

(b) any sub-tenant becoming a statutory tenant under and by virtue of any of the provisions of this Ordinance.

28. A statutory tenant shall hold the premises of the landlord upon the following terms and conditions, namely:

(a) he shall be deemed to hold as tenant from month to month, and subject thereto, shall observe and be entitled to the benefit of all the terms and conditions of his original tenancy or sub-tenancy as the case may be, so far as the same are consistent with the provisions of this Ordinance and with a holding from month to month:

Provided that in the case of a sub-tenant becoming a statutory tenant such a statutory tenant shall in addition hold the premises subject to any subsisting restrictive covenants contained in the terms and conditions of the tenancy between the landlord and the tenant;

(b) his tenancy shall be subject to be determined by such notice as would have been required by law to determine a monthly tenancy of the premises containing no express provision for determination; and

(c) he shall be subject to all the rights and powers conferred on a landlord under and by virtue of the Distress Ordinance."

By their claim the landlords contended that they were entitled to possession upon the ground that on the facts the case came clearly within section 15 (1) (g).

By her defence the tenant denied that the sub-paragraph applied on various grounds now abandoned except as mentioned below. She counterclaimed under section 3 for repayment of rent paid by her beyond the standard rent which she duly recovered subject to the operation of the Statute of Limitations. The landlords have not appealed from that order.

Before their Lordships' Board the tenant put forward an argument (not advanced before the trial Judge) that sub-paragraph (g) only applied where the tenant was paying the standard rent or rent fixed by the Conciliation Board; and if landlords unlawfully demand and receive a larger rent then they cannot rely upon the section. This argument did not impress the Federal Court nor does it impress their Lordships. A contention founded on "clean hands" was quickly abandoned and the argument was based on the view that sub-paragraph (g) was not appropriately phrased to cover the case where rent which exceeds the recoverable rent is being paid. But their Lordships are of opinion that the language of the sub-paragraph is too clear for argument. It applies whenever the rents received by the tenant exceed 110 per cent of the recoverable rent, as was the case here before, at, and after the notice to quit had expired. The rent payable by the tenant, if it exceeds the recoverable rent may, and in this case was, recovered from the landlords. The point therefore seems to possess little relevance. Whether in some special case the Court might exercise its discretion under section 18 is not a matter which their Lordships have considered; it has not been and could not be invoked in this case. It seems to them that the case is clearly within the terms of sub-paragraph (g) of section 15: and accordingly they agree with both Courts below that the landlords establish a case for possession, and that the cross-appeal fails.

Accordingly it becomes necessary to consider the main question in the appeal, whether the tenant must account for mesne profits since 1st April 1961 or is a statutory tenant, liable only for the recoverable rent for the period during which she holds over.

In their Lordships' judgment this must depend upon the concluding words of section 27 (a) namely "who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord". Purely as a matter of language it seems to their Lordships quite clear that the tenant does not satisfy this condition, because at the moment of the expiry of the notice to quit, the landlords were entitled to deprive her

of possession by reason of the provisions of the Ordinance namely section 15 (1) (g). It was said that the landlord could not "deprive" the tenant of possession, but only the Court could do so, *i.e.*, by making an order for ejection, and that in the meantime the tenant was a statutory tenant. This seems to their Lordships a most strained and unnatural construction which would in effect make the concluding words of section 27 (a) virtually meaningless.

Their Lordships' view is supported by authority in Malaya on comparable Ordinances and in Singapore.

See *Ida Fernandez (m.w.) v. Murugiah* (1950) 16 M.L.J. 83 per Murray-Aynsley C.J. on the corresponding wording of the Ordinance of 1947 and *K. S. Mohamed Ismail v. Choo Pin* (1954) 20 M.L.J. p. 183 per Briggs J. on the corresponding wording of section 15 of the Malayan Ordinance.

In their Lordships' opinion the learned trial Judge rightly followed and applied these authorities as Spencer Wilkinson J. had done in *Hooi Moon v. Suppiah Chettiar* (1954) 20 M.L.J. p. 186 again on the Malayan Ordinance.

To the same effect was the very clear statement of the position by Thomson J. (as he then was) in *M. K. Ramasamy Pillai v. Meyappa Chettiar and Another* (1955) 21 M.L.J. p. 105 where he said (on page 106):

"Section 15 of the [Malayan] Ordinance states what persons are statutory tenants under the Ordinance and apart from certain classes of sub-tenants which do not call for consideration in the present case a statutory tenant is:

'Any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord.'

In other words (again apart from the question of sub-tenancy) before a person can claim to be a statutory tenant of premises four conditions must be fulfilled:

- (a) he must have been a tenant of the premises;
- (b) his tenancy must have been determined, not assigned or anything of the sort;
- (c) he must have remained in possession of the premises after the determination of his tenancy; and
- (d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises."

When Lord President he followed this clear exposition in *Tan Khio Soei and Another v. Ban Hin Lee Bank Ltd.* (1964) 30 M.L.J. 71 in respect of the Singapore Ordinance itself.

Unfortunately in the earlier of these two cases the Lord President in a passage in his judgment, fully quoted in the present case in the judgment of the Chief Justice in the Federal Court, equated section 15 of the Rent Act with section 15 of the Malayan Ordinance, and drew the conclusion that notwithstanding the absence of any statutory definition of statutory tenant in the Rent Act, yet there was no material difference between a tenant who holds over under that Act (who admittedly remains in possession under a status of irremovability on paying the standard rent until ejected by judgment) and one who holds over under the Ordinance. The Federal Court followed and approved this statement of the law. Their Lordships are unable to agree; they have already drawn attention to the many differences between the Rent Act and the Ordinance and conclusions depending on their similarities are unsafe. The words of section 27 of the Ordinance defining a statutory tenant, as their Lordships have already held, are clear and unambiguous; there is no corresponding definition in the Rent Act, the term "statutory tenant" emanating entirely from judges. The wording of section 27 must prevail, and their Lordships with all respect to the Federal Court, can see no ambiguity for any relevant purposes in that section.

The Federal Court also dwelt on possible hardship to the tenant, and the power of the landlord to harass him if the appellants' argument were right. No doubt there are some cases in section 15, as their Lordships have already pointed out, where the facts giving rise to a successful claim for possession by the landlord, may be outside the knowledge of the tenant or where the granting of possession will depend upon the discretion of the Court; but this in their Lordships' opinion can afford no ground for not giving to section 27 its clear meaning.

Accordingly in their Lordships' opinion the tenant on expiry of the notice to quit failed to qualify as a statutory tenant within the meaning of section 27; and became a trespasser, with the consequence accepted or conceded in many cases in the Malay States and in Singapore that she became liable to pay mesne profits.

Their Lordships therefore allow the appeal of the landlords and restore the judgment of Choor Singh J. The matter must be remitted to the High Court to determine the question (reserved by that Court) of the tenant's claim to deduct income tax in assessing mesne profits.

The tenant's cross-appeal will be dismissed.

The tenant must pay the costs of this appeal and cross-appeal before their Lordships' Board and of the proceedings in the Federal Court.

In the Privy Council

SYED AHMED BIN ALWEE
AL-JUNIED AND OTHERS

v.

MUCHHOOL KHANUM RESHTY

DELIVERED BY
LORD UPJOHN