of the Rent Restriction Act. It was established that the tenant was already carrying on a business in the premises and that the effect of the decree against him would be to throw him out of business altogether and to involve him in very considerable financial loss. If, on the other hand, the *status quo* remained, the landlord would only lose the additional profits which he hoped to make by moving into the premises from his present shop.

Held, that, in the circumstances, it would be wholly unreasonable to authorise a decree for ejectment.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *M. H. Aziz*, for the defendant appellant.

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the plaintiff respondent.

Cur. adv. vult.

July 23, 1953. GRATIAEN J.—

This is a tenancy action in respect of premises No. 85, Chatham Street, Fort, to which the provisions of the Rent Restriction Act apply. The landlord obtained a decree for his tenant's ejectment on the ground that he "reasonably required" the premises for his own business within the meaning of the Act, but the learned Judge directed that, in order to mitigate the consequential hardships which the tenant would suffer, the execution of the writ should be postponed for a period of 18 months.

The tenant's appeal was based on the contention that, upon the facts as found by the learned Judge, the landlord's requirement of the premises was wholly unreasonable *inter partes*. While I appreciate the limits of the jurisdiction of an appellate tribunal in litigation of this kind—vide *Coplans v. King* [1] and *Cresswell v. Hodgson* [2]—I have come to the conclusion that it is our duty to set aside the judgment in the present case.

[1] *(1947) 2 A. E. R. 393.* [2] *(1951) 2 K. B. 92.*

Indeed, the very circumstance that the learned Judge was unwilling to interfere with the *status quo* for as long a period as 18 months indicates strongly to my mind that the landlord's present requirement was considered to lack reasonableness at the present time.

The landlord has since 1929 been carrying on a well-established business in the sale of ebony elephants in a shop situated in Canal Row, Fort. His customers are, in the main, tourist passengers, and he complains that in recent years his business has declined owing to a variety of unsatisfactory features connected with the situation of his present shop. He asserted that his profits would appreciate substantially if he could transfer the business to Chatham Street. The learned Judge took the view that he had " rather exaggerated the loss to his business during recent years " and that, generally speaking, " the conditions under which he carried on the business before 1944 and those during the last 4 years could not differ very much ". The final conclusion on this part of the case was that " the plaintiff has a reasonably prosperous business (in his present shop) but, if he has more suitable premises (in Chatham Street) the business would prosper still more ". In other words, the landlord genuinely desires to occupy the premises in order to gain some pecuniary advantage for himself, and is therefore entitled to succeed in the action provided also that his requirement is " reasonable " having regard to the effect which a decree for ejectment would have on his tenant.

Let us now consider the position of the tenant. He was until June 1951 a co-owner of the premises (the landlord himself being a substantial shareholder) and had in 1949 purchased the share of another co-owner, together with the goodwill of a profitable hotel business, which he has carried on in the premises ever since. In June 1951 the premises were put up for sale under the Partition Ordinance and were purchased by the landlord. Thereafter the tenant ceased to be a co-owner in occupation and became instead a contractual tenant under the landlord at a rental of Rs. 306 per mensem. Three months later this action was instituted.

It is common ground that, even if the tenant were ejected from the premises at a later date, there would be no reasonable prospect of his finding other suitable accommodation in the locality in which he could continue his hotel business. In the result, the effect of a decree for his ejectment would be to throw him out of business altogether, and to involve him in very considerable financial loss. If, on the other hand, the *status quo* remains, the plaintiff can continue to sell his ebony elephants as he did before, and will continue to receive a fair rental for his property in Chatham Street, losing only the additional profits which he hopes to make by moving into them himself. Tested in this way, it would be wholly unreasonable to authorise a decree for ejectment. I would therefore allow the appeal and dismiss the plaintiff's action with costs in both Courts.

K. D. DE SILVA J.—I agree.

Appeal allowed.