**1951** *Present:* **de Silva J.**

PEIRIS, Appellant, *and* SAVUNDRANAYAGAM, Respondent

*S. C. 186—C. R. Colombo, 26,152*

*Landlord and tenant—Action for ejectment—Sufficiency of notice to quit—How determined—" Reasonable requirement "—Method of assessment—Rent Restriction Act, No. 29 of 1948.*

Defendant had been occupying certain premises for a period anterior to November 22, 1949, as the tenant of the plaintiff's predecessor-in-title. On November 22, 1949, plaintiff purchased the premises and defendant attorned to the plaintiff and agreed to be his tenant as from that date. A notice was sent by the plaintiff to the defendant on November 28, 1949, requiring him to quit by December 31, 1949.

*Held*, that the tenancy having commenced on November 22, 1949, a calendar month had to be calculated as from that date. The notice to quit was, therefore, not valid.

*Held further*, that when considering whether premises are reasonably required for the occupation of the landlord within the meaning of the Rent Restriction Act, where the hardship to the tenant outweighs the hardship to the landlord the landlord's action to eject the tenant must be dismissed.

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

*H. W. Tambiah*, for the defendant appellant.

*J. E. R. Candappa*, for the plaintiff respondent.

*Cur. adv. vult.*

March 9, 1951. DE SILVA J.—

This is an action for rent and ejectment. Two questions come up for consideration in this case. Firstly, the sufficiency of notice given by the landlord to tenant and secondly, whether the premises are reasonably required for the occupation of the landlord within the meaning of the Rent Restriction Act. The plaintiff-respondent is the landlord and the

defendant-appellant the tenant. Case went to trial on seven issues. Defendant had been occupying these premises for a period anterior to the 22nd November, 1949. Plaintiff-respondent purchased the premises on 22nd November, 1949. Defendant-appellant has been in occupation from August, 1942, and he appeared to have gone into residence originally under the plaintiff's predecessor-in-title. On the 22nd November, 1949, defendant-appellant attorned to plaintiff-respondent and agreed to be his tenant as from that date. P1 is the document signed by the defendant agreeing to occupy the premises under the plaintiff as from the 22nd November, 1949, on a monthly rental of Rs. 47.33. It must be clearly borne in mind that the document does not say that defendant agreed to pay rent as from 1st December although the plaintiff in his evidence said so. Whatever the date of the commencement of the tenancy was as between the defendant and his previous landlord, P1 definitely has set at rest all doubts as regards the date of the commencement of contract of tenancy as between the plaintiff and the defendant. So that the tenancy having commenced on the 22nd November, 1949, a calendar month has to be calculated as from that date. A notice was sent by the plaintiff to the defendant on 28th November, 1949, through his proctors giving the defendant notice to quit by the 31st December, 1949. It has been argued by Counsel for the appellant that this notice is bad. He argues that inasmuch as the tenancy commenced on 22nd November, 1949, the notice given on the 28th November to quit on the 31st December is not valid. He, of course, concedes that if the notice was given on 28th November, requiring the defendant to quit by the end of January, 1950, the notice would have been good. He bases his argument on the principle laid down in *Warwick Major v. Fernando* [1]. There de Sampayo J. laid down the principle thus: " It is well settled that a monthly tenant is entitled to a month's notice, and the time from which the month should be calculated would depend on the commencement of the tenancy ". In that case the tenancy had commenced on the 15th October, 1916. Notice was given to the tenant on the 24th of April, 1917, requiring the defendant to quit the premises on the 31st May, 1917. There it was held that the notice was bad. I have also been referred to a case in *25 N. L. R. 327*. Jayawardene A.J. who delivered judgment made reference to *Warwick Major v. Fernando* (supra) and differentiated the facts of the case in *Warwick Major v. Fernando* from those in the case considered by him. Jayawardene A.J. makes the following observation: " But in the present case no question was raised in the lower Court as to the date on which the tenancy commenced and the parties appear to have assumed that the tenancy commenced on the 1st of a month. Mr. Sunderam asks that the case be sent back for the purpose of ascertaining the date of the commencement of the tenancy, but I see no reason to accede to his request ". I may say that the perusal of the two judgments in *Warwick Major v. Fernando* and the case reported in *25 N. L. R. 327*, shows that Jayawardene A.J. did not dissent from the principle laid down in *Warwick Major v. Fernando*. I am of opinion that the notice given in this case is bad. This point was specifically raised in the lower Court and the learned Commissioner addressed himself to the point.

[1] *(1917) 4 C. W. R. 221.*

As regards the next point the facts proved are as follows:—Plaintiff is in occupation at present of No. 78, 6th Lane, Wall Street, Kotahena, under Mr. G. F. Lucas Fernando, Proctor. He has seven children and wife living with him. No doubt it will be more convenient and desirable if he had a house with more accommodation than that obtaining in that house. But he made this admission in the course of his evidence, " So long as I want, I can live in this house undisturbed by Mr. Lucas Fernando ". So that the evidence is clear and unequivocal that the plaintiff has a house to live in, however small it may be. His landlord has not taken steps to eject him although there were differences between the two which led them to the Rent Control Board. On the other hand defendant has stated in evidence that he has nowhere to go with his wife and children if he were ejected. Defendant is employed under one Mr. Cassiechetty as his rent collector. Mr. Cassiechetty has several houses but there is no evidence that any of those houses is available for defendant's occupation. The learned Commissioner has considered the respective hardships that the parties are undergoing. The learned Commissioner has misdirected himself when he assumed that a house of Mr. Cassiechetty's would be available to the defendant. Evidence led in the case does not warrant such an assumption. The position now as matters stand is that the plaintiff has some accommodation, and, if the defendant who has his wife and children were ejected he will have no accommodation whatsoever. The principles that have to be applied in the consideration of a matter like this have been laid down in very many cases of this Court. I need refer to only two cases. *49 N. L. R. 473* and *51 N. L. R. 427*. In the earlier case which was decided by a bench of two Judges of this Court they have laid down the principles thus: " In considering whether premises are reasonably required for the occupation of a landlord in terms of section 8 (*c*) of the Rent Restriction Ordinance a Court must take into account not only the position of the landlord but also that of the tenant together with any other factor that may be directly relevant to the acquisition of the premises by the landlord ". In the case reported in *51 N. L. R. 427*, Dias S.P.J. having considered the various judgments of this Court has classified the principles thus: (1) where the hardship of the landlord is equally balanced with that of the tenant, the landlord's claim must prevail; (2) where the hardship to the landlord outweighs the hardship to the tenant, the landlord's claim must prevail; (3) where the hardship to the tenant outweighs the hardship to the landlord, the landlord's action must be dismissed ".

I am of opinion that in this case the tenant's hardship outweighs the hardship to the landlord and therefore this action is dismissed with costs both in this Court and in the lower Court.

Appeal is allowed.

*Appeal allowed.*