

1970

Present : Thamotheram, J.

F. A. FELIX SINGHO, Appellant, *and* THE URBAN COUNCIL,
KALUTARA, Respondent

S. C. 104/68—C. R. Kalutara, 6250 (R.E.)

Rent-controlled premises—"Service tenant"—His right to protection of Rent Restriction Act.

When an employee occupies, as a tenant, rent-controlled premises owned by his employer, he is a service tenant and, therefore, is entitled to the protection of the Rent Restriction Act.

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

N. S. A. Goonetilleke, for the defendant-appellant.

No appearance for the plaintiff-respondent.

Cur. adv. vult.

September 30, 1970. THAMOTHERAM, J.—

The Urban Council of Kalutara (Plaintiff-Respondent) filed an action against the Defendant-Appellant to have him ejected from premises bearing No. 2 (39B), Park House, Kalutara South, belonging to the council and to recover damages.

The following grounds were admitted at the trial. The plaintiff-respondent is the landlord and the defendant-appellant is the tenant of the premises in question. The plaintiff had terminated the tenancy by notice dated 10.2.67. The premises were situated in an area wherein the Rent Restriction Act was in operation. The plaintiff-respondent had not established that the premises were excepted premises.

The learned Judge having found all those matters in favour of the appellant should have dismissed the plaintiff-respondent's action. Instead he said "it is quite clear that the defendant has been in occupation of those premises as an employee of the Plaintiff-Council. Then the question is whether the defendant can seek the benefit of the Rent Restriction Act and resist this action of the plaintiff for ejection. I do not think I need labour this point much and I think it is sufficient to refer to Mogarry on the Rent Acts (9th Edition, page 52) where it deals with service occupier at page 53. He mentions in particular to certain occupiers who cannot take protection under the Rent Acts. In that category of people are included people like the defendant".

It is quite clear that the learned Judge has misdirected himself on this point. Mogarry says at page 61 (10th Edition) "... if a servant occupies premises owned by his master he may do so as a service tenant, service occupier or a licensee. If he is a service tenant he holds a true tenancy protected by the Rent Acts."

Once tenancy is admitted the fact that the tenant is also an employee can only make him a service tenant.

Judgment and decrees are set aside and the plaintiff's action is dismissed with costs in both courts.

Appeal allowed.