

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST**  
**REPUBLIC OF SRI LANKA**

In the matter of an appeal to the Supreme Court in terms of section 5 (c) 1 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990

Rajamany Widow of Ramasamy  
Oppilamany Ganeshanathan  
Kandar Madam,  
Vannar Ponnai,  
Jaffna.

Presently of 110/1, 5<sup>th</sup> Lane,  
Colombo 03.

Appearing by her Attorney,  
Thurairajah Sukumar of Madagal Road,  
Pandetteruppu,  
Jaffna.

**Plaintiff**

**SC Appeal 125/2013**

**SC/HCCA/LA 194/2011**

**HC/NP/HCCA/JAF/107/2010**

**DC/ Jaffna Case No. 695L**

**Vs,**

Vairamuthu Kovindapillai  
No. 62, Palam Road,  
Kandar Madam,  
Jaffna.

**Defendant**

**And between**

Vairamuthu Kovindapillai  
No. 62, Palam Road,  
Kandar Madam,  
Jaffna.

**Defendant-Appellant**

**Vs,**

Rajamany Widow of Ramasamy  
Oppilamany Ganeshanathan  
Kandar Madam,  
Vannar Ponnai,  
Jaffna.

Presently of 110/1, 5<sup>th</sup> Lane,  
Colombo 03.

Appearing by her Attorney,  
Thurairajah Sukumar of Madagal Road,  
Pandetteruppu,  
Jaffna.

**Plaintiff –Respondent**

**And now between**

Vairamuthu Kovindapillai  
No. 62, Palam Road,  
Kandar Madam,  
Jaffna.

**Defendant-Appellant-Appellant**

**Vs,**

Rajamany Widow of Ramasamy  
Oppilamany Ganeshanathan  
Kandar Madam,  
Vannar Ponnai,  
Jaffna.

Presently of 110/1, 5<sup>th</sup> Lane,  
Colombo 03.

Appearing by her Attorney,  
Thurairajah Sukumar of Madagal Road,  
Pandetteruppu,  
Jaffna.

**Plaintiff-Respondent-Respondent**



The trial before the District Court proceeded with 36 issues raised by parties and the learned District Judge by his judgment dated 09.07.2010 allowed the plaint by granting prayer (a) and (b) of the plaint.

Being aggrieved by the said decision of the District Court, the Appellant appealed to the Civil Appellate High Court of the Northern Province holden in Jaffna.

By its order dated 29.04.2011, the Civil Appellate High Court of the Northern Province had dismissed the said appeal subject to cost and the present appeal is preferred by the Appellant against the said order of the Civil Appellate High Court of the Northern Province on several grounds of appeal as averred in paragraph 26 of the Special Leave to Appeal Application filed before this Court on 8<sup>th</sup> June 2011.

This court on 01.10.2013 had granted Special Leave on the following question of Law.

Did the Civil Appellate High Court err in its finding that the Rent Act has no application to the premises in suit?

As referred to above the Appellant had mainly relied on the ground that the premises in question is governed by the provisions of the Rent Act No. 07 of 1972. During the trial before the District Court, on behalf of the defendant, the Appellant had given evidence and marked document from D1 to D6. However when analyzing the above evidence the learned District Judge had concluded that, the Appellant had failed to establish that the property in question is situated within an area which comes under the provisions of the Rent Act, and proceeded to consider the other grounds raised by the parties.

The same position was once again raised before the Civil Appellate High Court of the Northern Province by the Appellant, and the Hon. Judges of the Civil Appellate High Court had considered the said issues and concluded that,

“The counsel for the Appellant mainly depended on section 2(a) of the Act. I cannot agree with the contention of the counsel for the Appellant because section 2(a) clearly states that the Rent Act shall be in operation in every area in which Rent Restriction Act was in force immediately prior to 1<sup>st</sup> day of March 1972. No evidence on this matter was placed before the District Court during the trial nor was this court convinced that the Rent Restriction Act was in force immediately prior to the 1<sup>st</sup> day of March 1972.”

In the said context the Hon. Judges of the Civil Appellate High Court too had concluded that the Appellant had failed to establish that the property in question is situated within an area which comes under the provisions of the Rent Act No.7 of 1972.

