

a general rule the villager here does not dare to oppose a uniformed officer even when he attempts to enter a house for the purpose of search. But this contention was rejected by the learned Judge with the remark that he was not prepared to say that villagers, especially those engaged in committing an Excise offence, are "so docile as to allow their houses to be searched without protest". To say the least, this reasoning does not take into account at least that class of villagers against whom no presumption of being engaged in committing excise offences could be drawn. In my opinion, where an unlawful entry is made by an excise officer, it will be setting at nought the salutary provisions of the Excise Ordinance framed in that behalf to invest with legality that evidence.

Having regard to all these circumstances, I think the conviction cannot be sustained, which I therefore set aside and acquit the accused.

Appeal allowed.

1950

Present : **Basnayake J.**

YOOOSUF *et al.*, Appellants, and SUWARIS, Respondent

S. C. 103—C. R. Kandy, 3,342

Rent Restriction Act, No. 29 of 1948—Section 13—Landlord who is shareholder of a company—Cannot claim premises for purpose of company's business—Landlord's need must be immediate—Order giving unsuccessful tenant time to quit—Propriety of such order.

A shareholder who owns houses is not entitled to make use of the provisions of section 13 of the Rent Restriction Act in order to eject a tenant for the purpose of providing his company with a place of business.

A landlord's need must be immediate and present in order that the court may have jurisdiction to entertain his action to eject a tenant under the Rent Restriction Act.

Obiter : A landlord who succeeds in an action for ejection is entitled to execute his decree immediately and time can only be given by consent of parties or, in the event of an appeal, where the execution of the writ would cause irreparable damage to the unsuccessful party.

APPPEAL from a judgment of the Court of Requests, Kandy.

H. V. Perera, K.C., with *M. I. Mohamed*, for the defendants appellants.

E. B. Wikramanayake, K.C., with *Cyril E. S. Perera*, for the plaintiff respondent.

Cur. adv. vult.

May 3, 1950. **BASNAYAKE J.**—

This is an action instituted by one A. R. Suwaris against five persons who are carrying on business in partnership under the business name

of "Idroos Hardware Stores" at No. 67 Trincomalee Street, Kandy, (hereinafter referred to as No. 67). On 1st April, 1946, the plaintiff became the owner of the premises in which the defendants are carrying on business. On 25th July, 1947, the plaintiff gave the defendants notice of termination of their tenancy on 30th August, 1947, on the ground that the premises were reasonably required by him "for the purpose of the plaintiff's business called Suwaris & Sons, Ltd.". The defendants in resisting the plaintiff's action for ejection assert that the premises are not reasonably required by the plaintiff as alleged in the plaint "as the plaintiff owns several business places within the Municipal limits of Kandy".

The plaintiff, who owns several houses and lands in and around Kandy, was a contractor by trade. He started and carried on a business under the business name of "Suwaris & Co.". In due course he formed a limited liability company registered under the name of "A. R. Suwaris & Sons, Ltd.". The registered company has contracted with the Government of Ceylon to put up buildings for the University of Ceylon. The plaintiff as an individual has no building contracts. The stores and building materials required for the execution of the contract of A. R. Suwaris & Sons, Ltd., are kept at Mahaiyawa, and others at Katukelle and Peradeniya, all places around Kandy.

The plaintiff states that he requires No. 67 for the purpose of storing the cement needed for the contract entered into by A. R. Suwaris & Sons, Ltd. It is not the only property owned by the plaintiff in Kandy. He has a timber depot in the same street as No. 67, and he has several houses in Peradeniya which is nearer the University site than Kandy.

Learned counsel for the appellant makes the submission that the plaintiff's action is not entitled to succeed on the following grounds :

- (a) that the premises are required, not by the plaintiff himself but by another person, viz., the legal person of A. R. Suwaris & Sons, Ltd.
- (b) that in any event the premises are not reasonably required by the plaintiff, and
- (c) that the plaintiff's request for the premises is not made *bona fide*.

I am inclined to agree with all the submissions of learned counsel. The plaintiff is the landlord of the premises in question and is in his individual capacity only a shareholder of A. R. Suwaris & Sons, Ltd. for whose use he claims the premises. The evidence does not disclose how many shares the plaintiff holds in the company. Even if he were the holder of the bulk of the shares he does not come within the ambit of section 8 of the Rent Restriction Act as the premises are not reasonably required for "the purposes of the trade, business, profession, vocation or employment of the landlord", for A. R. Suwaris & Sons, Ltd. is not the landlord. A. R. Suwaris & Sons, Ltd. is a legal entity different from the plaintiff. A shareholder who owns houses is not entitled to

make use of the Rent Restriction Act for the purpose of providing his company with a place of business. Even if the plaintiff were seeking to get the house for his own personal business, his request is not in my view reasonable as he has not given a sound reason for storing cement in Kandy when his contract has to be executed at Peradeniya where he already has stores and a number of houses.

The defendants have been carrying on business at No. 67 for a long time and the nature of their business is such that it has to be carried on in the locality in which similar businesses are situated. They have tried to get other premises but have failed.

Another circumstance which militates against the plaintiff's claim is that in July, 1946, he instituted an action for ejection against the defendants in respect of the same premises and withdrew it. Thereafter about a year later, he instituted this action. Even then the plaintiff expressed his willingness to give the defendants further time to leave the premises. It appears therefore that the plaintiff's need is not immediate. The Rent Restriction Act provides for a case where the premises are reasonably required for the immediate use and occupation of the landlord or his family. It does not enable a landlord to eject a tenant on the off chance of his requiring his house at some future date. His need must be immediate and present in order that the court may have jurisdiction to entertain his action.

The learned Commissioner has allowed the defendants one year's time to quit the house and has ordered that writ of ejection should not issue till that period expires. Where a plaintiff is declared entitled to an order for ejection of his tenant it is not open to the trial judge, except with the consent of parties, to stay execution in that manner.

This is not the only case which has come up in appeal in which a judge has taken upon himself the responsibility of delaying execution without an application in that behalf by consent of parties. A judge is not in law entitled to exercise a sort of patriarchal justice and decide the manner of relief that should be granted to an unsuccessful party without even the consent of the successful litigant. A plaintiff who succeeds in an action for ejection is entitled to execute his decree immediately and time can only be given by consent of parties or in the event of an appeal where the execution of the writ would cause irreparable damage to the unsuccessful party. The Rent Restriction Act is designed both for the benefit of the landlord and the protection of the tenant. Its provisions would be rendered nugatory if a landlord who has succeeded in bringing himself within the ambit of section 13 were to be kept out of his house merely because the Commissioner thinks that he should give the tenant further time. The Commissioner is not entitled to interpose his will in that way.

The appeal is allowed with costs both here and below.

Appeal allowed.