1964 *Present :* **Sri Skanda Rajah, J., and Alles, J.**

I. ABDUL RAHIM and others, Appellants, *and* M. D. GUNASENA CORPORATION LTD., Respondent

S. C. 291/1962—D. C. Colombo, 49195/M

Rent Restriction Act—Section 13 (1) (c)—" Reasonable requirement "—Date at which it should be shown to exist—Right of appeal—Courts Ordinance, s. 36.

The date at which the reasonable requirement of the landlord in terms of section 13 (1) (c) of the Rent Restriction Act should be shown to exist is the date when the Court makes the ejectment order and not the date of the institution of the action.

Kader Mohideen v. Nagoor Gany (60 N. L. R. 16) not followed.

A judgment obtained by a landlord on the ground of reasonable requirement is subject to appeal to the Supreme Court.

APPEAL from a judgment of the District Court, Colombo.

G. E. Chitty, Q.C., with *T. Arulananthan* and *E. B. Vannitamby*, for the defendants-appellants.

H. V. Perera, Q.C., with *Desmond Fernando*, for the plaintiff-respondent.

Cur. adv. vult.

September 16, 1964. SRI SKANDA RAJAH, J.—

The plaintiff-respondent sued the defendants-appellants, its tenants, for ejectment from premises No. 223, Norris Road, Colombo, on the ground that the premises are reasonably required by the plaintiff for the purposes of its business.

The plaint was filed on 1.2.1960 and the answer on 12.7.1960. The case was taken up for trial on 18.10.1960, on which date the Chairman of the plaintiff corporation, Gunasena, gave part of his evidence-in-chief and the hearing was adjourned for 25.11.1960, on which date the case was taken off the trial roll for filing amended plaint on 6.12.1960. Amended answer was filed on 17.1.1961. The case was then heard on 23.10.1961 and other dates. The evidence was concluded on 27.10.1961, arguments were heard on 27.11.1961, written submissions tendered on 19.12.1961 and judgment was reserved for 30.1.1962 ; but, ultimately delivered on 6.6.1962.

The amended plaint was necessitated by the plaintiff pleading a further ground for ejecting the defendants, viz., that the defendants had sub-let parts of the premises after they became the plaintiff's tenants. This was

a second string to the plaintiff's bow—in the event of the plaintiff failing to prove that the premises are reasonably required for the purposes of its business it could still rely on the ground of sub-letting.

The learned Additional District Judge has held that the plaintiff reasonably requires the premises for the purposes of its business. The appeal is from this finding.

Regarding the alleged sub-letting, he has held against the plaintiff. The evidence regarding sub-letting after the plaintiff became the owner of the premises was so meagre that the learned Judge's finding cannot be said to be wrong. Once this conclusion was reached the need for consideration of the issues of law based on sub-letting did not arise.

Relying on *Coplans v. King*[1], Mr. Perera, for the respondent, argued that the decision of the District Judge regarding comparative hardship when considering whether or not to make an order for possession within the Rent Restriction Act on the ground of reasonable requirement was final and cannot be made the subject of appeal to this Court. He further argued that once the trial Judge had exercised his discretion and come to a conclusion as regards reasonable requirement his finding would be one of fact and, therefore, final and not subject to appeal.

In England, section 105 of the County Courts Act, 1934, makes the decision of a county court judge, who hears such cases, on a question of fact final. There was a similar provision in our Civil Procedure Code regarding the decision on certain matters of a Commissioner of Requests, viz., section 833A which has now been repealed by Act 5 of 1964. The extent of the appellate jurisdiction of this Court is contained is section 36 of the Courts Ordinance. It extends " to the correction of all errors in fact or in law which shall be committed by any District Court ". I would, therefore, hold that Mr. Perera's submissions are untenable.

