1944 *Present:* **Soertsz J.**

GUNAPALA, Appellant, *and* MOHIDEEN, Respondent.

87—C. R. Colombo, 93,806.

Rent restriction—Right of appeal—Court of Requests—Matters arising under section 8—Not a final order—Ordinance No. 60 of 1942, s. 8, provisos (a) to (d).

No appeal lies from an order of the Commissioner of Requests on any of the matters arising for decision under provisos (*a*) to (*d*) in section 8 of the Rent Restriction Ordinance.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

S. E. J. Fernando, for appellant.

M. I. M. Haniffa (with him *V. Arulanbalam*), for respondent.

Cur. adv. vult.

August 1, 1944. SOERTSZ J.—

A preliminary objection has been taken to the hearing of this appeal on the ground that there is no right of appeal from such an order as was made in this case in the court below, the Court of Requests of Colombo.

It is well established by judicial interpretation that an action in ejectment on a contract of tenancy from month to month is not an action for debt, damage, or demand, but an action involving an interest in land, and that there is a right of appeal from a final judgment, or from an order having the effect of a final judgment pronounced in such a case.

But Ordinance No. 60 of 1942—an emergency measure—introduced a material change in the law by debarring landlords, in certain areas, from instituting such actions without the written authorisation of an Assessment Board; and also by prohibiting Courts of law in those areas from entertaining such actions, were they instituted, unless in the opinion of the Court, the rent was in arrear, or the tenant had given notice, or the landlord required the premises reasonably, or the premises were being used in an immoral, illegal, neglectful, or pestiferous manner. Under the common law, of course, a landlord dissatisfied for any of these reasons need hardly have put himself to the occasion of pleading these matters and proving them. He could, unless he preferred devious ways, put an end to the tenancy by valid notice to quit. Even the most resourceful and dilatory tenant would have, in such a case, to bow, sooner or later, to his landlord's demand. But the Rent Restriction Ordinance served to put the tenant in a much more secure position in regard to his tenancy. The tenancy cannot now be determined by the landlord merely giving proper notice to quit. The landlord could come into Court only if he had been authorised in writing by the Assessment Board, the decision of the Board being conclusive and final, or if the landlord not confident of being able to commend his action to the Board, or for some other reason, presented a plaint, as he is entitled to do, in the form of a plaint in an action for ejectment, there would have to be, in addition to the usual averments

in such an action, averments in regard to the clause or clauses in section 8 (*a*) to (*d*) on which he relied to have his action entertained. The tenant then would make his answer to that averment as well as to the other averments and a preliminary inquiry would take place for the sole purpose of ascertaining whether the Court has the power to entertain the action for ejectment in the exercise of its ordinary jurisdiction. In the case now before me the landlord relied on the matters in clauses 8 (*a*) and (*c*) of the Ordinance and averred that rent was in arrear, and that he required the premises for his own use and occupation. The tenant, however, denied the former averment and put the landlord to the proof of the latter. But he did not deny the tenancy, or dispute that he had been given valid notice to quit. The meaning of all this is that if this action had arisen before the Ordinance of 1942, a decree for ejectment would have been entered of consent, and that would, or at least, should, have been the end of the case, there being no right of appeal from a consent decree.

The proceedings in this case show clearly that the only matters put in issue and inquired into were the question of the rent being in arrear, and the question whether the landlord required the premises reasonably. Both these questions were answered in favour of the landlord. That is to say, the Court found that it had the power to entertain the action. But on the pleadings in the case, entertaining the action only meant, in this instance, the entering of a decree for ejectment because to the action of ejectment itself, once it was entertained, there was no defence offered. The present appeal is, therefore, in reality, an appeal against the Commissioner's findings in regard to the rent being in arrear and the landlord reasonably requiring the premises himself.

In a case that came before me on July 17, 1944 (*see* Supreme Court Minutes of that day) the landlord had appealed against a finding that, in the opinion of the Court, it would not be said that he required the premises reasonably. No preliminary objection was taken to the hearing of the appeal, but in disposing of it on the merits, I ventured to express the opinion that from such an order there was no right of appeal. Four days later, this question arose directly before de Kretser J. upon a preliminary objection taken by Counsel who relied upon the view recently indicated by me, but my brother appears to have rejected the objection with uncompromising peremptoriness and to have delivered a judgment immediately from his seat. He said " the remarks of Soertsz J. were read to me. Those remarks were made *obiter*, and now an objection has been taken expressly. Section 12, sub-section 12, definitely says that the order of the Board of Assessment shall be final and conclusive. When we turn to section 8, that section does not give the right to the landlord to sue the tenant for ejectment. That is a right which he has independent of the Ordinance. What that section does is to curb his right and to limit it to certain circumstances ".

. . . .

When I put forward that view in the way in which I did, I had hoped that it would be further and more fully considered when it arose directly. But that turned out to be a vain hope, and it has fallen to me again to consider and answer the question now that it has arisen

directly. I must say at once that I derive no assistance whatever from my brother's judgment. To speak quite frankly, I do not see how from his premises he reaches his conclusion.

