

REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES

APPELLATE SIDE

Nichol Chetty

Appellant

Versus

P Subramaniam Pillay

Respondent

Civil Appeal No. 18 of 2008

Joel Camille for the Appellant

France G Bonte for the Respondent

JUDGMENT

FMS EGONDA-NTENDE, CJ

1. This is an appeal from the decision of the Rent Board delivered on the 17th June 2008. The decision appealed from is fairly short and can be set forth below in full. I have had to go over the handwritten record of the Rent Board as there are a couple of mistakes on the typed record on the file.

‘The applicant is represented by Mr. Bonte where the respondent is represented by Mr. Georges.

The applicant sought an order for ejectment for non payment of rent in sum Rs 150,000/- at rate of Rs6000/- from November 2003 to date.

Mr. Bonte further file in the board registry notice to terminate the lease of parcel V.5363.

Mr. Georges disputed notice the notice filed. In submission argued that as a consequence of the notice to terminate the lease agreement the respondent has a statutory tenancy over the parcel V 5363. Consequently the rent due is to the respondent until the statutory tenancy is put to an end by court order.

The respondent has remained in the premises after the expiry of the tenancy has thus become a statutory tenant, and would be

evicted on proof of non-payment of rent.

It is not in disputed that rent was not paid. He has failed to a condition of the lease. The fact that the lease has expired is not disputed, thus the Board is entitled to grant an order of eviction to respondent for expiry of lease and non payment of the rent with effect from the date when the lease terminated. The application is granted.

We order accordingly.’

2. The respondent below dissatisfied with that decision appealed to this court. The notice of appeal sets forth the ground of appeal,

‘Notice is given that the Respondent abovenamed, being aggrieved with the decision of the Board delivered on the on 17th October 2008 ordering the eviction of the Respondent and ordering him to pay rent arrears, intends to appeal to the Supreme Court on the ground that the Rent Board erred, having found that K Krishnan had a statutory tenancy over the premises, in finding that the rent due by the Respondent was due to the applicant.’

3. Both parties filed written submissions. The appellant asserted that the Board was wrong in its finding that the appellant herein, after having retained possession of the rented premises following the expiry of the tenancy agreement and qualifies as a statutory tenant could nonetheless be evicted as a statutory tenant on account of the rent due to the respondent and not Mr. Krisnan Chetty.
4. It is the appellant’s argument, following a decision of the Court of Appeal in a matter between the respondent and Mr. Krishnan Chetty the Court of Appeal held that Mr. K Chetty had an agreement for a lease over the property in dispute, that the tenancy agreement between the appellant and the respondent had been subsumed into that agreement for a lease. Following the repossession of the premises by the respondent by way of notice from Mr. Krishnan Chetty, Mr. K Chetty was now a statutory tenant under Section 12 of the Control of Rent and Tenancy Agreements Act and that rent is therefore due to Mr. K Chetty and not to the respondent.
5. Mr. Bonte for the respondent submitted that the Rent Board did not and could not have concluded that K. Chetty had a statutory tenancy over Parcel V.5363 and that it had rightly decided to grant the application for payment of rent due directly to the respondent. Firstly since the rights between K Chetty and the respondent as found in the Court of Appeal decision referred to above were rights in ‘personum’ and not in ‘rem’,

those rights were incapable of creating a statutory tenancy. Secondly that the appellant did not before the Rent Board dispute the existence of a lease agreement between the parties and the non payment of rent by the appellant as claimed by the respondent, the ruling of the Rent Board as to non payment of rent is correct.

6. I have read and re read the very brief ruling of the Rent Board. The Board does not find that Mr. K Chetty had a statutory lease over the premises in question. The ruling does not mention Mr. K Chetty at all. Mr. K Chetty was in fact not a party to these proceedings. Neither was he a witness in these proceedings. What the Board finds in very clear terms is that the appellant had a tenancy agreement over the premises. He remained in occupation of the premises after the end of this tenancy. The appellant did not pay rent to the respondent from November 2003 up to the date of filing the plaint.

7. As pointed out by Mr. Bonte the Board was entitled to find as it did and allow the application as the appellant had not paid the rent for premises. The Board is empowered to do so under Section 10 of the Control of Rent and Tenancy Agreement Act. Section 10 states in part,

‘(1) Every lessor wishing to eject his lessee shall apply to the Board for an order of ejectment.

(2) No order for recovery of possession of any dwelling house to which this Act applies, or for the ejectment of a lessee therefrom, shall be made by the Board unless- (a) any rent lawfully due from the lessee has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act, has been broken or not performed.’

8. I am satisfied that this appeal has no merit. The appeal is dismissed accordingly with costs. The decision of the Rent Board is affirmed.

Signed, dated and delivered at Victoria, this 28th day of October 2009

FMS Egonda-Ntende

Chief Justice