

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

In the matter of an appeal made in terms  
of Section 5 (C) (1) of the High Court of the  
Provinces (Special Provisions)  
(Amendment) Act No. 54 of 2006.

**SC / APPEAL / 05 / 2022**

**SC / HCCA / LA / 329 / 2020**

**CP / HCCA / FA / 101 / 2017**

**DC / Kandy / DRE / 00020 / 08**

**Upali Jayasinghe,**

716, Baseline Road,

Colombo 09.

**PLAINTIFF**

**-Vs-**

**Mahanuwara Multipurpose Co –**

**Operative Society Ltd.,**

15, Kumara Vidiya,

Kandy.

**DEFENDANT**

**AND THEN BETWEEN**

**Mahanuwara Multipurpose Co –  
Operative Society Ltd.,**

15, Kumara Vidiya,

Kandy.

**DEFENDANT – APPELLANT**

**-Vs-**

**Upali Jayasinghe,**

716, Baseline Road,

Colombo 09.

**PLAINTIFF – RESPONDENT**

**AND NOW BETWEEN**

**Upali Jayasinghe,**

716, Baseline Road,

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**PLAINTIFF – RESPONDENT –  
APPELLANT**

**-Vs-**

**Mahanuwara Multipurpose Co -  
Operative Society Ltd.,**

15, Kumara Vidiya,

Kandy.

**DEFENDANT – APPELLANT –  
RESPONDENT**

**Before:** A.H.M.D. Nawaz, J.  
Mahinda Samayawardhena, J. &  
K. Priyantha Fernando, J.

**Counsel:** C.E. de Silva, PC for the Plaintiff – Respondent – Appellant.  
G. Wijemanna for the Defendant – Appellant – Respondent.

**Argued on:** 14.01.2026

**Decided on:** 07.05.2026

**A.H.M.D. Nawaz, J.**

1. The Plaintiff – Respondent – Appellant, Upali Jayasinghe (hereinafter "the Plaintiff"), instituted this action in the District Court of Kandy against the Mahanuwara Multipurpose Co-operative Society Ltd – the Defendant – Appellant – Respondent (hereinafter "the Defendant") on 29 February 2008, seeking the ejection of the Defendant, its servants, agents and all those holding under the Defendant, from the premises bearing assessment No. 81, Castle Hill Street, Kandy (hereinafter "the premises in suit"). The Plaintiff also claimed damages in a sum of Rs. 25,000 per *mensem* from 1 February 2008 until he was quieted in vacant possession of the premises.

2. The Plaintiff averred in the plaint that the Defendant was carrying on business as a Co-operative Society, duly incorporated under the Co-operative Societies Law No. 5 of 1972 as amended. The Plaintiff, having become the owner of the premises in suit by virtue of a Deed of Transfer bearing No. 42 dated 11 May 1983 attested by T.J. Jayathilaka, Notary Public, became the landlord of the Defendant.
3. The quintessential aspect of the case of the Plaintiff was that the premises in suit constituted "excepted premises" within the meaning of the Rent Act No. 7 of 1972 (hereinafter "the Rent Act"), and that accordingly the Defendant enjoyed no statutory protection under that Act. The Plaintiff pleaded that he terminated the tenancy of the Defendant and dispatched a quit notice dated 17 December 2007, calling upon the Defendant to vacate the premises at the expiration on 31 January 2008. It was further pleaded that notwithstanding the quit notice, the Defendant continued in wrongful and unlawful occupation of the premises in suit, causing loss and damage to the Plaintiff, estimated at Rs. 25,000 per *mensem*.
4. The Defendant, in its answer, disputed that the premises in suit was "excepted premises" under the provisions of the Rent Act and prayed for a dismissal of the action. Accordingly, the principal *lis* between the parties was the question of the status of the premises in suit, namely, whether it was "excepted premises" as contended by the Plaintiff, or whether it fell within the protection of the Rent Act as maintained by the Defendant. The trial commenced upon 5 admissions and 21 issues.
5. The learned Additional District Judge of Kandy held with the Plaintiff and delivered judgment on 26 April 2017. The Defendant, aggrieved by that judgment, preferred an appeal to the Provincial High Court of Civil Appeal, which allowed the appeal by its judgment dated 15 September 2020.

