

IN THE SUPREME COURT OF SEYCHELLES

MICHELLE DUGASSE

APPELLANT

VERSUS

SEYCHELLES HOUSING

DEVELOPMENT CORPORATION

OF SEYCHELLES

RESPONDENT

Civil Appeal No

3 of 2004

Mr. B. Georges for the Appellant

Mr. J. Renaud for the Respondent

JUDGMENT

Perera J

— This is an appeal from a decision of the Rent Board ordering the eviction of the Appellant for non payment of rent. The matter originated with an application made by the Respondent (*SHDC*) on 2nd October 2002 for an order of eviction on the ground that the Appellant and her concubine who had entered into a Tenancy Agreement on 9th November 1995 to pay a monthly rent of Rs.1000, (*which was later revised to Rs.4000*), had defaulted payment from July 1997 leaving arrears in a sum of Rs.30,400 as at 1st October 2002.

At the hearing of the application before the Rent Board, it was revealed that the 1st Respondent (*Darrel Larue*) had vacated the premises, leaving the 2nd Respondent (*Appellant in the present matter*). The Appellant had testified that she had made payments intermittently up to June 2002, but defaulted thereafter until August 2002 as she was unemployed. She commenced payment from August 2002 after she had a new concubine who helped with the payments. She also testified that the SHDC had agreed to grant her time to pay the arrears and also agreed that no eviction would be done as she expressed her willingness to purchase the house

with the financial help from her concubine. Subsequently, on 25th July 2003, when the case was taken up for hearing, Mr Georges, Learned Counsel for the Appellant informed the Board that all arrears of rent up to February 2004, amounting to over Rs.30,000 had been paid to SHDC, and that the Appellant was ready to sign the deed for purchase of the house on 27th October 2003. However the SHDC disputed that assertion and instead moved for eviction on the ground that although arrears had been paid, such payments were received pending an order of eviction.

The Rent Board observed that there was conflicting evidence of an alleged agreement or at least an arrangement for the Appellant to purchase the premises. The Board also observed that the SHDC had taken almost seven years to institute legal proceedings for eviction, when the Appellant had been arrears of rent for about five years from 1997 for valid or invalid reasons. Taking these matters into consideration, the Board held that the Appellant was in clear breach of her obligation to pay rent pursuant to the lease agreement, and hence by decision dated 19th March 2004 ordered vacation of the premises by 31st May 2004 as rent had been paid up to then.

The Appellant contends that the Rent Board erred in making the order despite evidence that the arrears of rent had been made up as soon as she was able to pay. Mr Georges, Learned Counsel for the Appellant also submitted that the grounds specified in Section 10(2) of the Control of Rent and Tenancy Agreements Act (*Cap 47*) for eviction are subject to the first proviso which reads "*and in any case as aforesaid, the Board considers it reasonable to make such an order*". He submitted that there was a statutory requirement for the board to consider reasonableness of making an order of eviction without being bound to the legal provisions of the contract of Tenancy. It was also submitted that although the Applicant had been in arrears of rent for a long period for reasons she adduced before the Board, yet that situation had substantially changed by the time the matter was being heard by the Board, and all arrears and rent in advance up to May 2004 were paid. The order for eviction was made on 19th March 2004.

In the case of ***Horizon Trading v. Srinivasan Chetty (Civil Appeal no. 8 of 1993)***, I considered the 1st proviso to Section 10(2) as regards reasonableness and held that it was an objective test and not a subjective one. I cited the case of ***Cumming v. Danson (1992) A.E.R. 653*** at 655 in which Greene M.R. propounding

the objective test stated-

“In considering reasonableness under Section 3(1), it is, in my opinion perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of hearing. That he must do in what I venture to call a broad, common-sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

This view was also taken by Seaton CJ (as he then was) in the case of ***Julien Hoareau v/s Daniel Mousbe (1982) S.L.R. 241*** when he stated that

“It will be noted that before an order for eviction may be made under Section 10(2), there must not only exist one of the conditions mentioned therein, but the further condition of reasonableness. On the question of reasonableness there is the widest discretion to the making of the order. The board must take into account the relevant circumstances at the date of hearing, bearing in mind that certain minimum standards are required of a statutory tenant, including that he should not fail to pay such sums as are legally due to his Landlord”.

