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Judgment
21/1964

IN THE PRIVY COUNCIL No.21 of 1961

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT
OF TRINIDAD AND TOBAGO

BETWEEN :

ALBERT JAMES MAURITZEN Appellant.

- and -

GORDON GRANT & COMPANY LIMITED Respondents.

CASE FOR THE APPELLANT

RECORD

1. This is an appeal from a judgment of the Full Court of the Supreme Court of Trinidad and Tobago (Hallinan C.J., Lewis and Marnan JJ.) whereby the Court awarded the Appellant $100 damages for nuisance but in other respects affirmed the judgment of Mr. Justice Phillips, dismissing the Appellant's action and making an order against the Appellant upon the Respondent's counterclaim for possession of certain premises of which the Respondents are the Landlords and the Appellant claims to be a tenant protected by the provisions of the Trinidad and Tobago Rent Restriction Ordinance. The principal question arising on this appeal is whether such order for possession upon the counterclaim was right. A subsidiary question arises as to whether the Appellant ought also to have been awarded further and separate damages for trespass by the Respondents to the said premises. p. 107 p. 79 p. 9. l.9.

2. The premises in question (hereinafter called "the demised premises") consist of a large room and balcony situate on the first floor at the north-west corner of a block of office buildings owned by the Respondents and known as Nos. 2 and 4 Vincent

Street Port of Spain Trinidad (which block is hereinafter called "the office block").

3. On the 11th September 1958 the office block was struck by a severe wind storm from the south-east and suffered substantial damage including damage to the demised premises. At such date the Appellant was carrying on the business of a customs and freight forwarding agent on the demised premises as a monthly tenant of the Respondents and had been in occupation thereof for over four years.

p.145, l.23 4. By notice dated the 30th September 1958 the Respondents served notice to quit upon the Appellant, and as from the expiration of such notice on the 31st October 1958 he became a statutory tenant of the Respondents protected by the provisions of the Trinidad and Tobago Rent Restriction Ordinance, which by section 3 thereof applies (inter alia) to commercial buildings. Section 14 of the said Ordinance provides that no order shall be made for the recovery of possession of any premises to which the Ordinance applies except in certain cases, which include by subsection 1 (1) thereof that the building is required by law to be demolished and by subsection 3 thereof that the ejectment is expedient in the interests of public health or public safety.

p.148, l.17. 5. In consequence of damage done by the said wind storm the Port of Spain City Engineer served on the Respondents a notice dated the 4th October 1958 pursuant to Section 208 (2) of the Port of Spain Corporation Ordinance, requiring the Respondents within 30 days to take down the roof of the office block and the parapet wall and balcony along the south and west sides thereof. Section 208 (4) of the said Ordinance provides as follows :-

"(4) If the owner shall fail, within the time specified in any such notice served upon him under either of the three preceding subsections, to comply with the requirements of such notice, the Corporation, or any person authorised by them in writing, may make complaint thereof before the Magistrate, and it shall be lawful for such Magistrate to order the owner to carry out the requirements of such notice within a time to be fixed by him in such order."

No complaint to the Magistrate or order by the

Magistrate was in fact made in respect of the said notice dated the 4th October 1958.

6. On the 13th November the Respondents commenced proceedings against the Appellant for possession of the demised premises, and on the 3rd December 1958 the further hearing of such proceedings was adjourned until the 9th March 1959.

7. Between the 12th December 1958 and the 4th February 1958 or thereabouts the Respondents entered upon the demised premises without the consent of the Appellant and carried out various structural works thereon which included the removal of the balustrade enclosing the balcony which formed part thereof and the windows therein and the erection of a wooden plank fence in its place. The Respondents also lowered the roof of the office block to the south of the demised premises in such manner as to leave an exposed face to the south of the demised premises vulnerable to high winds and therefore dangerous and to provide an opening through which dust and dirt from the demolition work and husks from the Respondents' coffee hulling operations penetrated freely into the demised premises so as to cause a nuisance. Such latter work was commenced on or about the 10th December 1958. p.82, ll.21-29.