6. The Plaintiff thereupon sought leave to appeal to this Court, and leave was granted on 7 February 2022 upon two questions of law, namely;

*Whether the learned High Court Judges erred in holding,*

- a) that the Plaintiff has failed to satisfy court that Regulation No. 6 marked P5 was in operation during the relevant time; and*
- b) that the Plaintiff has failed to prove that the premises in suit is an "excepted premises" and that he is therefore not entitled to the relief sought.*

7. The regulation which is at the centre of this dispute was published in the Government Gazette bearing No. 1305/17 and dated 09 September 2003, and was marked as P5 at the trial. That regulation amended the Schedule to the Rent Act No. 7 of 1972 by the addition of the following new items immediately after Item 4 thereof:

*(5) Any premises of which the landlord is a Co-operative Society registered under the Co-operative Societies Law No. 5 of 1972 or any other law, the State, a Public Corporation, a Public Authority or a company registered under the Companies Act, No. 17 of 1982, shall be **excepted premises** for the purposes of this Act.*

*(6) Any premises of which the tenant is a Local Authority, a Co-operative Society registered under the Co-operative Societies Law No. 5 of 1972 or any other law, the State, a Public Corporation, a Public Authority or a company registered under the Companies Act, No. 17 of 1982, shall be **excepted premises** for the purpose of this Act.*

8. It is Regulation No.6 that directly bears upon the present case, since the Defendant is a Co-operative Society registered under the Co-operative Societies

Law No. 5 of 1972 and, at all material times, stood as the tenant of the premises in suit.

9. Several provisions of the Rent Act No. 7 of 1972 are engaged in this appeal and must be set out in full.

**Section 43(1)** of the Rent Act reads as follows;

*43(1) The Minister may make all such regulations as may be necessary for the purpose of carrying out or giving effect to the provisions and principles of this Act.*

**Section 43(2)** of the Rent Act reads as follows;

*43(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.*

**Section 43(3)** of the Rent Act reads as follows;

*43(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.*

**Section 43(5)** of the Rent Act reads as follows:

*43(5) Any regulation made by the Minister shall when approved by the Parliament, be as valid and effectual as if it were herein enacted. Notification of such approval shall be published in the Gazette.*

10. Additionally, the term "premises" is defined in Section 48 of the Rent Act in the following manner:

*"Premises" means any building or part of a building together with the land appertaining thereto.*

11. The significance of that definition lies in the fact that, as was explained by this Court in *Imbuldeniya v. D. De Silva*<sup>1</sup>, the entity of protection granted by the provisions of the Rent Act is the contract of tenancy and not the premises itself. The Rent Act No. 7 of 1972 is thus made applicable to the premises, and it is through the premises that the contract of tenancy becomes governed or excluded from its operation. As stated in Section 2(4) of the Act, so long as the Act is in operation in any area, the provisions of the Act apply to all premises in that area other than those that are excepted.

12. In *Alhambra Hotels Ltd. v. O.L.M. Macan Markar Ltd.*<sup>2</sup>, the Court of Appeal held that when the action for the ejectment of a tenant is instituted by the landlord and Regulation No. 6 of the Schedule to the Rent Act No. 7 of 1972 is in force at the time the action is instituted, that regulation becomes applicable to the said

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<sup>1</sup> 1987 (1) S.L.R. 367

<sup>2</sup> C.A.L.A. Application No. 148/2006, decided on 16 November 2015

action. This is a proposition that this Court considers to be well-founded and correct in law.

13. In the present case, the action was instituted on 29 February 2008. Regulation No. 6, having been published in the Government Gazette bearing No. 1305/17 dated 09 September 2003, was plainly in force on the date the action was filed, subject to the question of whether it had been rescinded by that time, a matter to which this Court shall return.

### **The Error of the Civil Appellate High Court**

14. The Civil Appellate High Court held that Regulation No. 6 did not have retrospective effect, reasoning that the regulation could not operate to eject a tenant who was in occupation of the premises even before the publication of the regulation in the Gazette. This Court finds that conclusion to be fundamentally misconceived, and it discloses an error of law of considerable significance.

15. There is no question of retrospectivity in this case. The regulation was published in September 2003. The action was filed in February 2008, some four and a half years later. The rights of the parties fell to be determined as at the date of the institution of the action, by which time Regulation No. 6 had long been on the legal landscape of landlord and tenant. For that regulation to be applied to an action filed in 2008 is not to give it retrospective effect. It is to apply existing regulation to a cause of action that arose whilst that regulation was in force. The Civil Appellate High Court thus erred in law when it held that the regulation had no retrospective effect to eject the tenant.

