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In the Privy Council.

No. 16 of 1952.	UNIVERSITY OF LONDON W.C.1.
10 FEB 1954	
INSTITUTE OF ADVANCED LEGAL STUDIES	

ON APPEAL FROM THE HIGH COURT OF
 APPEAL OF THE COLONY OF SINGAPORE
 ISLAND OF SINGAPORE

BETWEEN

1. HARDIAL SINGH, son of Mehar Singh
2. INDER SINGH, son of Mehar Singh
3. HIRA SINGH, son of Mehar Singh
4. BALWANT SINGH, son of Mehar Singh

(Plaintiffs) APPELLANTS

AND

MALAYAN THEATRES LIMITED ... (Defendants) RESPONDENTS.

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal from a Judgment of the High Court of Appeal of the Colony of Singapore, Island of Singapore (Brown Ag. C.J., Foster Sutton, C.J. and Spenser-Wilkinson, J.) dated the 17th July, 1951, reversing a Judgment of Mr. Justice Storr in the High Court of Singapore, Island of Singapore, dated the 14th April, 1951. Leave to appeal to Her Majesty in Council was granted by the Court of Appeal of the Colony of Singapore, Island of Singapore, on the 7th December, 1951.

p. 35, l. 1—
 p. 39, l. 10
 p. 29, l. 11—
 p. 33, l. 20
 p. 40, l. 10—
 p. 41, l. 14

2.—The question for decision involves the construction and the application of the Control of Rent Ordinance No. 25 of 1947 (as amended 10 by Ordinance No. 31 of 1947), s. 14 (1) of which provides that

“No. order or judgment for the recovery of possession of
 “any premises comprised in a tenancy shall be made or given
 “except in the following cases namely”

and after setting out twelve grounds for possession (none of which was in issue in this case) continues

RECORD

“(m) in any other case where the Court considers it reasonable that such an order or judgment be made or given and is satisfied that suitable alternative accommodation is available for the tenant or will be available to him when the order or judgment takes effect.”

3.—The principal points in this appeal are as follows :—

(1) Whether if a tenant of business premises (in this case a cinema) is also the tenant or owner of eight other similar business premises (i.e. cinemas) the eight such premises or any of them can be said to constitute suitable alternative accommodation available to the tenant to the one of which possession is sought by the landlord. 10

(2) Whether the Court of Appeal was wrong in law in holding that there was no evidence upon which the learned trial Judge could find that there was suitable alternative accommodation available to the tenant.

(3) Whether the Court of Appeal was right in holding that accommodation to be suitable and alternative must be such as would enable the tenant to transfer thereto the business carried on by him at the premises of which possession is claimed so as to be able substantially to accommodate a clientele of approximately the same size, a substantial proportion of the staff, mechanical appliances and all the other factors which collectively make up the tenants business. 20

p. 42, l. 1—
p. 46, l. 33

4.—By a Lease dated the 15th May, 1946, the Appellants' predecessors in title let all that piece of land situate in the District of Singapore Town in the Island of Singapore forming part of Lot 266 of Town Sub-division XIII together with all the buildings erected thereon and known as the Theatre Royal, No. 635 and 635a North Bridge Road, Singapore, to the Respondents for the term of twelve months from the 1st June, 1946, at the monthly rental of \$1500. At the end of the said term of twelve months the Respondents held over and remained in possession of the said property as monthly tenants. 30

p. 47, l. 1—
p. 51, l. 25

5.—By an Indenture dated the 5th August, 1948, the Appellants' immediate predecessors in title assigned their interest being the reversion on the said tenancy to the Appellants. The first, third and fourth Appellants were partners in the firm of Gian Singh and Co. which firm carries on the business inter alia of importing films and in particular Indian (Hindustani and Tamil) films. The second Appellant was the supplier of the said films to the other Appellants. The Appellants required possession of the said cinema in order to exhibit in the future films so supplied to them by the second Appellant. 40

