

1954

Present : de Silva J. and Sansoni J.

H. L. WICKREMASINGHE, Appellant, and S. A. M. ABDUL
RAHEEM, Respondent

S. C. 241—D. C. Colombo, 29,150M

*Rent Restriction Act, No. 29 of 1948—Death of tenant—Continuance of tenancy—
Section 18 (2)—Exclusive jurisdiction of Board of Review.*

Where, on the death of a tenant, a person gives notice to the landlord, in terms of section 18 (2) of the Rent Restriction Act, stating that he proposes, in his status as a member of the household of the deceased tenant, to continue in occupation of the leased premises as the tenant thereof, the landlord must, if he objects to the status of such person to give the notice, make an application to the Rent Control Board under section 18 (3), and is not entitled to raise such objection in a court of law in an action to eject the person who claims to be the new tenant.

¹ (1914) 18 N.L.R. 26.

² (1929) 30 N. L. R. 351.

APPPEAL from a judgment of the District Court, Colombo.

E. R. S. R. Coomaraswamy, with *Daya Perera*, for the plaintiff appellant.

No appearance for the defendant respondent.

M. Fernando, Crown Counsel, as *amicus curiae*, on notice.

Cur. adv. vult.

December 20, 1954. DE SILVA J.—

This appeal involves the interpretation of section 18 of the Rent Restriction Act of 1948 (herein referred to as the Act). This section reads :—

(1) Notwithstanding anything in any other law, but subject to any provision to the contrary in any written contract or agreement, the succeeding provisions of this section shall have effect in the event of the death of the tenant of any residential premises to which this Act applies.

(2) Any person who—

(a) is the surviving spouse or the child, parent brother or sister of the deceased tenant of the premises, or was a dependant of the deceased tenant of the premises immediately prior to his death ; and

(b) was a member of the household of the deceased tenant (whether in those premises or in any other premises) during the whole of the period of three months preceding his death,

shall be entitled to give written notice to the landlord, before the tenth day of the month succeeding that in which the death occurred, to the effect that he proposes to continue in occupation of the premises as tenant thereof ; and upon such written notice being given, such person shall, subject to any order of the Board as hereinafter provided, be deemed for the purposes of this Act to be the tenant of the premises with effect from the first day of such succeeding month, and the provisions of this Act shall apply accordingly.

(3) The landlord of the premises in relation to which any written notice is given under sub-section (2) by any person may make application to the Board for an order declaring that such person shall not be deemed as provided in that sub-section to be the tenant of the premises ; and the Board may make order accordingly if satisfied that such person is not entitled to give the notice for which provision is made by that sub-section.

(4) (Not material)

The plaintiff is the owner of premises bearing assessment No. 371 situated at Dam Street, Colombo, and she let the same on a monthly tenancy at a rental of Rs. 108·50 to one S. A. Seyad Hamid, a Proctor practising in Colombo. Mr. Seyad Hamid who was an Indian died in India on December 24, 1951. Thereafter on 9.1.'52 his brother the defendant gave notice to the plaintiff, in terms of section 18 (2) of the Act, that he proposed to continue in occupation of the premises as tenant thereof. The plaintiff replied to this letter through her Proctor on 12.1.'52 expressing her unwillingness to accept the notice and also denying the right of the defendant to avail himself of the provisions of Section 18 (2). When subsequently the defendant forwarded the rent to the plaintiff she refused to accept it and instituted this action on 10.6.'52 to eject him and to recover damages at the rate of Rs. 108·50 on the ground that he was in wrongful and unlawful occupation of the premises. The defendant claimed that he was entitled to be regarded as the plaintiff's tenant as he had complied with the provisions of Section 18 (2) by giving the required notice. He also contended that in view of the failure on the part of the plaintiff to make an application to the Rent Control Board under section 18 (3) on receiving the notice he must be deemed to be the tenant of the premises. The learned District Judge upheld this contention and dismissed the plaintiff's action. This appeal is against that decision.

Mr. Coomaraswamy for the appellant argued that the learned District Judge had erred in holding that the Court had no jurisdiction to inquire into the question whether or not the presumption of tenancy contemplated by section 18 (2) arose on the required notice being given. As the defendant was not represented at the hearing of this appeal and on Mr. Coomaraswamy bringing to the notice of the Court that the point of law involved was one of some importance, the Attorney General was requested to allow Crown Counsel to appear as *amicus curiae*. Accordingly, Mr. M. Fernando, C.C., appeared at the hearing of the appeal and we have had the advantage of his assistance. The plaintiff's position is that the defendant was not a member of the household of her tenant Seyad Hamid. The learned District Judge held in favour of the plaintiff on that point. Mr. Coomaraswamy maintained that on that finding judgment should have been entered for the plaintiff.

Bofore notice can be given under sub-section (2) the two conditions specified in sub-section (1) must be satisfied, namely, that the tenant has died and the premises in question are residential premises within the meaning of the Act. They are conditions precedent and unless they exist the notice would be ineffective. Mr. Fernando, C.C., submitted that although it is competent for the Court to inquire whether these two conditions have been successfully established, yet the requirements under sub-section 2 (a) and (b) are within the exclusive purview of the Board. This submission, in my opinion, is correct. The words:—

“ Such person shall, *subject to any order of the Board as hereinafter provided*, be deemed to be the tenant ” appearing in sub-section (2)

make it abundantly clear that the Board has the exclusive right to determine whether or not the person giving the notice is entitled to give that notice. This right cannot be exercised or shared by any other tribunal.

Sub-section (2) is one of many instances to be found in the Act where a statutory fiction has been created—in this case an artificial construction being given to the word “tenant”. The sub-section also provides the only method by which the “tenant” so created can be divested of this artificial character, viz. :—by an order of the Board obtained on an application made to it by the landlord of the premises, as provided in sub-section (3). In this case no such application was made by the plaintiff and the defendant must therefore be considered the tenant of the premises, provided that conditions contained in sub-section (1) have been satisfied.

Sub-section (3) would appear to indicate that the function of the Board is restricted to the decision on matters contemplated by sub-section (2). It makes no reference to sub-section (1) and therefore the questions which arise under that sub-section would be matters within the jurisdiction of the Courts. Accordingly, as the learned District Judge held, the Court is not entitled to adjudicate on the question whether or not the defendant was a member of the household of the deceased tenant during the required period.

That the plaintiff's tenant Seyad Hamid died on December 24, 1951, is not denied. Mr. Coomaraswamy however contended that the premises in question are not residential premises. This is a matter which the Court is entitled to adjudicate upon. The learned District Judge has held in favour of the defendant on this point. It is true that Seyad Hamid had sub-let two rooms of his house to others to be used as offices. But he himself lived in the house and had his meals prepared there. He also had his office there. The fact that he sub-let two of the spare rooms for offices is not sufficient to hold that these are business premises. The evidence discloses that the premises were occupied mainly for the purpose of residence. Therefore within the meaning of the Act they are residential premises.

Mr. Coomaraswamy also contended that the notice given by the defendant under section 18 (2) was not valid as it did not set out that the defendant had been a member of the deceased tenant's household during the required period. This sub-section does not provide that the requirements under sub-section 2 (a) and (b) must be inserted in the notice although it is desirable that those particulars should be given. The notice given by the defendant states that he is the brother of the deceased tenant and that he proposes to continue in occupation in terms of section 18 (2) (b). In my view that is sufficient compliance with the provisions of sub-section (2).

Accordingly the appeal fails. I dismiss the appeal without costs.

SANSONI J.—I agree.

Appeal dismissed.