

1971

Present : Samerawickrame, J.

H. M. L. D. RAJAPAKSE, Appellant, and THE COMMISSIONER OF NATIONAL HOUSING, Respondent

S. C. 34/69—C. R. Matara, 8813/R.E.

National Housing Act (Cap. 401)—Section 31 (1)—“House provided by the Commissioner for occupation by any person”—Procedure for recovery of possession—Sections 2 and 86 (4).

Certain mortgaged premises were put up for sale in terms of the provisions of the National Housing Act and bought by the Commissioner of National Housing. Subsequently the defendant, who was in occupation of a house in a lot on the premises as tenant of a person who had derived title from the mortgagor, entered into a fresh contract of tenancy with the Commissioner. The defendant was well aware that the premises were part of a housing scheme under the National Housing Act.

Held, that the provisions of Part V of the National Housing Act were applicable to the house occupied by the defendant. Accordingly, the special procedure under the Act for recovery of possession of premises was available to the Commissioner.

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

P. A. D. Samarasekera, for the occupier-respondent-appellant.

Ananda de Silva, Crown Counsel, for the landlord-applicant-respondent.

Cur. adv. vult.

April 3, 1971. SAMERAWICKRAME, J.—

The appellant submitted that the procedure under the National Housing Act for recovery of possession of the house was not available to the respondent in respect of the house occupied by him. The respondent who is the Commissioner of National Housing had granted a loan under the Act to Issadeen & Co., on the mortgage of a land. Issadeen & Co. had defaulted and the land was put up for sale in terms of the provisions of the National Housing Act and bought by the respondent. The appellant was in occupation of the house in a lot on the land as tenant of a person who had derived title from Issadeen & Co.

Learned counsel for the appellant referred to Section 86 (4) of the National Housing Act which provides how delivery of possession was to be given where a tenant was in occupation of any premises. He submitted that the appellant was a tenant in possession on the date of the purchase by the respondent and had attorned to him. He accordingly submitted that Part V of the National Housing Act did not apply to the house occupied by the appellant.

It appears to me however that this was not merely a case where the appellant was a tenant on the date of purchase and attorned to the respondent. The appellant obtained a fresh tenancy from the respondent. He agreed to pay him rent at Rs. 135/- per mensem whereas he had paid his earlier landlord only Rs. 65/-. The appellant also entered into tenancy agreement R1 which recites that the appellant had "been selected as the tenant of house No. 6, Yehiya Road, Issadeen Town Housing Scheme, Matara. . . ." The agreement also contains clauses which are not usually found in ordinary tenancy agreements. The appellant has signed the agreement R1 and in fact relied on it.

The learned Commissioner of Requests held that when Issadeen & Co. defaulted the respondent bought the premises and took over the control and management of the property. He referred to the fact that Housing object under s. 2 of the Act included management and control of buildings and building schemes. He held accordingly that these premises formed part of the housing scheme administered by the respondent. In view of the tenancy agreement R1 he held that Part V of the National Housing Act applied to this house. He held that the deletion of clause 25 dealing with rent-purchase did not affect the matter. In terms of s. 31 (1), Part V would apply to every house provided by the Commissioner for occupation by any person whether such occupation is upon the payment of any rent or not.

It is a fair inference from the evidence that the appellant at all times was aware that the premises in question were part of a housing scheme financed and carried on in terms of the National Housing Act.

The finding of the learned Commissioner of Requests is supported by the evidence and I see no reason to interfere with it. The appeal is accordingly dismissed with costs.

Appeal dismissed.