- 6.—By a Notice to Quit dated the 29th November, 1948, which expired on the 31st December, 1948, the Appellants determined the Respondents' monthly tenancy. The Respondents failed to vacate the said property and claimed to be statutory tenants protected by the said Ordinance. On the 7th April, 1950, the Appellants served a Notice to Quit expiring on the 31st May, 1950, in accordance with s. 17 (c) of the said Ordinance. The Respondents remained and still remain in occupation of the said property. p. 51, l. 24—
p. 52, l. 12
p. 52, l. 13—
p. 52, l. 35
- 10 7.—By a Writ dated the 3rd October, 1950, in the High Court of Singapore, Island of Singapore, the Appellants as Plaintiffs brought this action against the Respondents as Defendants to recover possession of the said property, and for mesne profits from the 1st October, 1950, until the date of delivery of possession of the said property and for damages for breach of covenant. On the 2nd November, 1950, the Appellants delivered their Statement of Claim and on the 22nd November, 1950, the Respondents delivered their Defence. At the trial of the action before Mr. Justice Storr the Appellants abandoned their claim for possession and damages on the ground of breach of covenant. No point was taken by the Respondents as to the validity of the Notices to Quit and they admitted that their contractual tenancy had been effectively determined, and that the requisite notice under s. 17 (c) of the said Ordinance had been given. p. 1, l. 1—
p. 2, l. 37
p. 3, l. 1—
p. 5, l. 31
p. 6, l. 1—
p. 7, l. 38
p. 8, l. 22
- 20 8.—At the trial of the action it was contended on behalf of the Appellants :—
- (1) That the said property did not come within the definition of " premises " within the meaning of s. 2 of the said Ordinance. p. 9, l. 27
- (2) That the Respondents were not in occupation of the said premises or any part thereof within the meaning of s. 14 (1) (i) of the said Ordinance. p. 9, l. 32
- 30 (3) Assuming each of the above contentions on behalf of the Appellants were wrong it was reasonable for the Court to make an order for possession of the said property and that there was suitable alternative accommodation available for the Respondents. p. 10, l. 25
- 9.—Evidence was given by the first Appellant that the Appellants were distributors of Indian and Tamil films which they imported from India. Because the Appellants did not own a cinema at which they could exhibit films themselves, they were forced to approach other exhibitors who would only exhibit the Appellants' films upon condition that a substantial proportion of the takings was retained by the exhibitors. p. 11, l. 15
p. 11, l. 15
p. 11, l. 18
p. 11, l. 23
- 40 If the Appellants were able to obtain possession of the Theatre Royal, they would be able to import more films and would not suffer the financial loss of having to share the proceeds with exhibitors. If the Appellants obtained possession of the Theatre Royal they intended to renovate it p. 12, l. 9
p. 12, l. 14

~RECORD

p. 15, l. 5 at a cost of \$100,000. The necessary plans for this work had been prepared and passed by the relevant authority. The Respondents were either the owners or tenants of eight cinemas in Singapore other than the Theatre Royal and could show their films in all of these cinemas, several of which already showed Indian films. All the leading Tamil films were offered to the Respondents because the Respondents had all the picture theatres. In recent years the Respondents had taken over control of a number of cinemas in the Island of Singapore where the Appellants' films had been exhibited and since these cinemas had been so taken over the Respondents had declined to take films from the Appellants and the Appellants were finding it more and more difficult to exhibit their films in Singapore. The witness further gave evidence that in his view the Respondents could exhibit that type of film now exhibited at the Theatre Royal at other cinemas under their control. 10

p. 15, l. 4—
p. 15, l. 19

10.—Evidence for the Respondents was given by one Lee Tun Koo, the manager of the Respondent Company, that if Indian films were shown at the cinemas which were at present showing English and American films, the receipts at those cinemas would be affected. It was the quality of the films shown that affected the size of the audience, but that it was possible for them to show Indian and Tamil films at two of the cinemas at present in the Respondents' ownership. The Respondents tried to get as many cinemas as possible. He further contended that the type of film exhibited at the Theatre Royal would not be acceptable to the clientele of some of the other cinemas controlled by the Respondents and that the clientele at the Theatre Royal would probably not go to cinemas in predominantly Chinese or European districts or to cinemas where the prices were higher than the Theatre Royal. He further stated that satisfactory arrangements could not be made for the carrying on of that part of the Respondents' business carried on at the Theatre Royal at any of the other cinemas under their control. 20 30

p. 21, l. 38

p. 25, l. 3
p. 25, l. 12
p. 25, l. 18
p. 24, l. 13
p. 25, l. 38

p. 25, l. 11
p. 25, l. 18

11.—On the 14th April, 1951, Mr. Justice Storr gave Judgment for the Appellants for (1) an order for possession to take effect as from the 1st November, 1951, (2) mesne profits at the rate of \$2,500 per mensem as from the 1st October, 1950, to the date of possession, and (3) costs.

p. 33, l. 16

12.—Mr. Justice Storr rejected the first two contentions of the Appellants which are set out in paragraph 7 hereof and which are no longer persisted in by the Appellants. So far as the Appellants' third contention is concerned Mr. Justice Storr gave the following among other reasons for his Judgment. He said "Having considered all the facts of this case I am quite satisfied that it is reasonable that the Plaintiffs (the Appellants) who have been the owners of the Theatre Royal since the 5th August 1948, and gave Notice to Quit at the end of 1948 should be put in possession of it." In considering the question whether suitable alternative accommodation was available for the Respondents he said that the evidence of the first Appellant showed and it was not disputed by the 40

p. 30, l. 31
p. 31, l. 18

p. 32, l. 21

p. 33, l. 37

Respondents that the Respondents were in possession of eight cinemas in Singapore other than the Theatre Royal and that they were building a new cinema. He continued "It is therefore clear to me that in any of the eight cinemas controlled by the Defendants (the Respondents) Indian films could be shown if the Defendants so desired and therefore I am satisfied that there is alternative accommodation for the Defendants in one of the other cinemas of which they are in possession."

