23/1953

No. 16 of 1952.

In the Privy Council.

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

SUIT No. 840 OF 1950.

BETWEEN :

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

(Plaintiffs) - *Appellants,*

AND

MALAYAN THEATRES LIMITED (Defendants) *Respondents.*

Case for the Respondents.

RECORD.

1. This is an appeal from a judgment of the High Court of the Colony of Singapore, Island of Singapore, dated the 17th July, 1951, which set aside a judgment of Storr J. ordering that the Appellants recover from the Respondents possession of premises in the Island of Singapore known as the Theatre Royal. pp. 39-40. pp. 33-34.

2. The Respondents show cinematograph films at a number of theatres and halls in Malaya including nine in Singapore. The films shown include English, American, Chinese, Malay, Egyptian, Hindustani and Tamil films. Each of the Respondents' theatres caters for a particular type of audience, and, for reasons given fully in evidence, would not be suitable for the showing of films intended to cater for a different type of audience. p. 53, ll. 14-41; p. 20, ll. 9-12. p. 20, l. 13–p. 22, l. 22; p. 23, ll. 34-40; p. 25, l. 3–p. 26, l. 34.

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p. 20, ll. 4-9. 3. Since 1939 the Respondents have continuously used the Theatre Royal for the showing of Indian films, chiefly Tamil films. On the pp. 42-46. 15th May, 1946, the executors of the former owner of the theatre granted a new lease of the theatre and its furniture and fittings to the Respondents for 12 months from the 1st June, 1946, at monthly rentals of $2,500, with an option of renewal for one further term of 12 months. p. 22, ll. 25-28; p. 11, ll. 7-14; p. 13, ll. 17-20. Evidence of the exercise of the option was given, but no formal lease was executed. It was common ground that on the expiry of the tenancy the Respondents held over and so under the local law became monthly tenants.

4. The Control of Rent Ordinance, 1947 (No. 25 of 1947) of the Colony of Singapore protects tenants not only in respect of residential premises but also of business premises where (as at the Theatre Royal) persons are employed. This protection extends, as both courts below have held, to tenants who are corporations. The Respondents accordingly came under the protection of the Ordinance in respect of the Theatre Royal.

p. 22, ll. 29-31. 5. While thus protected, the Respondents sought to buy the theatre from their landlords, but while negotiations were proceeding pp. 47-51. the Appellants by indenture dated the 5th August, 1948, bought the theatre.

p. 12, ll. 24-38. 6. The Appellants are four brothers, of whom three (the first third and fourth Appellants) were at the material times carrying on business in partnership in Singapore as general merchants under the p. 13, ll. 1-7. names of Gian Singh & Co., and of Bajaj Textiles. The second Appellant is in Bombay.

p. 11, l. 15–p. 12, l. 8; p. 12, l. 29–p. 13, l. 7. 7. In 1946 Gian Singh & Co. began to import Indian films of which the great majority were Hindustani. Over a period of five years they imported 189 films of which 173 were publicly shown through exhibitors, including the Respondents at the Theatre Royal. Of the p. 14, ll. 2-5. 173 not more than 20 were Tamil films. The films were obtained for Gian Singh & Co. in Bombay by a limited company under the control p. 15, ll. 38-43; p. 13, ll. 1-7. of the second Appellant, which was remunerated by commission.

p. 11, ll. 15-24; p. 12, ll. 9-20; p. 14, ll. 42-45. 8. The Appellants apparently thought that by buying the Theatre Royal and securing possession of it, Gian Singh & Co. would profit from not having to pay a percentage of the takings to exhibitors and from being able to increase Gian Singh & Co.'s imports of Indian pictures which the second Appellant would obtain.

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9. Accordingly the Appellants, through their then solicitors, on the 29th November, 1948, gave notice to the Respondents to deliver up possession of the Theatre Royal on the 31st December, 1948; and on the 7th April, 1950, the Appellants again gave notice to the Respondents purporting to determine the tenancy as on the 31st May, 1950. p. 51, l. 25. p. 52, l. 13.

10. On the 3rd October, 1950, the Appellants issued a writ, claiming possession, mesne profits from the 1st October, 1950, and damages for breach of covenant. There had been no breach of covenant, and the claim for damages was abandoned before trial. The statement of claim alleged that the Respondents were not protected by the Control of Rent Ordinance, 1947, that the Respondents had suitable alternative accommodation, whereas the Appellants had not, and that the Appellants required the theatre for their own use. By their defence the Respondents sought the protection of the Ordinance. p. 1. p. 53, l. 1. p. 5, ll. 1-7. p. 5, ll. 8-16. p. 7, l. 28.

