

Thamby Lebbe V. Ramasamy

356/1965

1965 Present: G. P. A. Silva, J.

A. R. M. L. THAMBY LEBBE, Appellant, and P. RAMASAMY, Respondent

S. C. 143/1964—C. R. Gampola, 13624

Rent Restriction Act—" Reasonable requirement "—Notice to quit—Form—Requirement of premises by landlord to start a new business thereon—His right to recover possession of the premises—Relevancy of the comparative means of the parties.

Where, in regard to the issue of " reasonable requirement ", it is shown that the hardship of the landlord is equally balanced with that of the tenant, the landlord's claim must prevail.

In considering a landlord's requirement of the premises let by him, it would be a misdirection if the Court is influenced by the consideration that the notice to quit given by him to the tenant did not mention the purpose for which the premises were required. There is no legal requirement to mention such purpose in a notice to quit.

A landlord is entitled to recover possession of rent-controlled premises if his need is genuine and more urgent than that of the tenant, even though the requirement of the former is to start a new business in the premises where the tenant is already carrying on a business. In such a case, the comparative means of each of them is a relevant though not a necessarily decisive factor in assessing the relative urgency of the landlord's requirement.

APPEAL from a judgment of the Court of Requests, Gampola.

S. Sharvananda, with *S. Rajaratnam*, for Plaintiff-Appellant.

T. B. Dissanayake, for Defendant-Respondent.

July 27, 1965. G. P. A. SILVA, J.—

This is an action by the plaintiff-appellant against the defendant-respondent for ejectment of the defendant from certain premises at Nawalapitiya in which the latter is carrying on a business of a Tea Kiosk and Hotel. The plaintiff is the owner of a number of premises in Nawalapitiya town all of which are tenanted. From the evidence in the case it would appear that he was once a successful timber merchant and contractor but had, at the time of the institution of the action, come on evil days having had to sell a number of properties to pay off his debts. His main source of income, at the time of the action, was some house rent from which he had to support his wife and children, four of whom were daughters, three being still unmarried. According to his evidence, his intention in obtaining possession of the premises let to the defendant is to enhance his diminished income by doing a textile business in the premises.

The main question which the learned Commissioner had to decide in this case was whether the plaintiff's contention, that he intended to run a textile business in these premises was true and, if so, whether the premises were reasonably required by him for the purpose of trade or business. In arriving at this decision, the learned Commissioner had to consider the relative requirements of the plaintiff vis-a-vis the defendant. The ancillary matters which arose for consideration were, inter alia :—

(a) Whether the plaintiff was able to obtain alternative accommodation ; (b) Whether the defendant was able to obtain alternative accommodation ; (c) Whether the plaintiff would stand to lose more by being kept out of his premises than the defendant would by being ejected from the premises ; (d) Whether the plaintiff was possessed of sufficient other income for the maintenance of himself and his family ; (e) Whether the defendant was possessed of sufficient other income for the maintenance of himself and his family.

Although the answer to any one of these questions would not be decisive, each of them would be of assistance in arriving at a decision as to whether the hardship to the plaintiff caused by deprivation of this premises outweighed the hardship to the defendant by ejectment from the premises or vice versa. Counsel on both sides cited a number of authorities on the questions at issue. The difficulty in the application of these principles in the present case, however, has resulted from an absence of a definite finding by the learned Commissioner on the factual position, a finding as to whether the plaintiff's evidence is acceptable or not being vital to the decision of the main issue. The judgment shows that the learned Commissioner accepted the evidence of the plaintiff in regard to his poor financial position and the consequent necessity to sell up his capital assets in order to meet his requirements. He also accepted the position that the plaintiff's inability to have one of his premises for his own use while he owned several did cause hardship to him. Thereafter, however, he appears to have been influenced by an irrelevant consideration, namely, that the notice to the defendant to vacate the premises did not contain the purpose for which the premises were required to enable the plaintiff to carry on a textile business or trade. It must be stated that there is no legal requirement to mention such purpose or any purpose at all in a notice to quit. It would appear that the learned Commissioner was not able to accept the position taken up by the plaintiff mainly as a result of this misdirection of himself. After considering the plaintiff's evidence, the learned Commissioner has stated: " Under these circumstances I am unable to hold that the plaintiff wants the premises for a business or that the plaintiff's needs outweigh that of the defendant. " It seems to me that if he had come to a definite finding as to whether the plaintiff's evidence was acceptable or not the above observation is inconsistent. For, if the evidence of the plaintiff did not impress him and if he could not, therefore, hold that the plaintiff, in fact, wanted the premises for a business, the question whether the plaintiff's needs outweighed those of the defendant's would not have arisen for consideration. His subsequent observation also to the effect that it would work equally great hardship to the defendant who will have to close up his prosperous business for the convenience of the plaintiff would also

not be called for in that event, as there would be no question of equal or greater hardship if the plaintiff's evidence did not show that the plaintiff suffered any hardship at all.

