

1968

*Present : Weeramantry, J.*

A. D. LUCIAN DE SILVA, Appellant, and A. T. S. K. SINGAM,  
Respondent

*S. C. 161/67—C. R. Colombo, 87764/R.E.*

*National Housing Act (Cap. 401)—Section 37—Suit by "occupier" against his tenant—Procedure—Interpretation of statutes—Construction of general words in accordance with context.*

The special procedure prescribed by section 37 of the National Housing Act is not applicable to an action instituted by an "occupier" to eject from premises provided to him by the Commissioner of National Housing a person who is his (the occupier's) tenant.

Statutory provisions must be construed according to the context in which they appear.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

*Walter Jayawardena, Q.C., with Nimal Senanayake and Bala Nadarajah, for the Defendant-Appellant.*

*S. Sharvananda, with M. Wanniaruppa, for the Plaintiff-Respondent.*

*Cur. adv. vult.*

November 21, 1968. WEERAMANTRY, J.—

This appeal is from an order in favour of the plaintiff in an action for rent and ejection.

It would appear that the premises in question which were let by the plaintiff to the defendant upon the document P2, had been provided to the plaintiff by the Commissioner of National Housing upon the document P1.

This latter document states *inter alia* that the plaintiff is a member of a building society and as such has made a deposit with the Commissioner towards the cost of a land allotted to him. It states further that he has been placed in occupation of the house constructed for him and that the cost of this house has been advanced by the Commissioner of National Housing to the building society. It contains also a prohibition against the letting or sub-letting of the house or any part thereof except with the written permission of the Commissioner of National Housing.

Several issues were raised at the trial but the only question on which I have been addressed in appeal on behalf of the appellant is the question whether the plaintiff can maintain this action in view of the provisions of section 37 of the National Housing Act, Cap. 401. This section provides that no action for the recovery or the possession of any house to which Part V of the Act applies or for the ejection of the occupier from the land or premises in which the house is situated shall be taken except under the provisions of that Part.

It is submitted for the appellant that this section debars the plaintiff from suing the defendant in ejection. In making this submission the appellant relies on the generality of the terms in which section 37 is framed. The section does not state that the action prohibited is an action by the Commissioner (designated as the "landlord" for the purpose of Part V) or that recovery must be sought from the person placed in occupation (designated as the "occupier" in this Part). It is therefore submitted that the prohibition in this section is not limited to actions by the Commissioner to recover possession of a house from the occupier but that it covers all actions for the recovery of the house by or against whomsoever such action may be instituted. By this argument, even actions such as the present, by the occupier against his lessee, are shut

out. In support of this contention it is said that the section is perfectly clear as it stands, and that in the absence of any resulting absurdity it would not be justifiable to place any gloss upon the words in the section and thereby whittle down their generality.

The appellant draws attention to the judgment of My Lord the Chief Justice in *Silva v. The Commissioner for National Housing*<sup>1</sup> where it was pointed out that Part V of the Act as originally enacted did not authorise the use of the special procedure therein provided against a person who is not an "occupier" in the strict sense of the term in section 31 of the Act, or a dependant of such an occupier. In that case the procedure so provided was held to be unavailable to the Commissioner in a case where the original occupier holding under the Commissioner sublets the premises or permits some other person not being a dependant to occupy the same. This decision is relied on as showing that the normal meaning was attached to the word "occupier" despite an obvious lacuna in the Ordinance (a lacuna which was removed by section 5 of Act No. 36 of 1966) and the very unsatisfactory result that followed therefrom, namely, that no procedure was available against the sub-tenant. On this basis it is said that despite the obviously unsatisfactory result that would follow from giving their plain meaning to the words in section 37, and the resulting lacuna as regards an occupier's claim against his sub-tenant, the court should not shrink from applying the normal rule of interpretation.

It is said further for the appellant that the entire scheme of Part V is aimed at reserving to the Commissioner or the relevant housing body a total and exclusive control in the matter of ejection of persons physically upon the premises and that even where there is a letting to a third party by an occupier, the policy of the Act requires that any action to recover the premises should be launched by the Commissioner or housing body alone. This may be done it is said by obtaining a rule against the occupier and such person, for, according to the amendment effected by section 5 of Act No. 36 of 1966, such a rule would be effective to obtain recovery against all persons occupying the land. Any hardship resulting in cases such as the present where the sub-letting is with the consent of the Commissioner may, it is submitted, be met by granting the premises afresh to the innocent occupier against whom a rule has had in this way to be obtained.

One other contention of the appellant to which I should make reference is that section 37 is made up of two limbs, the first of which deals with the recovery of possession of the house and the second of which deals with the ejection of the occupier from the land or premises in which the house is situated. The restriction to the case of an "occupier" appears only in the second limb and this deals with land or premises and not the house, the possession of which is sought to be recovered, so that in regard to recovery of possession of the house there is no restriction of the prohibition to cases where recovery is sought from an occupier.