Mr. Chitty's complaint that the trial Judge's approach to the question of reasonable requirement was wrong and influenced by irrelevant considerations is not without substance. For instance : (1) the judge refers to the defendants as T.R.P. (Temporary Residence Permit) holders ; and (2) to their reply P2 to the notice to quit as " a defiance suggesting the plaintiff to take their legal remedy "; (3) he says that " plaintiff's business is a great service to the public "; and (4) adds that he is " not influenced by quasi-political considerations in this case whether it be for the implementation of the language policy or not ".

These considerations are quite irrelevant for deciding the question of reasonable requirement. One is reminded of the words : " Out of the abundance of the heart the mouth speaketh ".

[1] *(1947) 2 A. E. R. 393.*

" What is the date at which the reasonable requirement of the landlord should be shown to exist ? " was a question posed by me to Mr. Perera. Relying on *Kader Mohideen v. Nagoor Gany*[1], he said that it was the date of the institution of the action. In that case Sinnetamby, J., held that "the Court cannot take into consideration events that occur subsequent to the date of action ".

In *Ismail v. Herft*[2], Windham, J., said, "The time at which the condition set out in section 8(*c*) of the Rent Restriction Ordinance, No. 60 of 1942. (now section 13 (1) proviso (*c*) of the Rent Restriction Act, 1948), must be shown to exist by a landlord is, I conceive, the time when the court is required to make the ejectment order ".

In *Andree v. de Fonseka*[3], Gratiaen, J., said, " the reasonableness of the landlord's demand to be restored to possession for the purposes of his business must be proved to exist at the date of the institution of the action and to continue to exist at the time of the trial ".

In *Aranolis Appuhamy v. de Alwis*[4], Sansoni, J., adopted this view. In his judgment Sansoni, J., referred to *Ismail v. Herft* (supra) and *Kader Mohideen v. Nagoor Gany* (supra) also.

In *Swamy v. Gunawardena*[5], Weerasooriya, J., held that the point of time at which the conditions set out in paragraph (*c*) of the proviso to section 13 of the Rent Restriction Act must be shown to exist is the time when the Court is required to make the ejectment order and not the date of institution of action.

We are in respectful agreement with the view expressed in *Ismail v. Herft, Andree v. de Fonseka, Aranolis Appuhamy v. de Alwis,* and *Swamy v. Gunawardena* (supra).

Now I will examine the evidence oral and documentary, to see if at the time of the judgment in this case the plaintiff's demand to be restored to possession for the purposes of its business was still reasonable, even if it was reasonable at the time of the action.

The plaintiff purchased premises No. 223 in 1956 while the defendants were still in occupation as tenants. They attorned to the plaintiff, who is also owner of the four adjoining premises—213, 215, 217 and 219. These premises, like 223, have two road frontages, viz., Norris Road on one side and Maliban Street on the opposite side. The plaintiff gave the defendants notice to quit dated 24.11.1958 (P1) adding that action for ejectment will be instituted on failure to comply. By P2 of 6.12.1958 the defendants

[1] *(1958) 60 N. L. R. 16.*
[2] *(1948) 50 N. L. R. 112 at 116.*
[3] *(1950) 51 N. L. R. 213 at 214.*
[4] *(1958) 60 N. L. R. 141 at 142.*
[5] *(1958) 61 N. L. R. 85.*

replied pointing out that the plaintiff had already demolished the buildings on 213 and 215 and new buildings were being constructed and was intending to do the same in respect of premises 217 and 219 and, therefore, when all those new buildings were completed the plaintiff will have such spacious premises as would eliminate reasonable requirement. P2 further stated that the defendants would suffer untold hardship by having to vacate premises 223 and added, " Your clients are entitled to carry out their threats and my clients will seek their legal remedy in reply."—This cannot be construed as a " defiant suggestion ".