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The propositions (*a*) that the landlord had a right to sue for ejectment before the Rent Restriction Ordinance, (*b*) that the Ordinance only curbed that right, (*c*) that a right of appeal that existed previously is not affected by the Ordinance, are obvious and hardly deserving of being stated, but now that they have been solemnly declared, how, I ask, from them does it follow that there is a right of appeal from *an order of the kind in question now*? The right of action and of appeal which existed previously is the right of the common law action and of the common law appeal from a final judgment or order having the effect of a final judgment. A present instance would be if a landlord obtains the authorisation of the Board and comes into Court, his action is *ab initio* purely and simply an action for ejectment. None of the preliminary matters in section 8 (*a*) to (*d*) arise in Court and both parties would certainly have the right of appeal from the final judgment. But not so when the landlord without authorisation institutes an action for ejectment. Really it is not correct to say in that event that the landlord institutes an action for ejectment. But that way of describing the matter may be allowed to pass provided we bear in mind that what he really does is that he presents a plaint in the form of a plaint in an action for ejectment with an additional averment in view of sections 8 (*a*) to (*d*). So that the question whether to entertain it or not may, in the first instance, be considered by the Court in the exercise of a new jurisdiction conferred upon it by the Ordinance. There is then an action for ejectment but only *in posse*. Till the Court has held the preliminary inquiry in accordance with the fundamental rule of procedure that requires that the party to be affected shall be heard, there is in reality no action for ejectment over which the Court has any power. If the Court is of opinion that the landlord has not made out a case under section 8 (*a*) to (*d*), and makes order accordingly, that surely is not an order in an ejectment action. An ejectment action had not yet come into being for the purpose of trial. The condition precedent for the Court to entertain it, and admit it to its jurisdiction, and to try it, had failed. That was the case that was before me when I expressed the view that from such an order there is no appeal. If, however, a Court finds that the relevant condition is satisfied and, that, therefore, it has power to entertain the action, the tenant will have no right of appeal from that order by virtue of the ordinary right of appeal in the common law action of ejectment because it is not an order made in the action itself but in the course of the newly created preliminary inquiry. Suppose, however, that the tenant has in his answer traversed tenancy and/or notice, both those questions would have to be tried, and the landlord and the tenant would ultimately have a right of appeal from the final judgment. But even if we assume for a moment, without conceding the point that the order may be regarded as an order made in the action for ejectment itself, still there is no right of appeal inasmuch as the order is *not* a final order. The case has still to be tried. It has

only been admitted to the jurisdiction of the court. (See *(1873) Grenier's Reports, Courts of Requests, page 36*).

In other words, the position that results from the amendment of the law by the Ordinance appears to be that in an action for ejectment without authorisation by a Board, a new jurisdiction has been conferred on certain Courts to consider some preliminary questions that do not arise as preliminary questions, in the ordinary tenancy case. Those questions have to be determined for on them depends the Court's power to exercise its ordinary jurisdiction.

Now, it is elementary, that a jurisdiction conferred on a Court is not subject to a right of appeal unless such a right has been given by clear words or by inevitable implication. Lord Westbury speaking many years ago in the case of *Attorney-General v. Sillen* [1] said, " The creation of a new right of appeal is an act which requires Legislative authority . . . . for the creation of a new right of appeal is, in effect, a curtailment of the jurisdiction of one Court, and an extension of the jurisdiction of another ". This is the leading case on the point. There are other pronouncements to the same effect, and just to refer to the better known among them in England and here, *King v. Joseph Hanson* [2]; *The Queen v. Stock* [3]; *Sangarapillai v. Municipal Council* [4]; *Fernando v. Municipal Council* [5]; *Kanagasunderam v. Podihamine* [6] (*Divisional Bench*); and *Vanderpoorten v. Settlement Officer* [7].

No right of appeal from orders made in the exercise of this jurisdiction has been given in express terms. So far as the implications of the Ordinance go they are inconsistent with the existence of a right of appeal. An assessment board called upon to authorise an action in ejectment may reasonably be supposed to guide itself to a decision by a consideration of such matters as the Court is required by section 8 (*a*) to (*d*) to inquire into. The decision of the Board is made final. Is it, at all, likely, that the Legislature intended that the decision of a judicial tribunal *in pari materia* should not be final ?

I only desire to make one reservation and, that is to say, that what I have said in this judgment applies to matters arising in Courts of Requests. Whether the position is the same in matters of this kind arising in District Courts, a question that may arise, in view of the difference between section 73 and section 78 of the Courts Ordinance, remains to be seen.

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I uphold the objection and reject the appeal with costs.

Appeal rejected.

[1] *11 E. R. 1200.*
[2] *106 E. R. 1027.*
[3] *112 E. R. 892.*
[4] *32 N. L. R. 92.*
[5] *38 N. L. R. 75.*
[6] *42 N. L. R. 97.*
[7] *43 N. L. R. 230.*