

1963

Present : T. S. Fernando, J.

M. C. PERERA, Appellant, and S. E. SENN, Respondent

S. C. 169/1961—C. R. Colombo, 77314

Rent Restriction (Amendment) Act, No. 10 of 1961—Section 13, sub-sections (2) and (3)—Retrospective effect thereof on action relating to “excepted premises”—Rent Restriction Act, No. 29 of 1948, s. 2 (5).

A landlord instituted action on 7th September, 1960, for the ejection of his tenant from certain premises which were “excepted premises” within the meaning of section 2 (5) of the Rent Restriction Act, No. 29 of 1948. The Rent Restriction (Amendment) Act, No. 10 of 1961, came into operation after the institution of the action but before its trial. One of its results was to take the premises in question outside the category of excepted premises.

Held, that section 13, sub-sections (2) and (3), of the Rent Restriction (Amendment) Act, No. 10 of 1961, had the retrospective effect of rendering the action and proceedings taken subsequent to the filing thereof null and void.

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

G. T. Samerawickreme, for the defendant-appellant.

S. Sharvananda, for the plaintiff-respondent.

Cur. adv. vult.

January 25, 1963. T. S. FERNANDO, J.—

The plaintiff (landlord) instituted this action on 7th September 1960 for the ejectment of the defendant (tenant) from certain premises. At the time of the institution of the action the premises were excepted premises within the meaning of section 2 (5) of the Rent Restriction Act, No. 29 of 1948, in that the construction of the premises had been completed after 1st March 1953. The action came on for trial on 2nd June 1961. The Rent Restriction (Amendment) Act, No. 10 of 1961, came into operation on 1st May 1961, i.e., after the institution of the action but before its trial.

The defendant contended at the trial that section 13 of the (Amendment) Act, No. 10 of 1961, had the effect of rendering the action and proceedings taken subsequent to the filing thereof null and void. The learned Commissioner, observing that "excepted premises which were not governed by the Rent Restriction Act till 1st May 1961 will not be bound by Act No. 10 of 1961", entered judgment for ejectment of the defendant.

One of the results of the amendment by Act No. 10 of 1961 of regulations in the Schedule to the principal Act, No. 29 of 1948, was to take the premises in question outside the category of excepted premises. Therefore the plaintiff became disentitled to institute any action or proceedings for the ejectment of the defendant as it was admitted that there was in this case an absence of any one of the three grounds (a), (b) and (c) specified in section 13 (1) of the (Amendment) Act, No. 10 of 1961. For the plaintiff it was argued that, any benefit to a tenant under section 13 (1) of that Act was not available to the defendant. It seems to me that that argument overlooks the effect of section 13 (2) of the Act. That sub-section enacts that "the provisions of sub-section (1) shall be deemed to have come into operation on the twentieth day of July, 1960, and shall continue in force for a period of two years commencing from that date". Parliament has, in my opinion, expressed beyond any doubt that any benefit available to the tenant shall accrue from a date even anterior to the coming into operation of the Act of Parliament. Whatever view one may entertain about the desirability of retrospective legislation, a court must give effect to a valid Act of Parliament the meaning of which admits of no doubt. Sub-sections (3) and (4) of section 13 of the (Amendment) Act, No. 10 of 1961, only serve, in my opinion, to emphasize the intention of the legislature when it decided by sub-section (2) to confer the benefits to be introduced by the amending legislation to all tenants as from the 20th day of July, 1960.

Counsel for the plaintiff referred me to the cases of *Seneviratne v. Perera*¹ and *Gunaratne v. Perera*², but these authorities deal with questions different to that arising here. On the other hand, I was referred by the defendant's counsel to the observations of Sir Raymond Evershed M.R. (as he then was) in *Hutchinson v. Jauncey*³ that "if the necessary intention of the Act is to affect pending causes of action, the court will give effect to the intention of the legislature even though there is no express reference of pending actions". So far as the case before me is concerned, it is to be noted that sub-section (3) of section 13 of Act No. 10 of 1961 even makes such an express reference.

I would set aside the judgment entered in the Court of Requests and direct that the plaintiff's action be dismissed, but without costs. The defendant, however, is entitled to the costs of this appeal.

Judgment set aside.
