1944 *Present:* **Soertsz J.**

ROSALINE NONA, Appellant, *and* JAN SINGHO, Respondent.

88—C. R., Colombo, 91,240.

Rent Restriction Ordinance—Authority of Board of Assessment to institute action—Procedure to be followed where no authority is obtained—Right of appeal—Ordinance No. 60 of 1942, s. 8.

Section 8 of the Rent Restriction Ordinance enables a landlord to institute an action in ejectment with the authorisation of the Board of Assessment.

Where no such authorisation is obtained a landlord may present a plaint in the Court of Requests in the manner of an action in ejectment but the Court is debarred from entertaining the plaint till the Court is of opinion that one or other of the conditions appearing in clause 8 (*a*) to (*d*) is satisfied.

Where there is a trial on questions of tenancy or determination of tenancy, there is a right of appeal from a judgment or order having the effect of a final judgment.

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

E. B. Wikremanayake, for defendant, appellant.

S. R. Wijayatilake, for plaintiff, respondent.

Cur. adv. vult.

August 3, 1944. SOERTSZ J.—

This case again affords an illustration of the confusion that appears to prevail in regard to the procedure to be adopted by Commissioners of Requests in trying actions of ejectment instituted after the commencement of the Ordinance No. 60 of 1942. Section 8 of that Ordinance enables a landlord to bring a case into Court as an ejectment case with the authorisation of the Board of Assessment. If no such authorisation has been obtained section 8 enables, none the less, a landlord to present a plaint to the Court of Requests framed in the manner of an action for ejectment. But section 8 debars the Court concerned from entertaining that action till the Court is of opinion that one or other of the conditions appearing in clause 8A to D is satisfied. This means that the Court has no power to try the proposed action till it has reached the opinion that one of the conditions precedent has been satisfied.

In this instance the plaintiff came into Court and it appears from the plaint that the ground on which he sought to have his action entertained by the Court was that the rent was in arrears, that would be under clause 8A. It was therefore incumbent upon the Court to try this preliminary matter which has now been introduced by the Rent Restriction Ordinance, namely, whether, the Court has the power to try the case on the ground that the Court is of opinion that the rent was in arrears. Instead of setting about the inquiry in that manner, the proceedings of October 25, 1943, show that the learned Commissioner framed 10 issues, issues involving the questions whether there was a tenancy or not and whether proper notice to quit had been given or not. Those were matters over which the Court had no jurisdiction till the Court had found that it had the power to entertain the proposed action. Eventually the Court held that the rent was in arrear, and also held that there was a tenancy of these particular premises which had been determined by valid notice. Now if the Court had set about this case in the manner I indicated, directly the Court answered the issue in regard to the rent being in arrear in favour of the landlord the Court was entitled to entertain the action. The Court should then have gone on to try the other questions, namely the existence of a tenancy and the determination of it. The Court eventually did that in this case by taking both the inquiry and the trial together.

Mr. Wijayatilake on behalf of the respondent has taken a preliminary objection to the hearing of this appeal on the ground that there was no right of appeal upon a recent ruling pronounced by this Court. But here again he is under a misconception because the defendant clearly had a right of appeal inasmuch as there was a trial on the questions of tenancy and the determination of the tenancy which are the questions that usually arise in an ejectment case and from a final judgment or an order having the effect of a final judgment there is a right of appeal in such an

action. The preliminary objection is overruled, but Mr. Wikremanayake was not able to satisfy me that the findings of the Commissioner on the questions of tenancy and the determination of the tenancy by valid notice are wrong.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.