1948 *Present :* **Wijeyewardene A.C.J. and Windham J.**

GUNASENA, Appellant, *and* SANGARALINGAM PILLAI & CO., Respondent.

*S. C. 232—D. C. Colombo, 16,243M.*

*Rent Restriction Ordinance—Action for ejectment by landlord—Premises reasonably required for his occupation—Proper meaning of " reasonably "—Factors to be considered by Court—Ordinance No. 60 of 1942, section 8 (c).*

In considering whether premises are reasonably required for the occupation of a landlord in terms of section 8 (c) of the Rent Restriction Ordinance, a Court must take into account not only the position of the landlord but also that of the tenant together with any other factor that may be directly relevant to the acquisition of the premises by the landlord.

*Fernando. v David (1948) 49 N. L. R. 210* and *Atukorale v. Navaratnam (1948) 49 N. L. R. 461* not followed.

APPEAL from a judgment of the District Judge, Colombo.

*N. E. Weerasooria, K.C.*, with *S. J. Kadirgamer*, for the plaintiff, appellant.

*H. V. Perera, K.C.*, with *Vernon Wijetunge*, for the defendant, respondent.

*Cur. adv. vult.*

August 23, 1948. WINDHAM J.—

The plaintiff-appellant carries on a large and expanding business as printer, stationer and bookseller in certain premises in Norris Road, Colombo. Until 1933 he had been a tenant of these premises, but in that year he purchased them. He also purchased from the same vendor the adjoining premises, in which the defendant-respondent company were carrying on, and still carry on, a considerable business as suppliers of tyres, spare parts and accessories for motor cars and bicycles. The respondents were taken over as tenants by the appellant, and when their lease expired in 1943 they remained on as monthly tenants, at a monthly rental of Rs. 450.

In 1945 the appellant, finding that the premises occupied by him were inadequate to accommodate his expanding business, and desiring therefore to take over the respondents' adjoining premises, duly gave the latter notice to quit, and thereupon sued them for eviction on the grounds that their premises were reasonably required for the purpose of the appellant's trade, business and employment.

The action was tried before the additional District Judge, who dismissed it. The learned Judge found that the appellant's desire to expand his business by taking in the repondents' adjoining premises was an understandable and even a laudable one, but he went on to consider the question of alternative accommodation for the respondents, and he found, justifiably in my view upon the evidence, that there were no premises into

which the respondents could move their own business if they were evicted. He accordingly came to the following conclusion :—" In the result the defendant has nowhere else to go, and in the circumstances I find it impossible to hold that the plaintiff can lawfully contend that the premises are reasonably required for his own use when the sole object of his wanting the defendant to vacate is in order that he may himself take, as his counsel put it, fortune at the flood and increase his own prosperity ". He accordingly dismissed the action.

The sole point at issue in this appeal is whether the learned additional District Judge was right in law in considering the question of alternative accommodation for the respondents to be a relevant factor in determining whether the respondents' premises were " reasonably required " for the purposes of the landlord's (appellant's) business. Learned counsel for the respondent admits that if alternative accommodation was not a relevant factor, his client must fail. This question is one which has been judicially considered in a number of decisions in Ceylon. Section 8 (*c*) of the Rent Restriction Ordinance, No. 60 of 1942, sets out the requirements for entertaining an eviction action on such grounds as follows, namely, that " the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purposes of his trade, business, profession, vocation or employment ".

