Natarajah V. Naidu

230/1965

Present: T. S. Fernando, J., and Tambiah, J.

M. NADARAJAH, Appellant, and M. NAIDU, Respondent

S. C. 75 of 1964—D. C. Colombo, 55004/M

Rent Restriction Act (Cap. 274)—Sections 4, 5, 6 (1) (b)—Sale of rented premises— Improvements effected by the landlord prior to the sale—Right of the purchaser to claim increased rent.

Where a landlord incurs expenditure on improvements and, before claiming from his tenant the permitted increase of rent in terms of section 6(1) (b) of the Rent Restriction Act, sells the rented premises, the purchaser is entitled, by operation of law, to claim the permitted increase of rent from the tenant who has attorned to him.

APPEAL from a judgment of the District Court, Colombo.

G. Ranganathan, Q. C., with *S. S. Nalliah*, for the plaintiff-appellant.

H. Wanigatunga, with *H. W. Senanayake*, for the defendant-respondent.

Cur. adv. vult.

December 14, 1965. **T. S. FERNANDO, J.**—

The sole question on this appeal is whether the rent payable by the defendant-respondent was in arrear as claimed by the plaintiff-appellant. The parties were agreed that the standard rent of the premises was Rs. 91/91 per mensem. Certain expenses estimated at a sum of Rs. 7,194 have been found by the trial judge to have been incurred by the vendor to the plaintiff in making improvements within the meaning of section 6 (1) (b) of the Rent Restriction Act (Cap. 274). The same judge, however, has held that the plaintiff was not entitled to maintain a claim that the standard rent be

increased by the amount calculated at the rate specified in the said section 6 (1) (b) for the reason that the expenditure was incurred by his vendor and not by him. If the permitted increase which is said to be about Rs. 35 per mensem is added to the admitted standard rent, the authorized rent would be Rs. 126/91. The amount claimed as rent in the plaint, it may be noted, was Rs. 125 per mensem.

In upholding the contention of the defendant that the permitted increase could be claimed only by the landlord who has actually incurred the expenditure and that this claim was not available to a purchaser from that landlord notwithstanding an attornment by the tenant to the purchaser, the learned judge has, in my opinion, overlooked the significance of the definition of authorised rent in section 4 of the Act as " the standard rent determined under section 5, or where any increase of rent is permitted by section 6 in the case of such premises, the aggregate of the standard rent and every such permitted increase ". The statute does not make the addition of the permitted increase dependent on the claim being made by the very landlord who incurred the expenditure. Indeed, there is little reason why, for example, a landlord who has bought premises shortly after the vendor to him has incurred expenditure on improvements but before the latter has claimed the permitted increase should be denied the benefit of that permitted increase. In the normal case, it is reasonable to conclude, the new landlord would have had to purchase the premises at a price higher than that which he would have paid if no improvements had been effected. Further, the enactment in section 6 (1) that any increase of rent in accordance with any of the paragraphs referred to therein, shall be a permitted increase, and the absence of a requirement that a claim for such permitted increase shall be made not later than a specified date are also pointers to the inference that it was not the intention of the legislature to deny the benefit of section 6 (1) (b) to a landlord who is not himself the person who incurred the expenditure.

An argument was advanced before us on behalf of the defendant that a permitted increase does not have effect by operation of law but must be agreed upon between landlord and tenant. I do not find

myself able to accede to that argument. The expression " may be increased " in section 6(1) (b) of the Act means, in my opinion, merely that the landlord has an option to increase the standard rent and not that the increase can be effected only with the agreement of the tenant.

The trial judge has found that the defendant had paid to the plaintiff for twenty-five months (i.e. from 1st March 1958 to 31st March 1960) rent at the rate of Rs. 190 per mensem. The plaintiff had therefore received excess rent in a sum of Rs. 65 each month, aggregating to a total of Rs. 1,625. From and after April 1960 the defendant tendered rent in a sum of only Rs. 90 per mensem, a sum which the plaintiff was justified in law in refusing to accept. The excess rent sufficed to cover the authorised rent of Rs. 125 for a period only of thirteen months. The notice to quit was given on 2nd August 1961, i.e. after sixteen months had elapsed from the last payment of rent. Therefore, even if the excess rent had been appropriated in respect of rent as it fell due, the defendant was on the date of the notice in arrear in payment of rent for three months, and he therefore rendered himself liable to be ejected.

For the reasons above indicated, I would set aside the judgment and decree appealed from, and order that decree be entered in favour of the plaintiff in a sum of Rs. 875 (being rent at Rs. 125 per mensem for the months of May to November 1961), and damages thereafter calculated at a sum of Rs. 125 per mensem till delivery of possession, and for ejectment as prayed for in the plaint. The defendant shall pay to the plaintiff his costs in both courts.

TAMBIAH, J.—I agree.

Appeal allowed.