However when the present application was filed before the Supreme Court, the Appellant had tendered additional documents which were not placed before the District Court and the Civil Appellate High Court. Even though the learned counsel for the Respondent objected for considering fresh evidence in appeal, it appears that this court had permitted fresh documents being produced before court at the support stage.

When submitting that the property in question is governed by the provisions of the Rent Act No.7 of 1972 the Appellant had heavily relied on section 2 (1) of the said Act which reads as follows;

**Rent Act No.7 of 1972**

Section 2 (1) This Act shall be in operation-

- (a) In every area in which the Rent Restriction Act No 29 of 1948 was, by virtue of the provisions of section 2 of that Act and by virtue of any notification made under that section, in force immediately prior to the 1<sup>st</sup> day of March 1972 and
- (b) In every other area for the time being declared by the Minister, by Notification published in the Gazette, to be an area in which this Act shall be in operation.

Section 2 of the Rent Restriction Act No. 29 of 1948 referred to above in section 2 of the Rent Act No.7 of 1972 reads as follows;

**Rent Restriction Act No.29 of 1948**

Section 2 (1) This Act shall be in operation

- (a) In every area in which the Rent Restriction Ordinance No.60 of 1942 was, by virtue of any proclamation under section 2 of that ordinance, in force immediately prior to the 1<sup>st</sup> day of January 1949
- (b) In every other area for the time being declared by the Minister by Notification published in the Gazette, to be an area in which this Act shall be in operation.

Section 2 of the Rent Restriction Ordinance 60 of 1942 referred to above in section 2 of the Rent Restriction Act 29 of 1948 reads as follows;

**Rent Restriction Ordinance No.60 of 1942**

Section 2 (1) The Governor may from time to time, by proclamation published in the Gazette, declare that this Ordinance shall be in force in any area specified in the proclamation and appoint the date on and after which the Ordinance shall be in force in such area.

- (2) so long as the proclamation under sub-section (1) is in force in respect of any area, this Ordinance shall subject as hereinafter provided, apply to all premises in such area which are used or occupied or intended to be used or occupied, whether in their entirety or in separate parts, for the purpose of residence or for the purpose of any trade, business undertaking, profession, vocation or employment, or for any other purpose whatsoever; provided, however, that the Governor may, by Order Published in the Gazette, exempt any specified premises or premises of any specified class or description from

the operation of this Ordinance or of any specified provision thereof; and so long as such order is in force, this Ordinance or such specified provisions thereof, as the case may be, shall not apply in the case of the premises specified in the order or of premises which are of any class or description so specified.

For the first time in the proceedings of the present case, the Appellant had tendered the proclamation said to have been published by the Governor of Ceylon under the above provision of the Rent Restriction Ordinance, along with the Leave to Appeal Application marked 6A.

In the said proclamation, which contained in the Extraordinary Gazette No. 9733 dated Thursday 10<sup>th</sup> July 1947, identified the Administrative limits of Jaffna Urban Council as an area comes within the provision of the Rent Restriction Ordinance 60 of 1942.

As revealed before us, other than the proclamation made under Rent Restriction Ordinance 60 of 1942, no other proclamation was made either under Rent Restriction Act No.29 of 1948 or under Rent Act No. 07 of 1972. However as submitted by the learned counsel for the Respondent, a significant change had taken place with regard to the functions of the Jaffna Urban Council in the year 1948 when the Jaffna Urban Council was made a Municipality Council by Government Gazette No 9,843 dated Friday 19<sup>th</sup> March 1948.

In the absence of a fresh proclamation made either under the Rent Restriction Ordinance declaring Jaffna Municipal limits under the said Ordinance or under section 2 (1) (b) of the Rent Restriction Act No. 29 of 1948, the learned Counsel for the Respondent argued that the provisions of the Rent Act No.7 of 1972 has no application with regard to the premises in question before us.

During the arguments before us the learned Counsel for the Respondent relied on the decision in ***C.A. Samarakoon Vs. A.H.K. Jayawardena (1953) 55 NLR 239*** and argued that in the absence of a fresh proclamation made after the issuance of Government Gazette 9,843 declaring Jaffna

Municipality to come within the provisions of Rent Restriction Ordinance, the premises in question, No, 62, Palam Road, Kandar Madam, Jaffna is not Governed by the provisions of the Rent Act 7 of 1972.

