1962 *Present :* **Weerasooriya, J.**

SENEVIRATNE, Appellant, *and* PERERA, Respondent

S. C. 166—C. R. Colombo, 72808

Rent Restriction Act, No. 29 of 1948—Section 13 (1)—Action in respect of "excepted premises"—Effect when, pending the action, the premises are taken out of the category of "excepted premises"—"Proceedings for the ejectment of the tenant".

Where, at the time when an action is instituted by a landlord for the ejectment of his tenant, the premises in question are "excepted premises", authorisation of the Board in terms of section 13 (1) of the Rent Restriction Act does not become subsequently necessary if, during the pendency of the action, the premises are taken out of the category of "excepted premises" by reason of the reduction of the annual value of the premises.

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

H. V. Perera, Q.C., with *H. E. B. Cooray*, for the defendant-appellant.

H. W. Jayewardene, Q.C., with *R. Manikkavasagar* and *S. S. Basnayake*, for the plaintiff-respondent.

Cur. adv. vult.

January 17, 1962. WEERASOORIYA, J.—

This is an appeal by the defendant against the judgment and decree of the Court of Requests, Coiombo, dated the 14th December, 1960, ordering his ejectment from certain residential premises situated within the Municipality of Colombo of which he was the tenant under the plaintiff. In entering judgment the Court also ordered that writ of ejectment should not issue until the 30th November, 1961. At the time of the institution of the action (on the 8th April, 1959) the provisions of the Rent Restriction Act, No. 29 of 1948 (Cap. 274) did not apply to the premises as they were " excepted premises " in that the annual value thereof was Rs. 2,240.

The trial took place on the 22nd November, 1960, and subsequent dates. Prior to that, and with effect from the 1st January, 1960, the annual value of the premises was reduced to Rs. 1,845. In the result, the premises were taken out of the category of " excepted premises " and the provisions of the Act became applicable to them. Section 13 (1) of the Act is as follows—" Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Act applies shall be instituted in or entertained by any Court, unless the Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings." Then comes a proviso under which the authorisation of the Board is declared not to be necessary in any of the cases mentioned in paragraphs (*a*), (*b*), (*c*) and (*d*) of the proviso. Paragraph (*c*) enables judgment in ejectment of the tenant to be given if, *inter alia*, the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of his family. It may be stated that the operation of paragraph (*c*) has been temporarily suspended by section 13 (1) of the Rent Restriction (Amendment) Act, No. 10 of 1961.

The present action for the ejectment of the defendant was instituted without obtaining the authorisation of the Board under section 13 (1). It is common ground that such authorisation was not required as the provisions of the Act were not then applicable to the premises. But Mr. H. V. Perera, who appeared for the defendant-appellant, submitted that once the provisions of the Act became applicable to the premises (that is, from the 1st January, 1960) the subsequent trial, and also any steps that may be taken in Court in the execution of the decree, constitute " proceedings for the ejectment of the tenant " as contemplated in section 13 (1), and that in the absence of any authorisation by the Board under that section the Court is precluded from entertaining the proceedings except in a case falling within the proviso. It was on this ground alone that Mr. Perera asked that the judgment and decree appealed from should be reversed and the plaintiff's action dismissed.

The main plank of learned counsel's argument was that Rent Control legislation is in a class by itself, the object of it being to protect tenants from eviction by their landlords, and that such legislation shall be construed in a manner which will suppress the mischief and advance

the remedy. While I see no objection to the rule of beneficial construction being invoked in construing the Rent Restriction Act, I think that, having regard to the inroads made by the Act on the common law rights of landlords, a Court should at the same time guard itself against giving tenants any greater protection than is accorded by the language of the relevant provisions of the Act.

There does not appear to be any previous case where the precise point raised by Mr. Perera was decided in this Court. In the absence of direct authority, he relied on certain cases dealing with paragraph (*c*) of the proviso to section 13 (1) where the question was whether the conditions postulated in that paragraph should be shown to exist as at the time of institution of the action or at the time when the Court is called upon to make the order of ejectment. On that question there seems to be a sharp conflict of judicial opinion—see *Ismail v. Herft*[1]; *S. P. Kader Mohideen & Co., Ltd. v. S. N. Nagoor Gany*[2]; *E. L. Arnolis Appuhamy v. L. D. De Alwis*[3]; and *Swamy v. Gunawardene*[4]. But those cases dealt with an entirely different question and, in my opinion, they are of little assistance in the decision of the point raised in the present appeal.

The word "proceedings" in section 13 (1) is, no doubt, a general word which, in its ordinary sense, would be applicable to the trial stage of an action or the stage when the decree is sought to be executed. But assuming (without deciding) that the proceedings at the trial of the present action or the stage of execution of the decree that has been entered would come within the expression "proceedings for the ejectment of the tenant" in section 13 (1), the question yet remains whether such proceedings required the authorisation of the Board. It seems to me that section 13 (1) itself furnishes the answer to the question, since the concluding part of the section expressly provides for the authorisation of the Board being necessary for the *institution* of the action or proceedings referred to in the earlier part. I think that it would be a misuse of language to speak of proceedings which are a step in, or incidental to, a pending action as proceedings which are "instituted".

Under section 3 of the Small Tenements Ordinance (Cap. 102) it is open to a landlord to take proceedings for the recovery of possession of a "tenement" as defined in section 2 of that Ordinance, by the filing of an application supported by an affidavit, instead of by a regular action. The filing of such an application would be an instance of proceedings being instituted for the ejectment of the tenant within the meaning of section 13 (1) of the Rent Restriction Act.

In my opinion, neither the proceedings at the trial nor at the stage when the decree is sought to be executed are proceedings of the kind contemplated in section 13 (1) as requiring the authorisation of the Board.

The appeal is dismissed with costs.

Appeal dismissed.

[1] *(1948) 50 N. L. R. 112.*
[2] *(1958) 60 N. L. R. 16.*
[3] *(1958) 60 N. L. R. 141.*
[4] *(1958) 61 N. L. R. 85.*