

1977 Present : Weeraratne, J., Vythialingam, J.,
and Colin Thome, J.

M. S. PERUMAL, Petitioner, and E. NANAYAKKARA,
Respondent

S. C. 55/76—D. C. Colombo 988/43/73

Conciliation Boards Act—Settlement of dispute between landlord and tenant—Validity of such settlement—Rent Act No. 7 of 1972—Section 22 thereof.

In an application to revise a settlement of a dispute between a landlord and a tenant under the provisions of the Conciliation Boards Act No. 10 of 1958 (which settlement was enforced as a decree of Court under the Act) it was contended *inter alia* on behalf of the tenant that (a) a tenant cannot contract out of the Rent Act; (b) the settlement before the Conciliation Board was invalid as it contravened Section 22(1) of the Rent Act No. 7 of 1972.

Held:

- (a) that a settlement effected under the Conciliation Boards Act cannot be equated to a voluntary settlement outside Court and that such settlement acquires statutory force in terms of the Act;
- (b) that Section 22(1) of the Rent Act does not operate as a bar to the settlement of a dispute between a landlord and a tenant before a Conciliation Board and such settlement is deemed to be a decree of Court in terms of Section 13 of Conciliation Boards Act.

APPPLICATION in revision.

S. F. A. Cooray, for the Petitioner.

H. L. de Silva, for the Respondent.

Cur. adv. vult.

January 20, 1977. WEERARATNE, J.—

This is an application by the defendant-petitioner seeking a revision of the settlement of a dispute under the provisions of the Conciliation Boards Act (No. 10 of 1958) between landlord and tenant, and which by virtue of the provisions of the said Act was enforced as a decree of the District Court of Colombo. The decree was sought to be set aside inter alia on the ground of fraud.

The plaintiff-respondent who is the landlord of premises No. 3/1, Edmonton Road gave it to the petitioner on a monthly rental of Rs. 150. The latter was occupying the said premises for about 10 years when sometime towards the end of 1972 the petitioner paid the assessed rent of Rs. 50 per month through the Colombo Municipal Council. The plaintiff in 1973 sent a notice to quit the said premises on the ground that they were required for his personal use. When there was no response to the said notice the plaintiff made an application to the appropriate Conciliation board for a settlement of the dispute stating that the premises were reasonably required for his occupation as he was living in a rented house. A settlement was thereafter effected between the parties under which it was agreed inter alia that the petitioner would vacate the premises on 3.11.77. The petitioner in his affidavit states that sometime in July 1974 he became aware that the plaintiff owned 2 other houses 3/2, and 3/3 Edmonton Road, at the time the settlement was entered into. The plaintiff had in July 1974, moved into premises 3/2 and rented out premises 3/3 Edmonton Road. The certificate of the Chairman of the Conciliation Board had also been enforced as a decree of Court, and it is this decree and the settlement which is presently sought to be set aside as referred to earlier.

Counsel for the defendant-petitioner submitted that the application to the Conciliation Board for a settlement was agreed upon by the petitioner on the statement made by the respondent landlord *that he was at that time living in a rented house and that the said premises were reasonably required for his occupation.* The petitioner consequently agreed to vacate the premises by the 3rd of November 1977. It was only sometime in 1974 (after the settlement had been enforced as a decree of Court) that the petitioner became aware of the other two houses owned by the plaintiff-respondent. Counsel argued that the petitioner agreed to a settlement as a result of a fraud practised upon him and consequently the settlement and decree should be set aside. It seems to me that the plaintiff-respondent's reply to this point in his affidavit, namely that the petitioner was fully aware of his ownership of the other two premises long before 1974, must

indeed be true because the other two premises were adjoining the premises 3/1 occupied by the petitioner and the petitioner should certainly have seen him carrying on repairs to them, especially in 1973 when he did extensive renovations. The respondent's position had not since been controverted by the petitioner. I see therefore no merit in his contention on the question of fraud practised on him. Counsel next submitted that a tenant cannot contract out of the Rent Act. By this is meant that an agreement by way of a settlement cannot override the protection a tenant has under the Rent Act. Counsel in this connection cited the case of *Ibrahim vs. Mansoor* (54 NLR 217 at page 224). In this case a bench of five judges stated that it was not competent for a party to contract out of a requirement of obtaining the authority of the Rent Control Board in writing authorising "the institution of such action or proceeding." Any decree entered in an action without such authority would be a nullity. This proposition so clearly set out by the bench of judges would certainly have no application to the present matter where there was a valid settlement arrived at between the parties on the basis of the Conciliation Boards Act. Counsel for the petitioner drew a distinction between settlements arrived at in an action pending in a court and those effected outside a court as for instance the one under discussion which was before a Conciliation Board and not in a court.

A settlement effected under the Conciliation Boards Act cannot certainly be equated to a voluntary settlement outside Court. Learned Counsel for the plaintiff-respondent submitted that a settlement under a statute (in this case the Conciliation Boards Act) acquires a statutory force. An examination of the provisions of the Conciliation Boards Act No. 10 of 1958 (as amended by the Conciliation Boards Amendment Act No. 12 of 1963) makes it incumbent on the Board "to make every effort to induce parties to a settlement to the dispute, and where such parties agree to a settlement, record such settlement and issue a copy thereof signed by the President . . . to each party." Section 12 (1). There is a provision in the Act, section 13(1) for parties to repudiate a settlement within one month "and where such notification is made with such reasons stated therein such settlement shall cease to be in force from the date specified in such notification." Section 13(3) of the Act sets out that, "such settlement shall with effect from the date of such filing (in this case in the District Court) be deemed to be a decree of that court and such of the provisions of the Civil Procedure Code as relate to the execution of decrees shall as far as practicable apply mutatis mutandis to and in relation to such settlement." It is indeed quite clear that a settlement entered into before a Conciliation

Board bears the same force as a settlement in a pending action. Finally Counsel for the petitioner argued that the agreement before the Board is invalid because it contravenes the provisions of the Rent Act. He referred us to Section 22 (1) (b) Rent Act No. 7 of 1972) :—

Section 22 (1)

“Notwithstanding anything in any other law, no action or proceedings for ejection of the tenant of any premises the standard rent (determined under section 4) of which for a month does not exceed one hundred rupees shall be instituted in or entertained by any court, unless where—

(a)

(b) such premises, being premises which have been let to the tenant on or after the date of commencement of this Act, are, in the opinion of the court, reasonably required for occupation as a residence for the landlord, or any member of the family of the landlord, or for purposes of the trade, business, profession, vocation or employment of the landlord ;..”

In this connection it must be remembered that the said premises were let to the petitioner about ten years prior to the filing of this application in 1975, consequently provision (b) of section 22(1) would not apply to this case. Be that as it may, it would appear that Section 22(1) deals with an action or proceeding for ejection *in a Court of Law*. The provisions of this section could not possibly apply to a statutory proceeding in which the Chairman of a Conciliation Board acting under the Act records a settlement, (which was not repudiated). Then when a copy of the settlement is received in the relevant District Court, and filed of record by the District Judge, it is by a process of legal fiction “deemed to be a decree of that court” as shown earlier. As stated by Counsel for the plaintiff respondent, this is no action, but a statutory proceeding leading to a decree by operation of law. In my opinion section 22(1) of the Rent Act does not operate as a bar to the entering into of a valid settlement by the parties in this matter under the Conciliation Boards Act.

This application is accordingly refused with costs.

VYTHIALINGAM, J.—I agree.

COLIN-THOME, J.—I agree.

Application refused.