11. The more important relevant provisions of the Ordinance may be summarised as follows :—

by section 2, " premises " includes any dwellinghouse, flat, factory, warehouse, office, counting house, shop, school and any other building in which persons are employed or work other than premises built or completed after the commencement of the Ordinance; " tenancy " means any lease, demise, letting or holding of premises whether in writing or otherwise, by virtue whereof the relationship of landlord and tenant is created other than the letting of furnished rooms with board; and " tenant " includes a statutory tenant;

by section 16 a tenant who remains in possession after the determination by any means of his tenancy and who cannot by reason of the Ordinance be deprived of possession by his landlord is a statutory tenant;

by section 17 a statutory tenant is deemed to hold as tenant from month to month, and otherwise on the terms and conditions of his original tenancy; his tenancy is determinable by notice; and his landlord has the ordinary rights of distress :

by section 14(1) no order or judgment for possession of any premises shall be made except in one of twelve specified sets of circumstances or under a thirteenth general clause :—

(*m*) in any other case where the Court considers it reasonable that such an order or judgment be made or given

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and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect.

One of the specified sets of circumstances is under clause (*f*) where the owner reasonably requires the premises for occupation by himself or certain other persons. In such a case if the owner has acquired the premises by purchase since the 15th February, 1942, he must wait at least a year and then give at least a year's notice to quit. Even then he cannot obtain an order or judgment for possession if the Court is satisfied that in all the circumstances, including the question whether other accommodation is available for the owner or tenant, greater hardships would be caused by granting an order than by refusing to grant it.

p. 5, ll. 12-16.

12. Although the Appellants pleaded that they required the Theatre Royal for their own use, it was obvious that they could not satisfy the conditions of Section 14(1) (*f*) of the Ordinance. At the trial they relied on three points only, contending that:

1. The Theatre Royal is not within the definition of "premises";

2. a trading company cannot be a statutory tenant or in possession of premises;

3. an order for possession should be made under section 14(1) (*m*) of the Ordinance.

p. 30, l. 20–p. 31, l. 19.

13. Storr J. decided the first and second contentions in favour of the Respondents, and by inference the Court of Appeal (who expressly dealt only with the third contention) upheld the view of Storr J. on these contentions.

p. 31, ll. 20-29.

14. In dealing with the third contention Storr J. appears to have considered clause (*m*) as if it stood alone, instead of as a residual clause, the proper effect of which is indicated by the twelve preceding clauses. In particular, Storr J. rejected arguments for the Respondents based on clause (*f*).

p. 31, l. 45–p. 32, l. 20; p. 33, ll. 9-12.

p. 31, ll. 30-41.

15. Storr J. set out the Appellants' submissions that (*a*) it was only reasonable to make an order for possession because the Appellants bought the theatre in 1948, and the Respondents ignored a notice to quit, thereby, as statutory tenants, depriving the Appellants from enjoying possession with the consequential profits and control; and

(*b*) the Court should consider itself satisfied that there was suitable alternative accommodation because the Respondents had other theatres any one of which, and particularly the Rex, Sun, and Grand Cinemas, would be suitable for showing the Indian films shown by the Respondents at the Theatre Royal. The Respondents respectfully contend that the first of these submissions shows no ground which would entitle the Court to hold it " reasonable " within the meaning of clause (*m*) to make an order. Storr J. however, without setting out his reasoning, accepted the submission. p. 32, ll. 21-24.

16. Turning to the second submission, Storr J. treated the p. 32, ll. 25-36.
Respondents as a tenant seeking to acquire and control an ever increasing number of cinemas; and he did not think that the Ordinance was framed to protect tenants of this class. As the person in control p. 32, l. 37–p. 33, l. 2.
can dictate what films can be shown Storr J. held that the Respondents' Indian films could be shown in any of the Respondents' other theatres, and that therefore there was suitable alternative accommodation in one of them.