In that case, the application for eviction on the ground of “*failure to pay rent properly due*”, was made on 8th September 1981. However during the hearing on 15th January 1982, the Landlord stated that he wanted the Tenant to vacate the house which was advertised for sale, and to pay all arrears of rent. The tenant replied that he had the intention to purchase, and that the Landlord’s proxy had already made an offer to him. Counsel for the Landlord then stated that the Tenant was free to purchase like anyone else. The board then made an interim order that -

“By the end of March, Respondent should have made all necessary arrangements to purchase the house. If by

then all attempts have proved unsuccessful, the applicant may sell her property to whoever wants to purchase it”.

As regards the arrears of rent, the board directed the Tenant to sign a document agreeing to pay arrears by monthly instalments of Rs.500 in accordance with Article 1326 of the Civil Code, and to pay the monthly rent in addition. The Tenant complied with that order. However, subsequent events showed that the Tenant had gone to the SHDC to obtain a loan to purchase the house and was asked to furnish necessary particulars of the premises including the survey plan, but the Landlord did not provide him with those documents. Consequently SHDC was unable to process the loan application. The board took that into consideration and found that it was unreasonable to make an order of eviction.

Seaton CJ, in considering whether the board had exercised its discretion under the 1st proviso to Section 10(2) correctly stated -

“A Court of Appeal should not disturb a finding on the issue of reasonableness if it is satisfied that every relevant consideration has been duly weighed, even if it might have to come to a different view thereon. With respect I do not consider as irrelevant the question of buying and selling the house occupied by the Tenant. Admittedly once the board had found that the Respondent was in arrears with his payment of rent, the onus shifted on the Respondent (Tenant) to prove it was not reasonable for the board to order his eviction”.

In that respect, Seaton CJ stated that the only reasonable inference from the Board’s decision was that it believed that the Tenant was in good faith negotiating to buy the house, and also as the Landlord’s grievances, to receive arrears of rent and to have the house sold were redressed, there was no reason to order eviction. The

Court however stated that the board in exercising its discretion on the question of eviction, must take a common sense view of the circumstances. Although the appeal of the Landlord was dismissed, the Court held that the Tenant must pay his rent regularly as it falls due and the arrears according to the document he had signed "*acknowledging the debt*". The Court further stated that so long he did so, no eviction order could be made, but if he defaulted he should vacate the premises.

In the present case did the board exercise its discretion as to reasonableness in a broad common sense manner? The Appellant testified before the board that arrangements for purchase of the house was being made with Mrs Julie, Legal Counsel of the SHDC. Learned Counsel for the Appellant had tried to call her as a witness, but failed as she had by then left employment. Mr Barry Cesar, an Accountant of SHDC, however denied any knowledge of such an arrangement. Hence unlike in the case of *Julien Hoareau (supra)* there was no acceptable evidence before the board of any agreement to purchase the premises. Learned Counsel for the Appellant emphasized on the word "*unfortunately*" used by the board when ordering eviction, and submitted that the board was unaware of the requirement to consider the reasonableness of such order. With respect, I cannot agree. The board considered the reasonableness of making an eviction order and stated that although the Appellant claimed that Mrs Julie had stated that if all arrears would be paid, arrangements would be made to transfer the premises, there was conflicting evidence on that matter. Even exercising a broad commonsense view, no tribunal can act on unsubstantiated oral assertions. Hence it could not be said that the board did not exercise its discretion, nor it did so unreasonably.

The board therefore considered that although the Appellant had paid all the arrears and even rent in advance, she had breached a condition of the lease agreement and was therefore liable for eviction. Once a Tenant falls into arrears of rent, he forfeits the protection given to him under the Act, from being ejected. He cannot regain that protection by tendering the arrears. Rent act protects the Tenant who fulfils his obligations, but that does not mean that that Act should be interpreted in such a way as to penalize the Landlord, whether the Landlord is an individual or a statutory body. In the case of a statutory body vested with the obligation to provide for the housing needs of the community, the need to evict tenants who do not fulfil their obligations

is greater, as there could be other deserving persons who are able and willing to become tenants and ready to fulfil their obligations. The fact that the Appellant paid all arrears and future rent up to May 2004 therefore does not oblige the board not to make an order of eviction. It is the duty of a Tenant to pay rents regularly even during the pendency of the action for eviction from the premises. It was in that respect that the board ordered eviction only after May 2004. The Appellant has been in occupation for two years thereafter, and hence there is no reason why this Court should grant any further extension of time to vacate.

The Appeal is accordingly dismissed with costs.

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A. R. PERERA

JUDGE

Dated this 3rd day of July 2006