CONTROL OF RENT ORDINANCE

Mohamed Hussein v. *Mohamed Abdullah*

In *Mohamed Hussein* v. *Mohamed Abdullah*[1] the Federation of Malaya Court of Appeal was concerned solely with construing section 12(1)(h) of the Federation Control of Rent Ordinance, 1956.

Before going to India on a visit the respondent sub-let furnished business premises (which were agreed to be subject to the provisions of the Control of Rent Ordinance 1956) to the appellant for a term of two years. It appears that the respondent granted the tenancy before he had ascertained from the immigration authorities that he would be permitted to re-enter after an absence of two years. In the event the respondent was given a re-entry permit valid for one year only and consequently returned to Malaya at a time when the tenancy he had granted had approximately a year more to run. When the term of the tenancy expired he demanded possession of the premises. On the demand being resisted by the appellant, he brought an action for recovery of possession.

In the High Court, the learned trial judge (Ong J.) gave judgment for the respondent on the ground that he had brought himself within the provisions of section 12(l)(h) of the Control of Rent Ordinance which reads: —

> " No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely. . . . . .
>
> .....
>
> (h) where the landlord was personally in occupation of the premises, and has let the same furnished for a term during his absence from the area of the local authority area in whose area the premises are situated, and has returned to such area and requires the premises for re-occupation by himself."

Of the six requirements of this sub-section four evoked no dispute: (i) the premises let were furnished, (ii) they were let for a definite term, (iii) the respondent had left the area, having gone to India, (iv) he had returned to the area and required the premises for his own occupation. As to the requirement that the landlord must be "personally in occupation of the premises" at the time these are sub-let, the Court of Appeal had no difficulty in holding that as the Control of Rent Ordinance 1956 applies to business as well as to residential premises, it is sufficient compliance, where the premises are business premises, if the landlord carries on business for himself on the premises. The Court of Appeal was in consequence left with only that clause to construe which reads "and has let the same . . . during his absence from the area."

The difficulty centred around the word "during" which, as Good J.A. pointed out when reviewing authorities on the interpretation of this word, is susceptible of several meanings. It could be interpreted to mean (1) "throughout the continuance of", (2) "for the duration of", (3) "in the time of" or (4) "in the course of." Thomson C.J. contented himself by holding that the circumstances of the case fell under the statutory provision and declined to say whether the provision called for the term to be in existence for the whole of the absence of the landlord or only a portion of it, though he felt that the landlord's absence must be for a substantial period. On this judgment it must be assumed that (a) whatever else the word "during" may mean, it must mean (1) above, for on the facts of the case the term was longer than the absence, and (b) that unless it also means (2) above, the term may be as considerably in excess of the period of absence as the landlord may wish, as long as the

1. (1961) 27 M.L.J. 24.

period of absence is substantial. As to meaning (2) above, the learned Chief Justice felt that if the intention of the legislature had been that the letting should coincide with the period of absence, the words "has let during his absence" would have been used. With respect, it must be pointed out that the intention of the legislature to secure a definite term for the tenant, as against an undefined period which could operate to derogate from a tenancy, probably led to the inclusion of the words "for a term." [2] The view of Hill J.A. was that "if . . . letting is for a definite term, it matters not if the term is less or greater than the period of absence, provided the transaction is a *bona fide* one. It may well be that the term of letting should be for at least a substantial part of the period of absence, but that question does not arise in this case."[3] His lordship did not discuss the question that did arise in this case, namely, whether the term could be substantially in excess of the absence. Presumably it may, provided the transaction is a *bona fide* one. If the term can be substantially in excess of this ground it is not clear why the period of absence may not be substantially in excess on the same ground. One could therefore wish that his lordship had elaborated on the doubt expressed. Good J.A. said that it would be impracticable and unrealistic to construe "for a term during his absence" as meaning "either that the term and the absence must be exactly of the same duration or that the term must fall within the period of absence. In order to arrive at an effective practical interpretation it is necessary to apply a broader test than that of time alone. The intention of the parties must be taken into consideration, and all the circumstances examined, to find out whether the letting was a *bona fide* transaction connected with and incidental to the landlord's intended absence." [4] On this test it is not necessary that the period of absence should be for a substantial period.

A more serious inconsistency in the judgment of Thomson C.J. on the one hand and those of Hill and Good JJ.A. on the other arises from the view of the learned Chief Justice that where there is a term of letting, the situation is automatically covered by the statutory provision, with only this proviso that the term of letting must be for a substantial period, whatever "substantial" may mean in this context. This is to say that where the facts are as they were in the instant case, with a defined term of letting, and the absence substantial, then validity arises without further ado under the statutory provision. There is no requirement for the application of any test in such a situation. This is not the view of the other two members of the Court. They hold that the transaction must be *bona fide,* and, more specifically, *per* Good J.A., it must be connected with and incidental to the landlord's absence.

Apart from these difficulties arising from the individual judgments for courts hearing actions under this sub-section in the future, mention may be made of the absence in the Court of Appeal's judgment of a requirement that the landlord show that he had reasonable grounds for his premature or late return. As the judgment now stands the landlord must, in good faith, relate the letting to the period of his intended absence. Once he has done this his position cannot be prejudiced by the length of the margin by which his absence is subsequently inconsistent with the term of the letting. He may, for instance, subsequently extend his absence, even considerably, without fear that the extension will have an effect on his right to recover possession. In these circumstances he will be, in effect, granting a letting, after the expiry of the term originally granted, which is (a) for an undefined period and not for a fixed term and (b) a letting which is not given whilst the landlord is personally in occupation, and therefore contrary to the statutory provision, and yet be retaining the right of repossession given under the same statutory provision. It remains for some future judgment to deal with this aspect.

KIRPAL SINGH.

2. Hill J.A. was of this view; see judgment at p. 26.
3. Page 26.
4. Page 28.