1947 *Present* : **Dias J.**

TALAGALA, Appellant, *and* GANGODAWILA CO-OPERATIVE STORES SOCIETY, LIMITED, Respondent.

S. C. 155—C. R. Colombo, 3,313.

Rent Restriction Ordinance—House let to Co-operative Society—Furnished house—Application of Ordinance No. 60 of 1942.

The Rent Restriction Ordinance, No. 60 of 1942, applies to bodies corporate and to furnished houses.

Where a question which is raised for the first time in appeal is a pure question of law and is not a mixed question of law and fact, it can be dealt with. The construction of an Ordinance is a pure question of law.

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

C. Chellappah, for the plaintiff-appellant.

No appearance for the defendant-respondent.

Cur. adv. vult.

September 3, 1947. DIAS J.—

The plaintiff let the premises in question on the written agreement, marked "A", to the respondent co-operative society. The hiring included the "fittings and furniture" referred to in the inventory attached to the agreement "A". It was agreed that at the termination of the tenancy, the defendant was to return to the plaintiff the "fittings and furniture".

Plaintiff alleging that the tenancy was terminated after due notice to quit sued the defendant for ejectment and damages. It was alleged that the plaintiff required the premises for the purposes of his trade. The defendant denied this.

The parties went to trial on the following issues :—

(1) Were the premises rented out to the defendant subject to the terms of an agreement embodied in the document marked A ?
(2) If so, is the plaintiff entitled to eject the defendant ?
(3) Are the premises in question reasonably required by the plaintiff for the purpose of his own use in connection with his trade and business within the meaning of section 8c of the Rent Restriction Ordinance ?
(4) What amount, if any, is due to plaintiff as rent and damages ?

The Commissioner of Requests held that the premises were not reasonably required for the occupation of the plaintiff for the purposes of his trade or business. It was further held that the defendant co-operative society, which served the needs of a wide circle of the public, could not obtain suitable alternative accommodation. He, therefore, dismissed the plaintiff's action with costs, but ordered the defendant to pay whatever damages were due to the plaintiff as from August 1, 1946.

In appeal three points were argued :—(*a*) that the findings of the Commissioner on the facts were erroneous ; (*b*) that the Rent Restriction Ordinance does not apply to corporations ; and (*c*) that when "furnished premises" were hired, the Rent Restriction Ordinance does not apply. The last two points were not raised at the trial, nor is there anything to show that counsel argued these questions before the trial Judge who has not referred to them in his judgment. There being no appearance for the respondent, I am labouring under the further difficulty of having no assistance on these points from the respondent. Point (*b*) has not been raised in the petition of appeal.

I see no reason to disturb the findings of fact of the trial Judge. The principle laid down by the authorities is that all contentious matter is focussed in the issues of law or fact raised at the trial, and that whatever is not involved in those issues is taken to be admitted. As a general rule therefore, it is not open to a party to put forward for the first time in appeal a new ground unless it might have been put forward in the trial Court under one of the issues framed, and the Court of Appeal has before it all the requisite material. Furthermore, if the new matter involves a question of fact, it must be clear that the parties whose conduct is called in question could have offered no satisfactory explanation if they had an

opportunity of doing so in the witness box—*Appuhamy v. Nona*[1]. Where the question raised for the first time in appeal, however, is a pure question of law, and is not a mixed question of law and fact, it can be dealt with. Thus, the construction of an Ordinance can be so raised—*Fernando v. Abeygoonesekera*[2]. See also *Attorney-General v. Croos*[3] and *Arulampikai v. Thambu*[4].

Although the questions now raised cannot be brought within any of the issues framed, they being questions of law involving the construction of the Rent Restriction Ordinance, they must, I think, be considered, although raised for the first time in appeal.

In applying the English law in regard to rent restriction in Ceylon one should be careful, because the subject of rent restriction in Britain is based on two sets of statute law—the legislation after the first World War and that which followed the housing shortage after the second World War.

Blundell in his "Rent Restriction Guide" says at page 1: "The Rent and Mortgage Interest Restrictions Acts originated as emergency legislation of the 1914-1918 war. They were aimed at dealing with the housing shortage which arose during that war . . . . . Houses subject to this form of control were said to be controlled houses. This is not strictly a technical term, but it is a very convenient expression and will be adopted in this book". The writer goes on to point out that between the two world wars the housing shortage gradually eased, and the Legislature permitted by corresponding stages a piecemeal relaxation of the restrictions with the object of ultimate abolition. The final stage of abolition was, however, not reached nor even in sight, when the second World War broke out in 1939. "Houses which were still controlled under the earlier Acts when the second World War broke out may conveniently be said to be subject to '1920 Act control' as the principal Act applying to them is the Increase of Rent and Mortgage (Restrictions) Act, 1920", which was amended from time to time until 1938. Many houses which had ceased to be controlled under the above Acts, or never had been controlled were brought under control from September 2, 1939. The Act which achieved this was the Rent and Mortgage Interest Restrictions Act, 1939. "*At the present day, therefore, some houses are subject to 1920 Act control while others are subject to 1939 Act control*".

I have cited this passage at length because it shows clearly that when English principles regulating rent restriction are cited in Ceylon, one should be careful to see whether those principles flow from the 1920 Act or from the 1939 Act.

On the question whether the Rent Restriction Ordinance applies to a corporation, the case of *Hiller v. United Dairies (London), Ltd.*[5] was cited. That was a case decided in 1933, *i.e.*, previous to the 1939 Act. A corporation were the leaseholders of a shop, and it was held under an Act of 1923 that the company was not protected under that Rent Restriction Act. I am not prepared to say that that principle can be extended to cover our Rent Restriction Ordinance, No. 60 of 1942. Section 16 of our Ordinance defines "landlord" to mean the person

[1] *(1912) 15 N. L. R. 311.*
[2] *(1931) 34 N. L. R. at p. 162-164.*
[3] *(1925) 26 N. L. R. at p. 459.*
[4] *(1944) 45 N. L. R. at . 461.*
[5] *(1933) 1 K. B. 57.*

for the time being entitled to receive the rent of premises. The term "Tenant" has not been defined, but I suppose it must mean the person who has to pay the rent to the landlord. The Interpretation Ordinance (Chap. 2), s. 2 (*m*), defines the word "person" to include any body of persons corporate or unincorporated (Ordinance No. 14 of 1941, s. 3). I, therefore, hold that the Rent Restriction Ordinance applies to a body corporate.

The contention that our Rent Restriction Ordinance does not apply to the hiring of "furnished premises" is based on the following passage in Blundell's Rent Restrictions Guide, p. 5: "The house must not be *bona fide* let at a rent which includes payments in respect of board, attendance, *or use of furniture* (Act of 1920, s. 12 (2)). If the house is so let, it is not subject to control, but such a letting is not considered to be *bona fide* unless the amount of rent which is fairly attributable to the attendance, or use of furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent (Act of 1923, s. 10) . . . . . ". The writer is here paraphrasing the provisions of a legislative enactment passed previous to 1939. Our Ordinance contains no such provisions. There is nothing before me to show that the Governor under the proviso to section 2 of the Ordinance has exempted "furnished premises" from the operation of the Ordinance. I am not prepared to construe our statute by reference to this passage from Blundell.

The appeal is dismissed.

Appeal dismissed.