8. On the 4th February 1959 the Appellant commenced the present proceedings against the Respondents claiming (inter alia) damages for wrongfully removing the said balustrade and windows, damages for trespass and damages for nuisance. The Respondents counterclaimed possession of the demised premises and relied upon subsections 1(1) and 3 of section 14 of the Rent Restriction Ordinance. pp. 2,3. p.9, l.9.

9. The action and counterclaim were tried by Mr. Justice Phillips on the 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th and 12th March 1959. Expert evidence was given on both sides as to the structural safety of the demised premises and the office block. The Appellant called as an expert witness a Mr. Archibald who first inspected the office block on the 27th November 1958 and last inspected it the day before he gave evidence. He agreed that the lowering of the roof by the Respondents had rendered the exposed face of the remaining roof dangerous, but was of opinion that the demised premises were not at the date of the p.60, l.10. p.61, l.17. p.63, l.28. p.66, l.16.

hearing otherwise dangerous and that it was possible to remove the danger by connecting the
p.66, ll.24,25. lowered roof with the old roof and so enclosing the exposed face. He considered that such work
p.77, ll.13,14. would be in the ordinary course of engineering practice. The Respondents called as an expert witness a Mr. Moore who would appear to have made no further inspection of the office block after work thereon had commenced on the 10th December 1958 and who gave no evidence at all as to what steps were possible or necessary to remove the danger from the exposed face of the roof caused by the said work.

p.79. 10. By a reserved judgment delivered on the 30th September 1959 the learned judge held that the discomfort and inconvenience proved by the
p.88, l.14. Appellant were not such as to amount to an actionable nuisance. He further held in reliance on Mint -v- Good 1950 2 All E.R. 1159 that the
p.92, ll.35,36 Respondents had as landlords an implied right to enter upon the demised premises to repair the same and were therefore justified in entering the demised premises and removing the said balustrade and windows. He rejected the contention of the Appellant that what they had done was not work of
p.94, l.46. repair but demolition and removal.

11. Upon the Respondents' counterclaim for possession of the demised premises the learned judge held that the Respondents were entitled to succeed
p.148, l.16. because by virtue of the City Engineer's notice of the 4th October 1958 without any further order of a magistrate the demised premises were required by law to be demolished within the meaning of subsection 1(1) of Section 14 of the Rent Restriction Ordinance. The learned judge held
p.96, l.36. that he was bound as to the meaning of "require" by the decision of the Full Court of the Supreme Court of Trinidad and Tobago in Lalchan Pooran -v- Kuar Singh and others (No. 164 of 1958). The most material passage in the judgment in that case is as follows:-

"It has however been contended by counsel for the respondents that the requirement by law does not arise until an order has been made by a magistrate on a complaint under sub-section (4) of section 201 of Ch. 39 No. 7.

We have considered and analysed Counsel's argument and the conclusion we reach is that the

only purpose which could be served by a provision having that effect would be to give parties, other than the landlord, adversely affected by the notice, for example, tenants, a right to be heard. The proceeding before the magistrate is however a matter between the Council and the landlord only, and the tenants would not be entitled to impeach the notice given by the Town Engineer on the grounds that the premises are not dangerous. The only effect would therefore be to cause delay with the risk of a dangerous building collapsing and causing damage to persons or property.

We hold that the Magistrate ought to have found that the notice constituted a requirement by law, and that having reached that finding judgment should have been entered for the landlord without any consideration as to whether the premises were in fact dangerous."

12. The learned judge further considered a contention by the Appellant that the requirement of the City Engineer that part only of the structure of the demised premises should be taken down was not a requirement that "the building" should be demolished within the meaning of section 14(1)(1) of the Rent Ordinance. The learned judge rejected such contention in the following terms :-

"I am unable to accept this submission, as it seems to me that the intention of the Legislature in creating this relaxation of the restrictions on a landlord's right to obtain possession of demised premises, as created by this provision of the Ordinance, would be rendered nugatory unless such relaxation is held to apply to cases where only a portion of such premises is required by law to be demolished." p.98, l.11.