## **The Question of Parliamentary Approval and the Operation of the Regulation**

16. The Civil Appellate High Court proceeded further to hold that, for Regulation No. 6 to come into operation, parliament must approve it. This Court finds that conclusion to be equally erroneous, and entirely inconsistent with the plain language of Section 43(2) of the Rent Act.
  
17. Section 43(2) is explicit and admits of no ambiguity. Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation. Regulation No. 6 came into operation on 09 September 2003, the date of its publication in the Gazette bearing No. 1305/17, since no later operative date was specified within the regulation itself.
  
18. The role of Section 43(3) is an entirely separate matter. That provision imposes an obligation upon the Minister to bring every regulation before parliament for approval, as soon as convenient after its publication in the Gazette. Critically, however, Section 43(3) provides that any regulation which is not so approved shall be deemed to be rescinded.
  
19. The mechanism operates prospectively upon disapproval, not as a condition precedent to a regulation coming into force. The distinction is fundamental. A regulation that has been published in the Gazette takes effect on the date of publication. It continues in operation unless and until parliament disapproves it, at which point it is deemed rescinded from the date of that disapproval, without prejudice to anything done under it before that date. Section 43(5) further provides that upon parliamentary approval, a regulation shall be as valid and effectual as if it were enacted in the Act itself.

20. A conjoined reading of Sections 43(2) and 43(3) therefore makes it clear that the operation of a regulation that has been published in the Gazette commences on the date of publication and is not arrested unless parliament withholds its approval. The regulation does not hang suspended, awaiting the approval of parliament before it can take effect. It operates from the date of publication and ceases to operate only if disapproved.

21. The Defendant has sought to rely upon the decision in *Illeperuma Sons Ltd. v. Government Agent*<sup>3</sup>, which concerned Section 7(2) of the Heavy Motor Vehicles Taxation Ordinance (Cap. 249), a provision which required regulations to be placed before parliament within a specified period as a precondition for validity. That provision is materially different from Section 43(3) of the Rent Act, which sets no time limit upon presentation and which makes rescission dependent upon active disapproval by parliament, not upon the mere effluxion of time. The analogy drawn by the defendant fails upon a proper reading of the two provisions and the Civil Appellate High Court erred in relying upon it.

### **The Absence of Proof of Disapproval and the Burden of Proof**

22. There is no evidence before this Court, nor was any adduced at trial, to the effect that Regulation No. 6 was ever brought before parliament and disapproved. The absence of any such proof is significant, and upon it this Court draws the following observations.

23. Section 43(3) provides that a regulation, once brought before parliament and not approved, shall be deemed to be rescinded as from the date of disapproval. Section 43(4) further provides that notification of the date on which any regulation is so deemed to be rescinded shall be published in the Gazette. The mechanism for rescission thus requires a positive act of disapproval by parliament, followed by a

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<sup>3</sup> 70 N.L.R 549

gazette notification of that disapproval. No such gazette notification was placed before this Court.

24. In this context, illustration (c) to Section 114 of the Evidence Ordinance becomes apposite. That illustration provides that the court may presume that a thing or state of things which has been shown to be in existence within a period shorter than that within which such thing or state of affairs usually ceases to exist is still in existence. Regulation No. 6 was shown to have come into existence and to have been in operation upon its publication in September 2003. The Defendant has produced no evidence whatsoever to demonstrate that the said regulation has ceased to exist by virtue of parliamentary disapproval. No gazette notification of disapproval was tendered. In the circumstances, this Court shall draw the presumption available under illustration (c) to Section 114 of the Evidence Ordinance that the regulation continued to be in operation, and indeed remained in force as at the date of the institution of the action on 29 February 2008.

25. This Court also observes that the Plaintiff has submitted that according to the notification published in the Government Gazette bearing No. 1978/4 dated 01 August 2016, the regulation had by then been approved by the parliament of Sri Lanka. Whether or not that is treated as bringing the matter beyond doubt, it is not necessary for the resolution of this appeal since the relevant date is the date of the institution of the action in 2008, by which time the regulation was plainly in operation having been published in 2003 and not disapproved.