The learned Commissioner has also failed to consider the full impact of the evidence of the defendant on the question as to the availability of alternative accommodation for him. The defendant stated in cross-examination as follows:— " I did not make any attempt at all to shift my business. I do not know whether on the same road on the same side new buildings owned by one Shahul Hamid have come up and are lying vacant for sometime. I am not aware whether 4 or 5 buildings were vacant off the Kadiresan Maha Vidyalaya on the Kotmale Road. I did not interest myself to see whether there were new buildings. I do not know whether there is one more shop available next to this boutique. If a building is given to me close to this boutique I am not prepared to shift. This place is most suitable for me. I am not prepared to shift my business however it may be convenient away from these premises. I am not prepared to go anywhere else. Even if the plaintiff gets me another place I am not prepared to go. " One cannot, on this evidence, fail to be impressed by the mala fides of the defendant whose resistance to the plaintiff can only succeed—and that too after comparing the relative positions of the plaintiff and the defendant—if he cannot obtain suitable alternative accommodation for his business however much he may try. The learned Commissioner's judgment does not show that he has considered this evidence of the defendant at all.

Having regard, therefore, to the misdirection which has influenced the mind of the learned Commissioner in considering the plaintiff's evidence and the failure on the other hand to consider the vital admissions made by the defendant against himself, I am compelled to hold that the plaintiff's case must succeed. Counsel for the respondent, however, has drawn my attention to the fact that the learned Commissioner has answered in the affirmative the issue " Do the requirements of the premises in suit for the business of the defendant overwhelmingly outweigh those of the plaintiff ? ". I am unable, in the face of the analysis of the judgment which I have

made earlier, to attach such degree of weight to this affirmative answer as would persuade me to change my view. It seems to me, therefore, that the plaintiff has at least established—as the learned Commissioner himself has stated in effect at a certain stage of the judgment—that the hardship he would suffer, if he is kept out of his premises, is no less than the hardship that the defendant would suffer as a result of ejectment from the premises. Coupled with this the defendant has only gone so far as to say that he was not aware whether there were several other premises available to him to run his business, the suggestion in cross-examination being that there were, in fact, some such premises available. His position is rendered still weaker by his assertion that he was not prepared to leave the premises even if other suitable accommodation was available or even if alternative accommodation was offered to him by the plaintiff. On the basis of this finding, I shall proceed to consider some of the previous decisions cited by counsel on this matter.

In the case of *Mendig v. Ferdinands* [(1950) 51 N. L. R. 427.], Dias, S. P. J., set out three categories of comparative needs as between a landlord and a tenant, in accordance with the decision of which, the landlord or the tenant, as the case may be, would be entitled to a judgment in his favour:—

(i) Where the hardship of the landlord is equally balanced with that of the tenant, the landlord's claim must prevail; (ii) Where the hardship to the landlord outweighs the hardship to the tenant, the landlord's claim must prevail; (iii) Where the hardship to the tenant outweighs the hardship to the landlord, the landlord's action must be dismissed.

If one were to be guided by these bases, on my finding of the facts above the decision should be made in favour of the plaintiff.

In the case of *Suppiah v. Samarakoon* [(1954) 56 N. L. R. 161], it was held by Sansoni, J. that, when assessing whether the landlord reasonably requires the premises, the court should give weight to the advantage to the tenant of continuing to occupy the same premises and to the proportionate disadvantage suffered by him by

being forced to leave them. While the principle laid down in this case on which the respondent's counsel relies is, no doubt, applicable in the present case, the evidence of the defendant has reduced the strength of his own case to a considerable extent in that he was not only not able to contradict the specific suggestion that there were several other suitable vacant premises in the area but also persisted in his attitude that he would not leave the premises even if an alternative was offered to him. The fact that the plaintiff in this case had also made a general admission of the difficulty of obtaining any vacant premises in the area does not, in my view, make a difference to the case, considering the inability of the defendant to deny the specific suggestions put to him regarding the existence of alternative vacant premises and his mala fides as revealed by his evidence. The landlord's need, therefore, would be more pressing in the circumstances as the learned Commissioner would seem to have accepted the evidence of the plaintiff that he wanted to carry on a new textile business.

On the question whether a landlord is entitled under the present law to recover the premises let to a tenant on the ground of his requirement to start a new business, counsel have referred me to the cases of *Andree v. De Fonseka* [(1950) 51 N. L. R. 213.] and *Nanayakkara v. Pablis Silva* [(1959) 60 N. L. R. 490.]. Conflicting views have been taken in these two cases and I would prefer to take the view that a landlord is entitled in law to recover possession of his premises provided his need is genuine and more urgent than that of the tenant even though the requirement of the former is to start a new business in the premises where the tenant is already carrying on a business. In addition to these considerations I would say that in a case in which the relative urgency of the requirement of the landlord vis-a-vis that of the tenant is in issue, the comparative means of each of them is a relevant though not a necessarily decisive factor. Considering the evidence of this case as a whole it would appear that while the landlord's prosperity has continued to diminish, the position of the tenant has continued to improve and his business establishments have spread into even neighbouring towns.

For the reasons set out above, I allow the appeal, set aside the order of the learned Commissioner and enter judgment for the plaintiff as prayed for in the plaint with costs of appeal and of the court below.

Appeal allowed.