17. The Court of Appeal set aside the judgment of Storr J. pp. 35-39. p. 36, ll. 1-18.
for reasons given by the Acting Chief Justice of Singapore. On whether or not it was reasonable to make an order for possession all the facts, including suitable alternative accommodation, must be considered, and although the Court thought the question one of fact for the judge, his finding could not stand if it was based upon a wrong construction of section 14(1) (*m*) in its application to business premises. If the judge considered it reasonable to make an order, he must p. 36, ll. 1-4.
also be satisfied (*a*) that there is alternative accommodation, (*b*) that it is suitable, and (*c*) that it is or will be available. The Court ought p. 36, l. 19–p. 37, l. 6.
not to speculate on whether the legislature in protecting business premises envisaged such a case as the present, but ought to construe p. 37, ll. 7-22.
the Ordinance, which requires that the suitable alternative accommodation must be accommodation suitable to the business carried on on the premises, including, in the present case, not merely projecting Indian films on a screen but all ancillary matters, among them the p. 37, ll. 23-41.
clientele. English decisions under an Act applying only to dwelling-houses do not help in interpreting the Ordinance in its application to business premises. The Acting Chief Justice took the view that p. 37, l. 42–p. 38, l. 10.
the nature of the Respondents' business made the locality of accommodation important, and accommodation which would deter Indian audiences from continuing to patronise the business would not satisfy the section. In his opinion there was no evidence to establish p. 38, ll. 10-11.
that suitable alternative accommodation was or would be available. p. 38, ll. 12-28.
The evidence demonstrated the unsuitability of the suggested

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p. 38, ll. 29-38. alternatives. Moreover, the protected business could only be transferred by displacing the business now carried on in the suggested alternative accommodation; which shows that the accommodation is not available within the meaning of the Ordinance. There was
p. 38, ll. 39-44. therefore no evidence upon which the judge could have been satisfied that there was suitable alternative accommodation.

18. The Respondents submit that the Court of Appeal took the right view of the requirement of the Ordinance in respect of suitable alternative accommodation. The Respondents further submit that there was no evidence upon which the Court of first instance could properly consider that it was reasonable to make the order for which the Appellants asked. The Appellants bought the Theatre Royal with
p. 13, ll. 8-9. knowledge that the Respondents were the tenants thereof, and that the Ordinance was in force. The only indication given by Storr J.
p. 32, ll. 21-24; of why he thought it reasonable to make an order was his apparent
p. 31, ll. 30-37. acceptance of the argument for the Appellants that having been owners since August, 1948, and having given notice to quit which was ignored, the Appellants should no longer be prevented from enjoying possession and the profits which would result from possession. The Respondents submit that so to hold is seriously to misconstrue " reasonable " in section 14(1) (*m*) of the Ordinance.

19. The object of section 14 is to prevent landlords from recovering possession of premises except in cases where the legislature thinks it reasonable for possession to be given to the landlord. Otherwise the tenant is to have possession with all the benefits thereof. The legislature has set out twelve cases in which (subject to varying conditions) the legislature considers that an order for possession should be made in favour of the landlord. The legislature then confers a discretionary power on the Court to make an order for possession in any other case where the Court considers it " reasonable " that an order should be made. The Respondents submit that " reasonable " should be construed in the light of the twelve preceding cases. Thus if the four Appellants had wanted the Theatre Royal for their own occupation they could not have obtained an order because they would not have complied with the requirements of clause (*f*). Wanting it for commercial exploitation by Gian Singh & Co. the Appellants cannot (in the Respondents' submission) be in a stronger position, for the test of reasonableness under clause (*m*) is not satisfied by the mere fact that the applicant is the landlord, for however long a time, and the tenant is deriving benefit from occupying the landlord's property. Storr J. in effect construed clause (*m*) as giving the Court

a dispensing power to exclude from the operation of the Ordinance all cases where the Court thought that protection should not be given, subject to alternative accommodation being available. The Respondents submit that if he had properly construed clause (*m*), there were no facts upon which Storr J. could have held it reasonable to make an order.

20. The Respondents therefore submit that this appeal should be dismissed with costs for the following amongst other

REASONS

10 1. Because, as the Courts below held, the Respondents are within the protection of the Control of Rent Ordinance, 1947, in respect of their tenancy of the Theatre Royal.

2. Because the evidence showed that no suitable alternative accommodation was or would be available.

3. Because there was no evidence which could properly satisfy the Court that suitable alternative accommodation was or would be available.

4. Because there were no facts upon which the Court could properly consider it reasonable that an order for possession
20 should be made.

5. Because, as the Court of Appeal held, Storr J. misconstrued the Ordinance, and must have refused to make an order if he had rightly construed the Ordinance.

HARTLEY SHAWCROSS.

FRANK GAHAN.

F. R. N. H. MASSEY.

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COWARD, CHANCE & CO.,
ST. SWITHIN'S HOUSE,
WALBROOK, E.C.4.

Waterlow & Sons Limited, London and Dunstable.