

1970

Present: Samerawickrame, J.

T. N. RAMZAN, Appellant, and Mrs. G. SARDAR, Respondent.

S. C. 98/68—C. R. Colombo, 1969, R.E.

Rent Restriction Act, as amended by Act No. 10 of 1961—Section 13 (1A)—Notice to quit—Arrears of rent—Quantum that should be tendered—Rent Restriction (Amendment) Act, No. 12 of 1966—Scope of s. 4 (1) (a), read with s. 12A of the principal Act.

Section 13 (1A) of the Rent Restriction Act, as amended by Act No. 10 of 1961, reads as follows:—

“ The landlord of any premises to which this Act applies shall not be entitled to institute any action or proceedings for the ejection of the tenant of such premises on the ground that the rent of such premises has been in arrear for one month after it has become due,—

(a) if the landlord has not given the tenant three months’ notice of the termination of the tenancy, or

(b) if the tenant has, before such date of termination of the tenancy as is specified in the landlord’s notice of such termination, tendered to the landlord all arrears of rent. ”

Held, that what the provision in subsection (b) requires is that the tenant should tender all arrears of rent as at the date of the notice.

Held further, that the rule that actions *prima facie* void under section 4 (1) (a) of the Rent Restriction (Amendment) Act No. 12 of 1966 may be maintained if they are based on grounds set out in section 12A of the principal Act should not be extended to actions which would have failed under the law that was actually in operation on the date when the action was filed.

APPEAL from a judgment of the Court of Requests, Colombo.

A. C. Nadarajah, for the plaintiff-appellant.

A. Sivagurunathan, for the defendant-respondent.

Cur. adv. vult.

August 24, 1970. SAMERAWICKRAME, J.—

In this case the learned Commissioner of Requests had to consider the interpretation to be placed on Section 13 (1A) of the Rent Restriction Act introduced by the Rent Restriction (Amendment) Act, No. 10 of 1961. The provision is as follows:—

“ The landlord of any premises to which this Act applies shall not be entitled to institute any action or proceedings for the ejection

of the tenant of such premises on the ground that the rent of such premises has been in arrear for one month after it has become due,—

(a) if the landlord has not given the tenant three months' notice of the termination of the tenancy, or

(b) if the tenant has, before such date of termination of the tenancy as is specified in the landlord's notice of such termination, tendered to the landlord all arrears of rent."

A possible view is that in terms of the provision in subsection (b) quoted above, all arrears of rent as at the date of termination of the tenancy had to be tendered by the tenant. In *Bardeen v. de Silva*¹ Tambiah, J. rejected this interpretation and said, "He conceded that in order to succeed in his contention the words 'up to the date of the termination of notice' should be read into the statute after the words 'tendered to the landlord all arrears of rent' in section 13 (1A) (b) of the Rent Restriction Act, as amended by Act No. 10 of 1961. I cannot agree. It is a cardinal rule of construction that words should not be read into a statute unless clear reason for it is to be found within the four corners of the statute itself (vide *Cickers v. Evans* (1910) L.J.K.B., p. 955). The Courts cannot arrogate to themselves the functions of the Legislature and should confine themselves to the task of interpretation." With respect, I agree with this dictum.

As the tenant has to tender the arrears "*before such date of termination*" it should be open to him to do so even on the day after he receives notice. If this be correct, arrears would not include arrears arising during the period of the three months' of notice. I am, therefore, of the view that what the provision in subsection (b) requires is that the tenant should tender all arrears of rent as at the date of the notice.

The question arises whether a tenant has to tender all rent that has become due before the date of the notice or only rent that had become due and had been in arrear for one month thereafter. As the words used in the provision are "all arrears of rent" I am of opinion that he has to tender all rent that had become due before the date of the notice and was therefore in arrear at that date. It is, however, unnecessary to decide this question in the present case. Notice of termination of tenancy was given on 14th July, 1964, and on that date only rents for the months of May and June were due but on 9th September, 1964, before the date of the termination of the tenancy specified in the notice, the defendant-tenant had paid the rents for May, June and July.

I am therefore of the view that upon an application of the provisions of s. 13 (1A) the plaintiff could not have maintained this action.

At the time this action came to trial the Rent Restriction (Amendment) Act, No. 12 of 1966, had come into force and a different provision had become applicable. I am however of the view that the rule adopted

¹ (1964) 66 N. L. R. 547 at 548.

by this Court that actions, *prima facie*, void under s. 4 (1) (a) of Act No. 12 of 1966, may be maintained if they are based on grounds set out in s. 12A, should not be extended to actions which would have failed under the law that was actually in operation on the date that the action was filed. I am therefore, of the view that the learned Commissioner was correct in holding that the plaintiff cannot avail himself of the amending Act No. 12 of 1966 and maintain the action if in fact he was not entitled to institute the action at the time the action was so instituted. The appeal is accordingly dismissed with costs.

Appeal dismissed.