Gunasena's evidence given on 23.10.1961 reveals, inter alia : The four premises 213, 215, 217 and 219 had been completely demolished for erecting a new building consisting of basement accommodation, ground floor and two storeys and the building was nearing completion. At that time plaintiff was in occupation of rented premises No. 185, Norris Road. Besides, the plaintiff was the owner of 7 and 9, Trinity Place, 128 and 150, Mihindumawatha, 20, San Sebastian Hill, 93/41, Norris Road—total extent being over two and a half acres—From 29.4.1960 plaintiff became owner of still other premises—109, 111 (Victoria Hotel premises) and 113, Norris Road, 7, 11, 13, 15, 17 and 19, First Cross Street and 60 and 62, Maliban Street in extent 34 perches. The plaintiff is also owner of 123, Norris Road, and 72, Maliban Street, where the Wijesiri Hotel is.

His evidence given on 27.10.1961 shows:—(*a*) Application was made by the plaintiff on 13.8.1960 (v. D15) to erect a building at Trinity Place for printing and stores (v. plan D12b) and it was approved on 23.8.1961—That plan reveals that the building was to consist of two storeys and the ground floor ; printing (part of the plaintiff's business) is to be carried on there ; provision was made for a total floor space of 13,129 square feet ; this was the first stage of development ; the second and third stages of development were to be offices (v. site plan in D15b—(1), (2) and (3)—and the ground area covered by the proposed buildings (2) and (3) being much larger than that by the building (1), which is 3,794 square feet, the first stage of development) ; (*b*) Application was made by plaintiff on 11.10.1960 for building a bookshop and offices on 213, 215, 217 and 219, Norris Road (v. D16., D16a, D16b and D16c) and it was approved on 15.11.1960. The ground area covered by the building is 7,614 square feet and the total floor space of all floors is 23,482 square feet. The building consists of a basement, ground floor and two storeys, whereas it consisted of a ground floor only before demolition—i.e., presumably 7,614 square feet. D16c shows that the basement is to be used as stores. Extensive office area is provided for and a restaurant too. It would appear that these plans were submitted nine months after the institution of this action. Gunasena's evidence on this point is that the plans were made to meet all the plaintiff's requirements at that time, i.e., to meet all the plaintiff's requirements nine months after this action was instituted. This building was about to be completed in about two to four months of 27.10.1961—that would be between the end of December, 1961, and February, 1962.

It would, therefore, appear that before judgment was delivered in this case the plaintiff had converted premises 213, 215, 217 and 219 into premises with floor space more than three times the original floor space.

This aspect of the matter had not been adverted to by the learned Judge. Had he directed his mind to this important aspect instead of to matters completely irrelevant he could not have reached the conclusion he did as regards reasonable requirement, viz., " There is no evidence that the landlord in this case has at his disposal suitable premises which he can without difficulty appropriate for his own use. All that he has got is totally inadequate for his needs. It is not the number of premises he has got but the sufficiency of the premises that has to be considered ".

The new building on 213, 215, 217, and 219, Norris Road, is more than sufficient to meet the plaintiff's requirements for carrying on the business of book-sellers, publishers, stationers, and paper merchants.

In examination-in-chief itself Gunasena said that the defendants carry on business in cereals and foodstuffs. Cader's evidence is that the defendants are exporters and importers. Besides, there were documents produced to show the turnover of the defendants' business. Therefore, it is surprising that the learned Judge said, "One really is in doubt as to what sort of business is done by them (defendants). I have no doubt that the document D20, the income tax assessment, is of no avail to the defendant." The learned Judge appears to have been more concerned with the fact that the defendants are " T.R.P. holders " than with evidence favourable to them.

For these reasons, we would hold that at the time of the judgment in this case the plaintiff's demand to be restored to possession for the purpose of its business was not reasonable. The answer to issue No. 1—Are the premises in suit reasonably required by the plaintiff for the purpose of business within the meaning of section 13 (1) (*c*) of the Rent Restriction Act ?—should be in the negative.

In the result, the appeal is allowed and the plaintiff's action for ejectment is dismissed with costs both here and in the Court below. Rent is payable from 1.11.1958. Credit should, however, be given to the defendants in respect of remittances, if any, received and accepted by the plaintiff.

ALLES, J.—I agree.

Appeal allowed.