Now it has been held in *Abeyewardene v. Nicolle*[1], and later in *Ranen v. Perera*[2], and *Mohamed v. Salahudeen*[3], that in deciding whether under section 8 (*c*) the requirement of the premises for the landlord's use is a " reasonable " one, the surrounding relevant facts must be considered, and that the lack of alternative accommodation for the tenant is one of such relevant facts. The same interpretation of section 8 (*c*) was laid down, though *obiter* only, in *Raheem v. Jayawardene*[4], and *Wijemanne & Co. Ltd. v. Fernando*[5], (a decision of two judges). In two very recent single bench decisions, however, the opposite view has been upheld, namely, that in deciding whether the premises are " reasonably required " under section 8 (*c*) the requirement shall be considered from the landlord's point of view exclusively, and that if his requirement, judged on its own merits, is " reasonable ", all outside factors, including the tenant's difficulties in finding other accommodation, are irrelevant and ought not to be taken into account. The first of these two decisions is *Fernando v. David*[6], and the second, where the question was dealt with by the same Judge at greater length and after consideration of all the relevant authorties is *Atukorale v. Navaratnam* (*1948*) *49 N. L. R. 461.*

In declining to follow the earlier decisions of the Supreme Court on the point, in which the English cases of *Nevile v. Hardy*[7], and *Shrimpton v. Rabbits*[8], were cited with approval, the learned Judge in *Atukorale v. Navaratnam* rightly pointed out that those English cases were decided respectively on section 5 (1) (*d*) of the increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and the same section as enacted with amendments in the Rent and Mortgage Interest Restrictions Act, 1923,

[1] *(1944) 45 N. L. R. 350.*
[2] *(1944) 46 N. L. R. 133.*
[3] *(1945) 46 N. L. R. 166.*
[4] *(1944) 45 N. L. R. 313.*
[5] *(1946) 47 N. L. R. 62.*
[6] *(1948) 49 N. L. R. 210.*
[7] *(1920) 124 L. T. 327.*
[8] *(1924) 40 Times L. R. 541.*

and that those sections, after making provision similar to section 8 (*c*) of the Ceylon Ordinance, make further specific provision that the Court (*a*) shall be satisfied that adequate alternative accommodation is available, and (*b*) shall consider it reasonable to make the order for eviction. That is true. And it is also true, as the learned Judge pointed out, that the Courts in those two English cases made it clear that, if those additional provisions had not been present in the English Acts, they would have interpreted the words " reasonably required " (the words common to the English and the Ceylon legislation) to mean " reasonably " from the point of view of the landlord exclusively. But since those additional provisions were included in the English Acts, I do not think these opinions of the learned English Judges can be held to be other than *obiter*; they might well have considered the meaning of the words " reasonably required " with more deliberation had not the additional words relieved them of the necessity of doing so.

The learned Judge in *Atukorale v. Navaratnam* then proceeded to consider certain decisions of the Supreme Court of South Africa, namely, *Gonsalves v. Thompson*[1]; *Newman v. Biggs*[2]; *Johannesburg Board of Executors and Trust Co. Ltd. v. Gordon*[3]; and *Paterson v. Koonin*[4]. Those cases were decided when the relevant provision in South African Rents Act, 1942 (or the corresponding provision in the earlier Act of 1920) was for all material purposes the same as section 8 (c) in the Ceylon Ordinance and did not contain the further provisions present in the English Acts. In each of those cases the words " reasonably required " were interpreted to mean required genuinely and in good faith by the landlord, without reference to the position of the tenant. They are therefore persuasive authority for that interpretation being placed upon the same words in our Ceylon Ordinance. They are, however, no more than persuasive; and in view of the conflicting decisions on the point in the Courts of Ceylon, I think the question is ripe for examination unfettered by authority.

I turn, then, to consider the meaning of the words " reasonably required " in section 8 (*c*) of our Ordinance. The first point to bear in mind is that (unlike the corresponding provision in the English Acts) the section does not say " reasonably required *by* the landlord ", but " reasonably required *for* " the occupation or business purposes of the landlord. The point is a small one, but it is perhaps a slight indication that the section does not lay emphasis on the point of view of the landlord. But the more important question is—what is the proper meaning to attach to the word " reasonably " ? Can the reasonableness of the requirement of premises for the landlord be decided upon solely in the light of the landlord's own desire to occupy them, however well grounded, genuine and even urgent, without reference to how the gratifying of that requirement might directly affect, injure or inconvenience other people ? I do not think so. It is the negation of reasonableness to take a onesided view, to consider one factor only out of more than one; nor can any person be said to have reached a reasonable decision who, in reaching it, ignores any effect which it may have on his neighbours.

