

Rajabdeen V. Yoosoof

377/1966

Present: H. N. G. Fernando, S. P. J., and Abeyesundere, J.

A. M. M. RAJABDEEN, Appellant, and O. L. M. YOOSOOF,
Respondent

S. C. 297/1963—D. C. Colombo, 52089/M

Rent Restriction (Amendment) Act, No. 10 of 1961—Excepted premises—Sections 12 and 13—Inapplicability to actions pending at the time of enactment—Rent Restriction Act (Cap. 274), s. 13 and Regulation 1 of Schedule.

An action for ejectment was instituted on 8th February, 1961, in respect of certain premises which were “excepted premises” within the meaning of regulation 1 of the Schedule to the Rent Restriction Act (Cap. 274). While the action was pending, the premises ceased to be excepted premises in consequence of the repeal effected by section 12 of the Rent Restriction (Amendment) Act, No. 10 of 1961.

Held, that, in the absence of any retrospective provision in section 12 of Act No. 10 of 1961, subsection (3) of section 13 of that Act could not interfere with pending actions to which the principal Act had not previously applied. Accordingly, the plaintiff’s action for ejectment was not affected by the provisions of the Act of 1961.

Perera v. Senn (64 N. L. R. 524) not followed.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, Q.C., with *A. Sivagurunathan*, for the plaintiff-appellant.

G. T. Samerawickreme, Q.C., with *W. S. Weerasooria*, for the defendant-respondent.

Cur. adv. vult.

May 24, 1966. **H. N. G. FERNANDO, S. P. J.**—

This action for ejectment was instituted on 8th February 1961. The premises in question had been constructed after 31st March 1953 and accordingly, by reason of the provision of the Rent Restriction (Amendment) Act, No. 6 of 1953, were excepted premises for the purpose of the Rent Restriction Act, No. 29 of 1948. At the time of the institution of the action therefore the limitations of the right to institute an action for ejectment which operate under the Rent Restriction Act were not applicable in the case of this action.

While the action was pending Parliament enacted the Amending Act No. 10 of 1961, Section 12 of which repealed the exception created by the Act of 1953 in respect of premises constructed after March 1953. In addition Section 13 of the Act of 1961 contained the following provision:—

“ Section 13 (1) Notwithstanding anything in the principal Act, the landlord of any premises to which this Act applies shall be entitled to institute any action or proceedings for the ejectment of the tenant of such premises only on any one or more of the following grounds :
—

(a) that the rent of such premises has been in arrear for three months ;

(b) that such premises have been used by such tenant or by any person residing or lodging with him or being his sub-tenant for an immoral or illegal purpose.

(c) that such tenant or any person residing or lodging with him or being his sub-tenant has caused wanton destruction or damage to such premises.

Section 13 (2) The provisions of sub-section (1) shall be deemed to have come into operation on the twentieth day of July, 1960, and

shall continue in force for a period of two years commencing from that date.

Section 13 (3) Where any action or proceeding instituted in any court on or after the twentieth day of July, 1960, for the ejectment of a tenant from any premises to which the principal Act applies on any ground other than a ground specified in sub-section (1) of this section is or are pending on the day immediately preceding the date of commencement of this Act, such action or proceedings shall be deemed at all times to have been and to be null and void.”

The learned District Judge followed a decision of this Court in *M. C. Perera v. S. E. Senn* [1 (1963) 64 N. L. R. 524.] which also dealt with an action relating to premises which were excepted premises at the time of the institution, but which by reason of the repeal effected by Section 12 of the Act of 1961 ceased to be excepted premises while the action was pending. This Court there held that having regard to sub-sections (1), (2) and (3) of Section 13 of the Act of 1961 the Legislature had expressly referred to pending actions and thereby expressed its intention to confer the benefits introduced by the amending legislation on tenants of premises which ceased to be excepted premises by reason of Section 12. A contrary view was however taken by Tambiah J. in *Abdulkhadir v. Eazick* (S. C. 119/61 (R. E.) C. R. Colombo 78089).

The scope and effect of Section 13 of the Act of 1961 can be appreciated only after a consideration of certain provisions of the principal Act of 1948. Section 13 of the principal Act provided that an action for ejectment could not be instituted (unless the Rent Control Board had authorised the institution). The provisos to that Section however enacted that such authorisation is not necessary in any case where ,—

“ (a) rent had been in arrear for one month after it has become due ;
or

(b) the tenant has given notice to quit; or

(c) 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 purpose of the trade, business, profession, vocation or employment of the landlord ; or

(d) the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the Court, been guilty of conduct which is a nuisance to adjoining occupiers, or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person.”

Section 13 of the principal Act was not repealed by Act No. 10 of 1961. What section 13 (1) of the Act of 1961 did was to enact different provisions, applicable for a period of two years from July 20th 1960, as to the institution of actions for ejectment to which the 1961 Act applied. Instead of permitting the action to be instituted in a case where there was present any of the circumstances mentioned in paragraphs (a), (b), (c) and (d) reproduced above, the 1961 Act provided that notwithstanding anything in the principal Act the action could be instituted on one or more of the grounds specified in Section 13 of the Amending Act. It seems to me that the intention of the Legislature stated in ordinary language was as follows :—

“ Section 13 of the principal Act allows an institution if there are present any of the circumstances specified in that Section. But for the two years commencing on July 20th 1960 the institution will be permitted only if there are present any of the circumstances Parliament now specifies in Section 13 of the Act of 1961”.

Although the Legislature in 1961 referred to the permitted circumstances of institution as “ grounds ”, I doubt whether there was any intention to declare grounds for the institution of an action, rather than to provide (as did Section 13 of the principal Act) that an action for ejectment brought on grounds contemplated by the Common Law may not be instituted unless certain specified circumstances are present. In regard therefore to premises to which

the principal Act applied prior to the enactment of Act No. 10 of 1961, there was clearly an intention in Section 13 of the Act of 1961 to alter the pre-existing law governing the institution of actions for ejectment, whether they be prospective actions or pending actions instituted after July 20th 1960. But the question of some difficulty is whether there was a further intention in subsection (3) of Section 13 to interfere with pending actions to which the principal Act had not previously applied because the premises to which those actions relate have previously been excepted premises.

Section 12 of the Act of 1961 in effect declared that buildings erected after March 1953 would cease, after the enactment of Section 12 or 6th March 1961, to be excepted premises. But there was no provision in Section 12 giving any retrospective effect to the amendment of the law made by that Section. No doubt it is possible to construe Section 13 in such a manner as to elicit from it not only an intention that it should have the primary retrospective operation which I have already mentioned but also the further retrospective effect upon pending actions relating to premises previously excepted. But in the absence from Section 12 of any retrospective provision, the Legislature has not in my opinion clearly manifested an intention to interfere with actions not previously governed by the principal Act. For these reasons I would hold that the plaintiff's action for ejectment was not affected by the provisions of the Act of 1961, and set aside the decree dismissing the action. The Record will be remitted to the District Court for entry of a decree of ejectment and for damages. The amount of the damages will be fixed in accordance with the agreement reached on 6th December 1962 and after account is taken of such payments as may already have been made. Plaintiff will be entitled to costs in both Courts.

ABEYESUNDERE, J. - I agree.

Decree set aside.