26. The question must also be addressed as to who bore the burden of establishing whether the regulation had been rescinded. The answer is not in doubt. The Defendant, in its answer and throughout the proceedings, took the positive stance that the premises in suit was not excepted premises and that the Rent Act applied to it. In so doing, the Defendant asserted the affirmative of the issue. Section 101 of the Evidence Ordinance provides as follows;

*Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

27. That provision embodies the Roman Law maxim, *ei qui affirmat non ei qui negat incumbit probatio*, which entails that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, for a negative does not ordinarily admit of direct and simple proof. As stated in ***Ranutrol Industries Limited v. Nauched Singh and Anr.***<sup>4</sup>, the burden of proof rests on the party who substantially asserts the affirmative.
28. The Defendant asserted that the premises was not excepted premises, which is tantamount to asserting that the regulation did not apply or had been rescinded. It was for the Defendant, not the Plaintiff, to establish that the regulation had ceased to have effect. The Plaintiff cannot be called upon to prove a negative. The Defendant manifestly failed to discharge that burden.
29. The Defendant contended that Sections 43(2), 43(3) and 43(5) must be read together as a whole, and that on such a reading, the presentation of the regulation to parliament for approval and the publication of approval in the Gazette were mandatory conditions that had to be fulfilled before the regulation could attain legal validity. Reliance was placed upon Maxwell on the Interpretation of Statutes and the principle of reading an Act as a whole.
30. This Court accepts, as it must, that a statute is to be read as a whole and that no provision is to be read in isolation. However, the reading urged by the Defendant

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<sup>4</sup> Writ Petition (Civil) No. 1478/2008

does not follow from that principle. Sections 43(2), 43(3) and 43(5) operate at different points in the lifecycle of a regulation and serve distinct purposes. Section 43(2) governs the coming into operation of a regulation. Section 43(3) imposes a parliamentary oversight obligation, with the consequence of rescission flowing only from active disapproval. Section 43(5) addresses the enhanced status that attaches to a regulation upon parliamentary approval, treating it as if enacted in the statute itself. These three subsections are perfectly reconcilable and do not require that parliamentary approval be treated as a condition precedent to the initial operation of a regulation. Read together, they establish a coherent scheme under which a regulation takes effect upon gazettal, is subject to parliamentary oversight, and is elevated to the force of an enacted provision upon approval.

31. The Defendant's argument that the literal interpretation of Section 43(2) leads to absurdity is not persuasive. The scheme of Gazette publication followed by parliamentary oversight is a common legislative mechanism in Sri Lanka and elsewhere, and there is nothing absurd in a regulation having legal effect from the date of its publication whilst remaining subject to parliamentary oversight. The consequence of disapproval, namely rescission from the date of disapproval without prejudice to acts previously done thereunder, is itself a recognition that the regulation has in the meantime been operative.

32. Similarly, the argument relating to retrospectivity must fail. As this Court has already observed, applying to a 2008 action a regulation that has been in force since 2003 involves no retrospectivity whatsoever. The Defendant was in occupation as a tenant under the Rent Act regime. When Regulation No. 6 came into force in September 2003, the character of those premises changed, by operation of law, to Excepted Premises. From that point forward, the protection afforded by the Rent Act was no longer available to the Defendant as tenant. The action brought by the Plaintiff in 2008 simply gave effect to the legal position that had subsisted since 2003.

33. For the reasons set out above, this Court is satisfied that the learned Additional District Judge of Kandy correctly held that Regulation No. 6 of the Schedule to the Rent Act No. 7 of 1972, published in Government Gazette bearing No. 1305/17 dated 09 September 2003, was in operation at the time the action was instituted on 29 February 2008, and that the premises bearing assessment No. 81, Castle Hill Street, Kandy, constituted excepted premises within the meaning of that regulation.

34. The Civil Appellate High Court fell into error in two respects. First, it incorrectly held that parliamentary approval was a condition precedent to the operation of the regulation. Second, it erred in holding that the application of the regulation to the present action would amount to giving it retrospective effect. Both conclusions are contrary to law for the reasons elaborated in this judgment.

35. Accordingly, this Court proceeds to set aside the judgment of the Civil Appellate High Court of the Central Province dated 15 September 2020. The appeal of the Plaintiff is allowed. The judgment of the District Court of Kandy dated 26 April 2017 is affirmed. The reliefs prayed for by the Plaintiff in the original action are hereby ordered to be granted.

36. The Defendant, its servants, agents and all those holding under the Defendant, are ordered to be ejected from the premises bearing assessment No. 81, Castle Hill Street, Kandy, and the Plaintiff is to be restored to vacant possession thereof.

**Judge of the Supreme Court**

**Mahinda Samayawardhena, J.**

**Judge of the Supreme Court**

I agree.

**K. Priyantha Fernando, J.**

**Judge of the Supreme Court**

I agree.