[1] (*1922*) *C. P. C. 477.*
[2] (*1945*) *E. D. L. 51.*
[3] (*1947*) (*1*) *S. A. L. R. 92.*
[4] (*1947*) (*2*) *S. A. L. R. 337.*

Furthermore, as I have said, there is nothing in the section to suggest that this one factor alone should be considered. I do not even think that to consider the requirement of the premises from the landlord's point of view exclusively would be any more reasonable than to consider it from the tenant's point of view exclusively. If, to turn for a moment to the facts in the present case, the landlord were entitled to say—" I have genuine need of the premises, and therefore my requirement is reasonable ", would not the tenant be equally entitled to say—" I have greater need of the premises, for if he ousts me he will then be occupying two premises whereas I shall have none, and therefore his requirement is unreasonable " ? The answer is that neither contention would be sound, and that the Court, in deciding upon the reasonableness of the requirement, ought to take both factors into account, together with any other factors which may be directly relevant to the acquisition of the premises by the landlord. To take a hypothetical case : a landlord's *bona fide* desire to use for himself premises occupied occasionally by a tenant who normally resided elsewhere, might well be considered reasonable ; whereas if those same premises were permanently occupied by a bedridden invalid with nowhere else to go, his desire might properly be considered unreasonable. Can it seriously be contended that no distinction ought to be drawn between the one case and the other, as touching the reasonableness of his requirement ? I do not think it can. The genuineness of the landlord's desire is one thing ; the reasonableness of his requirement is another.

I respectfully agree with my learned brother in *Atukorale v. Navaratnam* in that I do not consider that the words " in the opinion of the Court " appearing in section 8 (*c*) affect to any extent the interpretation to be placed on the word " reasonably " ; they merely emphasize, what it was unnecessary to emphasize, that the landlord's *ipse dixit* that his requirement of the premises is reasonable is not enough, and that it is the Court which has to decide whether the requirement is reasonable ; but these words still leave open the question whether " reasonable " means reasonable upon a consideration of the landlord's point of view exclusively, or upon consideration also of the tenant's position and of any other relevant factors. The interpretation which I have placed upon the word " reasonably " has thus been arrived at independently of the presence of the immediately preceding words " in the opinion of the court ".

It has been suggested that to interpret the word " reasonably " so as to allow consideration of such factors as alternative accommodation for the tenant is in effect to read into section 8 (*c*) the additional provisions which are absent from it but are present in the English Acts. I do not think so. The question is what is implicit in the word itself. And I consider rather that it is the restriction of " reasonably " to the landlord's point of view only which strays from the wording of the section, for to impose such a limitation is in effect to substitute the words " genuinely " or " in good faith " for the word " reasonably ". And, so far as concerns the question of alternative accommodation, I would guard against saying that the Court *must* satisfy itself (as it must under the English Acts) that there is alternative accommodation for the tenant before ordering eviction under section 8 (*c*). That is not the position. A case

might well occur where, after duly considering the fact that there was no alternative accommodation, the Court might still consider that the landlord's requirement was reasonable. This point was made clear by Soertsz J. in *Abeywardene v. Nicolle* (*supra*). Alternative accommodation is a relevant factor, no more and no less, in determining whether the requirement of the premises for the landlord's purposes is reasonable.

Applying these conclusions to the facts and findings in the present case, I hold that the learned additional District Judge's finding that the premises in question were not reasonably required by the appellant, was based upon considerations legally relevant, and I see no reason to interfere with it. The appeal is accordingly dismissed with costs.

WIJEYEWARDENE A.C.J.—I agree.

*Appeal dismissed.*