As observed by this court, *Swan J* had considered the matters before his lordship as follows;

“The simple question is whether the area in which the premises were situated came within the operation of the Rent Restriction Ordinance No 60 1942, by virtue of any proclamation under section 2 of that ordinance.....

.....By notification published in Gazette No 9,773 of the 10<sup>th</sup> July 1947, the Notification in Gazette 9,084 was cancelled and a new list of areas brought within the operation of the Rent Restriction Act was published. In that list we once again find reference to the area within the administrative limits of the U.C. Kotte. Gazette 7,910 of the 4<sup>th</sup> March 1932, published a list and gave the boundaries of the areas in which Urban Councils were established.

There we have reference to the administrative limits of the Kotte Urban Council which are described by physical metes and bounds. In my opinion there can be no question that the area brought within the operation of the Rent Restriction Act 1948 by virtue of section 2 (a) was the area within the boundaries mentioned in the notification of Gazette No. 7,910 perhaps it was a casus omissus on the part of the authorities not to have notified that the Rent Restriction Act of 1948 would apply to the administrative limits of U.C. Kotte, as extended from the beginning of 1951. But upon an interpretation of section 2 (a) of the Rent Restriction Act I have come to the conclusion that in the absence of a notification under section 2 (b) the Rent Restriction Act does not apply to the extended limits....”

Referring to the above decision, the Appellant submitted that there are no extended limits, when it refers to the Jaffna Urban Council, as against the Jaffna Municipal Council. The Appellant had

submitted Government Gazette 9,843 dated Friday 19<sup>th</sup> March 1948 marked XX1, under which the Jaffna Municipal Council was declared. In the said Gazette the metes and bounds of the Jaffna Municipal Council had been identified and, "Kantherimadam" had been identified as ward 9 of the said Municipal Council.

However I cannot agree with the submission of the learned Counsel for the Appellant, since what is before this court is only the metes and bounds of the Jaffna Municipal Council, which was declared in the year 1948. In the absence of the metes and bounds of the Jaffna Urban Council as at 10<sup>th</sup> July 1947 when the proclamation under section 2 of the Rent Restriction Ordinance was issued, this court is unable to agree with the submissions of the Appellant before this court.

With regard to the accepting of additional evidence before this court, the Appellants having relied to several decisions by Appellate Courts, including *Jayakody Vs. Silva 44 NLR 379*, *Edirisinghe Vs. Cassim 46 NLR 334*, *Samarawickrama Vs. Sebastian (1971) 74 NLR 101* had argued that our courts have taken judicial notice of Gazette Notifications without the said Notifications being produced before Court and in the said circumstances this court should consider the Gazette Notification that has come by way of fresh evidence and be acted upon in the present appeal.

I am not inclined to accept the said argument as it is, but considering the fact that this court, prior to the present case being supported for leave on 01.10.2013 had permitted the Appellant to file fresh material in order to support his position, observe that no prejudice has caused to the Respondent by allowing the Petitioner to file fresh material in appeal.

As revealed before us the Appellant had filed the first set of fresh documents including the proclamation made under section 2 of the Rent Restriction Ordinance by the Governor of Ceylon marked P 6A on 08<sup>th</sup> June 2011.

However as further revealed before us, Appellant was ejected from the said premises, i.e. No. 62 Palam Road, Kandar Madam, Jaffna on 22<sup>nd</sup> August, ten weeks after the said papers were tendered

before the Supreme Court, but the Appellant had failed to tender the copies of the said document before the District Court of Jaffna for the learned District Judge to consider them at the time he decided to eject the Appellant. When considering all these matters I see no merit in the appeal before us. I therefore answer the question of Law raised in the present appeal in favour of the Respondent and dismiss the appeal with costs.

**Judge of the Supreme Court**

**Sisira J. De. Abrew J**

**I agree,**

**Judge of the Supreme Court**

**L.T.B. Dehideniya J**

**I agree,**

**Judge of the Supreme Court**