<sup>1</sup> (1968) 70 N. L. R. 573.

It seems to me that these various submissions do not give adequate weight to the context in which this section is found.

Section 37 appears in the context of a Part of the Ordinance dealing with recovery of possession by the Commissioner and other housing authorities, and creates a special procedure by which quick relief may be obtained by them. Section 37 must not be read in isolation from the Part in which it appears. While no doubt such a construction would be appropriate and indeed necessary in certain contexts, as where words appear in a general portion of the Act, such a construction would be inappropriate in the peculiar context of their appearance in a group of sections making available to the *Commissioner and certain housing authorities* a special procedure for recovery. Indeed this Part is intitled "Recovery of possession of houses by the Commissioner, Building Companies, Building Societies and Housing Bodies" and would not appear to contemplate recovery by any party other than the Commissioner or the housing authorities therein specified. When therefore by section 37 the legislature prevented action being brought otherwise than in the manner stated in Part V it was merely displacing the usual procedure available to such persons and could not have contemplated that actions by persons other than the specified agencies were thereby shut out. It seems most unlikely that in a Part dealing exclusively with the "landlord"- "occupier" relationship any prohibition would be contained in respect of an action so foreign to the scope of that Part, as an action by an "occupier" against his sub-tenant.

Any other interpretation of section 37 would involve moreover the taking away of common law rights, for an occupier would ordinarily be entitled at common law to an action for the recovery of the house from a person to whom he had sublet it. Any interpretation of the section which produces the result that the occupier is deprived of this common law right should not therefore be favoured unless there is express language or clear implication to this effect.<sup>1</sup>

To give to section 37 such an unrestricted meaning as to cover all actions whether by the "landlord" or not and whether against the "occupier" or not would be to go much further afield in the prohibition of actions than the context of the section warrants, and it seems a necessary inference in all the circumstances that the section relates only to the class of action contemplated by Part V.

In giving this contextual interpretation to section 37 no departure is involved from the ordinary canons of interpretation of statutes for it is a well recognised rule that statutory provisions must be considered according to the context in which they appear. In particular where sweeping general words are used it becomes necessary to examine their context in order to see whether they are not necessarily limited to a particular restricted meaning harmonising with that context. As Maxwell observes,<sup>2</sup> a survey of the context in which words appear "is often indispensable,

<sup>1</sup> *Maxwell, Interpretation of Statutes, 11th ed. p. 276.*

<sup>2</sup> *Interpretation of Statutes, 11th ed. p. 28.*

even when the words are the plainest, for the true meaning of any passage is that which (being permissible) best harmonises with the subject and with every other passage of the statute". In the words of du Parcq, L.J. in *Butcher v. Poole Corporation*<sup>1</sup> "it is of course impossible to construe particular words in an Act of Parliament without reference to their context and to the whole tenor of the Act". In that case, as in the present, it was sought by the unsuccessful party to construe certain statutory provisions framed in general terms by giving to the words used their normal and natural meaning. It was argued that the words "any remedy by way of re-entry upon any land" were wide enough to include re-entry upon land of which a trespasser had taken possession. Du Parcq, L.J., whilst stating that such a wide construction could be given to these words if one gave one's attention only to them, said that if one looked at the whole Act, it was manifest that when the legislature spoke of a person to whom the remedy of re-entry upon land was available, it meant in that context that person who had the right of re-entry by reason of the antecedent failure of the occupier of the land to fulfil some obligation. This principle of construing words according to their context seems to provide the answer to the question which this case involves and I would prefer to rest this judgment on this rule rather than on the alternative submission of the respondents that the wide construction contended for by the appellant would result in absurdity. The absurdity pointed out by the respondents is that no remedy would be available to an occupier to sue his lessee. Such a lacuna in the law, as was the lacuna referred to by My Lord the Chief Justice in *Silva v. Commissioner for National Housing*<sup>2</sup>, would no doubt result in inconvenience and hardship but this by itself would be no sufficient reason for giving to the words in question the narrower meaning contended for by the respondents.

It seems clear that this narrower meaning must be given to section 37 for the contextual reason to which I have referred, and on this basis I take the view that the occupier, namely the plaintiff in this case, is not debarred by section 37 from the remedy which would ordinarily be available to him at common law, of seeking to eject the lessee whom he has placed in occupation.

The appeal accordingly fails and is dismissed with costs.

*Appeal dismissed.*

<sup>1</sup> (1942) 2 All E. R. 572 at 579.

<sup>2</sup> (1968) 70 N. L. R. 573.