RECORD

p. 32, l. 44

13.—The Respondents appealed to the High Court of Appeal of the Colony of Singapore, Island of Singapore (Brown Ag. C.J., Foster Sutton, C.J. and Spenser-Wilkinson, J.). The Appeal was heard on the 26th and 27th June, 1951, and on the 17th July, 1951, the High Court of Appeal delivered Judgments unanimously allowing the Appeal and ordering that the Appellants should pay the costs of the Appeal and in the Court below. Brown Ag. C.J. in the course of his Judgment in which Foster-Sutton, C.J. and Spenser-Wilkinson, J. concurred without giving any further reasons, stated "Thus there are two requirements which have to be fulfilled. Firstly the Court must consider it reasonable to make the order asked for. Secondly the Court must be satisfied (a) that there is alternative accommodation available, (b) that it is suitable, and (c) that it is or will be available." He also said "But in applying the test of reasonableness all the facts must be taken into consideration including the alternative accommodation which is available" and "To this extent the question of reasonableness is dependent upon the question of suitable alternative accommodation, and the two questions cannot be regarded as separate and distinct." He further said "But the Appellants' business at the Theatre Royal consists of more than the mere act of projecting Indian films on to a screen. Their business consists of all matters which are ancillary to the exhibition of Indian films. They include the clientele from whom the profits of the business are derived; the employees (whom there are twenty-seven at the Theatre Royal) by whose labour the business is carried on; and the mechanical appliances which they use in their business. It is for such factors as these, which collectively constitute the Appellants' business at the Theatre Royal, for which suitable alternative accommodation must be available." He then said that in his view there was no evidence upon which the learned trial Judge could find as a fact that there was suitable alternative accommodation available to the Respondents.

p. 36, l. 1

p. 36, l. 7

p. 36, l. 16

p. 37, l. 13

p. 38, l. 40

14.—On the 7th December, 1951, the Court of Appeal of the Colony of Singapore, Island of Singapore, granted leave to the Appellants to appeal to Her Majesty in Council.

p. 40, l. 10

p. 41, l. 14

15.—The Appellants submit that the Judgment of the High Court of Appeal of the Colony of Singapore, Island of Singapore, setting aside the Judgment of Mr. Justice Storr is wrong and ought to be reversed and the present appeal allowed for the following and other

REASONS

1. BECAUSE the Court of Appeal misdirected themselves and wrongly construed the provisions of the said Ordinance in that—
 - (a) they held that the learned trial Judge misdirected himself in his construction of s. 14 (1) (m) of the said Ordinance and its application to business premises
 - (b) they held that for accommodation to be suitable and alternative it must be such as would enable the tenant to transfer thereto the business carried on by him at the premises of which possession is claimed so as to be suitable substantially to accommodate a clientele of approximately the same size, a substantial proportion of the staff, mechanical appliances and all the other factors which collectively make up the tenants' business. 10

2. BECAUSE the Court of Appeal was wrong in law in holding that there was no evidence upon which the learned trial Judge could hold that there was suitable alternative accommodation available to the tenant and because the Court of Appeal should not on the evidence have interfered with the findings of the learned trial Judge that there was suitable alternative accommodation available to the Respondents. 20

3. BECAUSE upon a true construction of s. 14 (1) (m) of the said Ordinance the learned trial Judge was entitled to hold and was right in holding that there was suitable alternative accommodation for the Respondents in one of the other cinemas in which they are in possession.

4. BECAUSE having held that the question whether it was reasonable to make an order for possession could not be regarded as separate and distinct from the question of the availability of suitable alternative accommodation but that the former question was dependent upon the latter, and being wrong in law in having held that the learned trial Judge misdirected himself on the question of availability of suitable alternative accommodation and in having held that there was no evidence of any suitable alternative accommodation available to the tenant, the Court of Appeal was consequently wrong in law in their dependent determination of the question of reasonableness and in their determination that the landlords were not entitled to possession and that the Judgment of the learned trial Judge be set aside. 30 40

5. BECAUSE the Judgment of the learned trial Judge was right and that of the Court of Appeal was wrong.

H. HEATHCOTE-WILLIAMS.
LIONEL A. BLUNDELL.

In the Privy Council.

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BETWEEN

SINGH AND OTHERS (*Plaintiffs*)
APPELLANTS

AND

MALAYAN THEATRES LIMITED
(*Defendants*) RESPONDENTS.

CASE FOR THE APPELLANTS

KENNETH BROWN, BAKER, BAKER,
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