

1964

*Present : Sri Skanda Rajah, J.*J. M. APPUHAMY, Appellant. *and* P. B. DE SILVA, Respondent*S. C. 84/62—C. R. Colombo, 84306**Rent Restriction Act—Section 13 (1) (c)—Premises required by landlord for occupation as residence—Meaning of “immediate requirement”.*

The plaintiff, who was a Government servant due to retire by the 28th September 1963, instituted action on the 19th February 1963 against his tenant, the defendant, for ejection on the ground that the rented premises were reasonably required for his occupation as a residence.

Held, that although the plaintiff was in occupation of Government quarters at the time of the institution of the action, it could not be contended that his requirement of the rented premises was not immediate at the time of the action.

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

G. T. Samerawickreme, with *K. Palakidnar*, for the Defendant-Appellant.

D. R. P. Goonetilleke, for the Plaintiff-Respondent.

March 24, 1964. SRI SKANDA RAJAH, J.—

The plaintiff sued the defendant-appellant for ejectment on the ground that these premises were reasonably required for his occupation as a residence.

The words that require construction in this case are contained in section 13 (1) (c) of the Rent Restriction Act and they are: "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 the trade, business, profession, vocation or employment of the landlord."

This provision has been the subject of decision in a number of cases which fall under two categories. It is sufficient to refer to seven of these cases. Six of them have been decided with reference to the premises being reasonably required for the purposes of the trade of the landlord.

In the case of *Hameedu Lebbe v. Adam Saibo*¹ Nagalingam, J., held that in considering whether the premises are reasonably required for the use of the landlord in terms of the corresponding section of the Rent Restriction Act the fact that the landlord who has no business of his own wants to earn a livelihood by commencing a business is a matter to be taken into account. In doing so he followed the case of *Gunaseena v. Sangaralingampillai*².

In the case of *Mamuhewa v. Ruwanpatirana*³, a case decided by Basnayake, J., 35 days after the decision just referred to, he held that the trade or business contemplated under the corresponding section is an existing trade or business and not one *in posse*.

In *Andree v. de Fonseka*⁴, Gratiaen J., preferred to follow the view expressed by Nagalingam, J., in 50 N. L. R. 181 and did not follow the decision of Basnayake, J., in 50 N. L. R. 184. This case was also in respect of a business premises.

The next case was that of *Yusuf v. Suwaris*⁵ decided by Basnayake, J., also in respect of a business premises, where he held that a landlord's need must be immediate and present in order that the Court may have jurisdiction to entertain an action to eject a tenant under the Rent Restriction Act, and that it was not open to a landlord to claim back his premises under section 13 (1) (c) of the Rent Restriction Act for the purpose of establishing a business which is not yet in actual existence at the time of the institution of the action.

In the case of *Mendis v. Ferdinands*⁶ Dias, S.P.J., following the opinion expressed by Basnayake, J., in 51 N. L. R. 381, held that whether the plaintiff's need of the premises was immediate at the date of the institution of the action was also to be taken into consideration. This was in respect of a residential premises. As I have already pointed out, the case in 51 N. L. R. 381 was with reference to a business premises.

¹ (1948) 50 N. L. R. 181.

² (1948) 49 N. L. R. 473.

³ (1948) 50 N. L. R. 184.

⁴ (1950) 51 N. L. R. 213.

⁵ (1950) 51 N. L. R. 381.

⁶ (1950) 51 N. L. R. 427.

In *Gunasekera v. Mathew*¹ which was decided by Gunasekara, J., the facts were as follows: A landlord instituted an action for ejectment against his tenant on the ground that the premises in question were required as a residence for his son who was about 28 years of age; the son was not dependent on the father. He was engaged to be married and the premises were alleged to be required as a residence for him after his marriage. The learned Judge held that the words "dependent on him" in the definition of "member of the family" in section 13 (1) of the Rent Restriction Act did not qualify "son or daughter over 18 years of age". The landlord was therefore entitled to claim the premises on the ground that they were reasonably required for his son although the latter was not dependent on him. He further held that in order to show that the premises required for occupation as a residence for the landlord's son and the latter's wife, it was not necessary for the landlord to prove that the son was already married at the time of the trial. At page 302 the learned Judge said, "The appellant and his son stated in evidence at the trial on 14th November, 1951, that the latter had been engaged to be married since April but that it had not been possible to fix the date for the marriage because he had no place to live in with his wife. The learned Commissioner accepted the evidence about the engagement, but he holds that the need of the premises is not an immediate and present need. 'The plaintiff's son is not married yet', he says, 'and this action is brought in order to provide a house for his son after he gets married. Therefore, the need of the landlord is not immediate and present. The plaintiff's evidence is that the marriage is not solemnized yet as they cannot be provided with accommodation. I refuse to believe this'. I am unable to agree that in order to show that the premises are required for occupation as a residence for the landlord's son and the latter's wife, the landlord must prove that the son is already married. If it had been arranged that he was to be married on say the 14th November 1951, it should surely not be said that because the marriage had not yet taken place the need of a house was not an immediate and present need at the time of the trial."

In this case the plaintiff was at the time of this action a Jail Guard and he had reached the age of 55 years on 28.9.62. He filed this action on the 19th February, 1963, Being a Government servant he was liable to be retired at the age of fifty-five. There is evidence in this case that he was given an extension of one year's time. Therefore, he would have had to retire by the 28th September, 1963, and also vacate the Government quarters. Under the circumstances, I am of the view that though he was in occupation of Government quarters at the time of the institution of this action, his requirement was an immediate requirement. Therefore, Mr. Samarawickrema's contention on behalf of the appellant that the requirement of the landlord was not immediate at the time of the action is not entitled to succeed.

I would dismiss the appeal with costs.

Appeal dismissed.

¹ (1953) 64 N. L. R. 299.