

1945

Present: Canekeratne J.

EDMUND APPUHAMY, Appellant, and SAMARASEKERE,
Respondent.

122—C. R. Matale, 8,570.

Rent Restriction Ordinance—Premises reasonably required for occupation by landlord—Insanitary condition of house presently occupied by landlord—Pecuniary loss resulting to tenant if ejected—Relevant facts—Ordinance No. 60 of 1942, s. 8, proviso (c).

In an action for ejection brought under section 8, proviso (c) of the Rent Restriction Ordinance, if the landlord or tenant leads evidence that injury might result to his health from an order for possession being made or refused or that some pecuniary loss might directly flow from one being turned out the Judge is entitled to consider these in making his order.

A PPEAL from a judgment of the Commissioner of Requests, Matale.

N. E. Weerasooria, K.C. (with him *Walter Jayewardene*), for the plaintiff, appellant.

N. Nadarajah, K. C. (with him *S. R. Wijayatilake*), for the defendant, respondent.

Cur. adv. vult.

July 5, 1945. CANEKERATNE J.—

In this case the plaintiff sought to recover possession of premises bearing assessment No. 88, Esplanade Road, Matale, of which the defendant was the tenant. He claimed possession under section 8, proviso (c) of the Rent Restriction Ordinance of 1942, alleging that the dwelling house was reasonably required by him for occupation as a residence for himself. The learned Commissioner found on the facts as they were presented to him that it "was not reasonable for the Court to gratify" the landlord's wish.

The plaintiff carries on the business of a cycle repairer at No. 68, Esplanade Road. The premises consist of a long room, 7 ft. 9 in. by 11 ft., which is used as the repair shop, an open space 11 ft. by 10 ft. now improvised and used as a room, a kitchen 11 ft. by 9 ft. now used as a bedroom, a temporary kitchen behind this room and next to that a lavatory. The plaintiff has been in occupation of these premises for about nine years. At the start he lived there with his father; in 1942, he brought his wife and two children, her mother and a cook to this place

and they have been living since then in these premises; in addition there is a baby in arms, a niece of the plaintiff attending school and apparently the child of the cook. As he found it difficult to live with his family he borrowed money and purchased premises No. 88, Esplanade Road, on August 15, 1944, with the intention of moving his residence to this place.

The defendant has been practising as a proctor in this town since 1937. He resides at Ukuwela, 2½ miles away from the Court-house: he has been using these premises as his office since he started practice; he comes there daily during the working days. The plaintiff, after his purchase, gave notice to defendant to quit the premises on or before October 1, 1944. The defendant averred that he requires an office, that he had made every effort to obtain another house in the same locality but has not been successful. The learned Commissioner's opinion was that the premises where plaintiff was residing have not become unfit or dangerous for human habitation and that the inconvenience and perhaps the discomfort that may be caused to plaintiff by continued residence therein cannot be compared to the difficulty which the defendant would have to meet with if he were ejected from these premises. He disallowed plaintiff's application for ejectment.

The Medical Officer of Health of the place testified that the building No. 68 was insanitary and contrary to public health measures on account of there being no ventilation and the required accommodation space for living-room. He continued—"the premises No. 88 were very much more spacious, more ventilated from front and behind. As there is no living-room. He continued—"the premises No. 88 were very much should reside there."

It is clear that if a person can give evidence that injury might result to his health from an order for possession being made or refused or that some pecuniary loss might directly flow from one being turned out the Judge is entitled to consider these in making up his mind whether on the whole it is reasonable to make an order.

The evidence discloses that the landlord has a genuine present need of these premises for his own occupation: there is nothing to suggest that the application for ejectment is made with an ulterior object. After taking into account all the circumstances affecting both the interests of the defendant as well as the interests of the plaintiff it seems to me that greater hardship would be caused to the owner by refusing an order for possession than to the tenant by granting it. Any financial hardship that might possibly be inflicted on the defendant may be mitigated by giving him a little longer time—he has already had possession from October, 1944—than he otherwise would have had in order that he may make arrangements to share an office with another or transfer his office to some other place or in some way or other to alleviate for himself the hardship which immediate ejectment might cause.

I set aside the dismissal of the plaintiff's action and make order for possession to be given to the plaintiff of the premises referred to on or before October 1, 1945. The plaintiff is entitled to the costs of the action and of this appeal.

Appeal allowed.