

1967 Present : Manicavasagar, J., and Samerawickrame, J.

U. N. WIJETUNGE, Appellant, and J. SENANAYAKE and another,  
Respondents

*S. C. 653/64—D. C. Kandy, 7179*

*Rent Restriction Act—Excepted premises—Schedule, Regulations 1 and 2—Annual value—Significance of date of institution of action—Sections 2 (4), 2 (5), 10, 13 (1), 27.*

Where a landlord seeks to eject his tenant and the question for determination is whether the premises let are excepted premises within the meaning of regulation 2 of the Schedule to the Rent Restriction Act, the relevant annual value is what it is at the time of the institution of the action and not what it was at the time when the premises were let.

**A**PPPEAL from a judgment of the District Court, Kandy.

*H. W. Jayewardene, Q.C.*, with *A. K. Premadasa* and *D. S. Wijewardene*, for defendant-appellant.

*C. Ranganathan, Q.C.*, with *I. S. de Silva*, for plaintiffs-respondents.

*Cur. adv. vult.*

March 15, 1967. SAMERAWICKRAME, J.—

In this appeal, the defendant-appellant submits that the premises in suit were not excepted premises within the meaning of the Rent Restriction Act and that he was, therefore, entitled to the protection granted to tenants under the said Act.

Section 2 (4) of the Rent Restriction Act provides that where an Act is in operation in any area, it should apply to all premises in that area not being excepted premises. Section 2 (5) provides that the regulations in the schedule should be applied for the purposes of determining the premises which shall be excepted premises for the purposes of this Act.

Prior to an amendment in the year 1953, Regulation 1 of the Schedule stated "annual value" means the annual value of the premises as assessed for the purposes of any rates levied by any local authority under any written law during the month of November, 1941. By Regulation 2, premises were excepted premises if being premises of the description mentioned in Column 2, the annual value thereof exceeds the amount stated in it. In Column 2 premises are described as (a) residential premises, (b) business premises. By Act No. 6 of 1953, Regulation 1 as it appeared before was deleted and Regulation 2 reads as follows:—"Any premises (other than premises referred to in Regulation 1) situated in any area specified in column 1 hereunder shall be excepted premises for the purposes of the Act, if being premises of the description mentioned in column 2, the annual value thereof as assessed for the purposes of any rates levied for the time being by any local authority under any written law exceeds the amount specified in the corresponding entry in column 3."

The premises in question are situated within the limits of the Municipal Council of Kandy and, at all times relevant to this action, had been business premises. The annual value of these premises was assessed for the purposes of rates by the Municipal Council of Kandy as follows :—

In 1945 they were assessed at Rs. 4,000.

In 1946 the assessment remained the same.

In 1947 they were assessed at Rs. 4,400.

In 1963 they had been assessed at Rs. 4,400.

Business premises situated within the area of the Municipal Council of Kandy are excepted premises if the annual value exceeds Rs. 4,000.

The defendant-appellant submits that the relevant annual value is that for the year in which the premises were let. The plaintiff-respondent contends that the relevant annual value is that at the time of the institution of the action. The letting had been in 1946 and the action was filed in 1963.

Prior to the amendment in the year 1953, it is clear that the relevant annual value was that which prevailed in the year 1941 for that was expressly provided in Regulation 1 as it then stood. After the amendment to the Schedule, the annual value as assessed for the purposes of any rates levied for the time being by any local authority under any written law is referred to. The words "for the time being" means, in my view, the relevant time or the time with reference to which the question that has been raised is to be determined. The matter for determination in this action is whether the plaintiff was precluded from instituting this action by reason of the provisions of Section 13 (1) of the Rent Restriction Act for the reason that the premises in suit were premises to which the Act applied. The relevant time or the time with reference to which the question that has been raised in this action is to be determined, is therefore, the time of the institution of the action. I am, therefore, of the view that it is the assessment at the date of the institution of the action : namely, the 29th May 1963, that has to be looked at. Assessment at that date was Rs. 4,400. Applying the provisions of paragraph 2 of the Schedule, the premises are excepted premises.

Mr. H. W. Jayewardene, Q.C., appearing for the defendant-appellant referred to the definition "residential premises" in section 27 ; in that Section, residential premises are defined as "'residential premises' means any premises for the time being occupied wholly or mainly for the purposes of residence". He submits that the words 'for the time being' in that provision have to be given the meaning of the time of the letting as otherwise it would be open to a tenant to change the character of the premises from residential premises to business premises or vice versa, by reason of the use to which he puts the premises. He referred also to a judgment of Sinnetamby J. in *Muttucumaru v. Corea*<sup>1</sup> in which

<sup>1</sup> (1955) 59 N. L. R. 525.

it was held that in determining a question whether premises are residential premises or not, it has to be decided with reference to the position at the time of the letting of the premises. Mr. Jayewardene, therefore, submitted that the words 'for the time being' in paragraph 2 of the Schedule should be given the same meaning as has been given to it in the definition of residential premises in Section 27. It is to be noted that in his judgment, Sinnetamby J. while holding that 'for the time being' in the definition of residential premises in Section 27 meant the time at which the premises were let, nevertheless held that in paragraph 2 of the schedule the words 'for the time being' should be taken as referring to the time of the institution of the action. Further, while it is desirable that an expression used in an Act should have the same meaning wherever it appears, it is not imperative that it should have that same meaning. Even where an expression is defined in a defining Section, the Section usually contains the words "unless the context otherwise requires". In this matter, the words 'for the time being' have not been defined. It is, therefore, open to a Court to give it the meaning which appears to be called for in the context.

Although Sinnetamby J. has stated that the question whether the premises are residential premises or not should be decided with reference to the position at the time of the letting of the premises, it appears to me that it may be more correct to state that the question is to be decided with reference to the date of the institution of the action but in deciding that question, reference may have to be made to the position at the time of the letting for the reason that it would not be open to a tenant by unilateral action to change the character of the premises. This is expressly prohibited and illegal in view of Section 10 of the Rent Restriction Act and it would also be unlawful under the Common Law in the case where tenancy is not covered by the Act. Accordingly, on the principle that a party cannot take advantage of his own wrong, any change in the character of the premises made either illegally or unlawfully by the tenant after the date at which the premises were let to him will have to be ignored and cannot be relied upon by him to support a contention that the premises are protected by the Rent Restriction Act. For the purpose of this appeal, however, it is not necessary to decide that matter.

I accordingly hold that the learned District Judge has come to a correct decision on this matter. His judgment is affirmed and the appeal is dismissed with costs.

MANICAVASAGAR, J.—I agree.

*Appeal dismissed.*