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IN THE SEYCHELLES COURT OF APPEAL

WEST & EAST SISTERS ISLAND A.G.

APPELLANT

versus

**BERNARD SANDERS
GRETA SANDERS**

RESPONDENTS

Criminal Appeal No: 31 of 1999

[Before: Ayoola, P., Pillay, & Matadeen, J.J.A]

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Mr. P. Boulle for the Appellant
Mr. A. Juliette for the Respondents

JUDGMENT OF THE COURT

(Delivered by Matadeen, JA.)



This is an appeal against a judgment of the Supreme Court dismissing an application by the appellant for the issue of a Writ Habere Facias Possessionem.

The appellant had claimed before the learned Judge that it was the owner of two islands which were leased to the respondents for a specified period which, after two extensions, had come to an end. A new lease agreement was concluded after each extension. The last one had expired and was not renewed and, despite repeated requests, the respondents had refused to vacate the two islands.

The case for the respondents was that although the last lease agreement had come to an end on 31st December 1998, it was entitled to carry on its business of hosting tourists on daytime excursion to those two

islands as it enjoyed the protection of the Control of Rent and Tenancy Agreements Act.

The learned judge, after reviewing the affidavit evidence, held as follows –

“In this matter it appears that these two islands could be considered as business premises in terms of Section 13(1) of the Rent Control and Tenancy Agreement Act. In view of the fact that one of the covenant in the lease states that the lessee has to make certain payments from the amount collected from some of the tourists visiting those islands, it appears that the transaction involved and covered by this covenant is one of commercial nature. Therefore, I conclude that the premises in question is a business premises for all legal intents and purposes. Therefore, the lessee hereof is entitled to get all the protection provided under the provisions of the Rent Control and Tenancy Agreement Act.”

This finding of the learned Judge is patently wrong, and this for two reasons. First, as rightly pointed out by learned counsel for the appellant, nowhere in the lease agreement that came to an end on 31st December 1998 is mention made of the fact that the respondents had to make certain payments to the appellant from the amount collected from the tourists visiting the islands. It is clear that the learned Judge was mistakenly referring to a previous lease agreement which had expired and which had been superseded by the one that terminated on 31st December 1998.


Secondly, the lease agreement specified in no uncertain terms that the subject-matter of the lease was the two islands. Nowhere in the lease

agreement or in the affidavits of either party was reference made to the lease of buildings used for business purposes. True it is that the Control of Rent and Tenancy Agreements Act mentions a dwelling house and that Section 13 extends the provisions of the Act to "premises used for business, trade or professional purposes."

It is clear, however, from the general language and purport of the legislation that it is meant to apply only to rented buildings, be they dwelling houses or buildings used for business purposes. Moreover, a close look at Section 13 itself shows that the Section was not designed to, and cannot, apply to bare land.

We are reinforced in our view by the emphasis that is placed by Section 3 – which deals with the application of the Act – on the need of a house or, by extension under Section 13, a building. In the circumstances, the lease by the respondents of the two islands belonging to the appellant amounts to an ordinary lease which was governed by the provisions of the Civil Code of Seychelles Act and not glossed over by the special provisions of the Control of Rent and Tenancy Agreements Act.

For the reasons we have given above, we allow the appeal, quash the judgment of the learned Judge and order the respondents to vacate the two islands by 31st May 2000, failing which, the writ shall issue. With costs against the respondents.


E. O. AYoola
PRESIDENT


A. G. PILLAY
JUSTICE OF APPEAL


K. P. MATADEEN
JUSTICE OF APPEAL

Delivered at Victoria, Mahe this 13th day of **April** 2000.