13. The learned judge finally considered the effect of subsection 14(3) of the Rent Restriction Ordinance and dealt with the same in the following terms:-

"A considerable mass of evidence was adduced by the parties to this action in relation to the effects on the building of the windstorm of the 11th September 1958, and I consider it sufficient to state that I accept the evidence given on behalf of the defendant Company that the building (and particularly the roof and balcony) was rendered dangerous as a result of the windstorm, and I hold that it is necessary in the interest of public p.100, l.21

safety for the defendant Company to carry out the demolition work required by the City Engineer's notice of the 4th October, 1958.

The question as to whether a particular structure is or is not dangerous may be, of course, largely a matter of opinion, but in so far as there is any conflict on matters of fact between the evidence given on behalf of the parties in relation to this matter, I accept substantially the evidence adduced on behalf of the defendant Company and reject that adduced on behalf of the plaintiff. With regard to the testimony of the expert witnesses, which is each case appeared to be given fairly and impartially, it is to be observed that whereas the defendant Company's architect spoke as to the condition in which he found the building shortly after the occurrence of the windstorm, the evidence of the plaintiff's expert witness, Mr. R.D. Archibald, on the other hand, was largely a matter of inferences based upon what he saw a considerable time after the windstorm, when the removal of the greater portion of the main roof of the building had already been completed.

It seems to me that, having regard to the dangerous situation that now exists in connection with the portion of the roof (including the roof of the demised premises) that remains standing, and bearing in mind the location of the building, situated as it is in a densely populated part of the business area of Port of Spain and adjoining the public highway, it is expedient in the interest of public safety that an order for possession should be made".

p.102. 14. The learned judge accordingly by Order dated the 30th September 1959 dismissed the Appellant's action with costs and gave judgment for possession of the demised premises with costs on the Respondents' counterclaim. A stay of execution of the judgment was granted pending the hearing of an appeal.

p.104. 15. The Appellant appealed from the said judgment of Mr. Justice Phillips to the Full Court and the appeal was heard on the 11th, 12th, 13th and 14th October 1960. The leading judgment was
p.107, l.30 delivered by Mr. Justice Lewis and the Chief
p.126 Justice and Mr. Justice Marnan briefly concurred therewith. Mr. Justice Lewis found that the
p.115, l.6 Respondents had an implied right to re-enter on

the demised premises for the purpose of repair and rejected the Appellant's contention that they had not repaired the balustrade but removed it on the ground that the balustrade could not be repaired without replacing the roof, and that it would be unreasonable to expect the landlords to replace the roof. He found however in favour of the Appellant on the issue of nuisance and assessed the damages at $100. p.116, ll.42,43 p.119, 1.46 p.120, 1.1

16. Upon the counterclaim for possession Mr. Justice Lewis was of opinion that the earlier decision of the Full Court in Lalchan Pooran -v- Kuar Singh and Others was right in law. While he accepted that by virtue of the provisions of Section 208(4) of the Port of Spain Corporation Ordinance (set out in paragraph 5 hereof) the magistrate has a discretion whether or not to order the owner to carry out the requirements of the notice, he was of opinion that such section in effect takes the place of a right of appeal and does not prevent the requirement of the notice served by the City Engineer being a requirement by law within the meaning of section 14(1)(1) of the Rent Restriction Ordinance. The learned judge did not deal with the argument that the notice was a notice to demolish part only and not the whole of the building. Nor did he consider it necessary in view of his finding under subsection 14(1) of the Ordinance to deal fully with the argument based on subsection 14(3) thereof, but simply stated that he was clearly of opinion that the order of Mr. Justice Phillips was justified on this ground also. p.125, 1.25 p.126, 1.6.

17. Although the Full Court reversed the judgment of Mr. Justice Phillips on the issue of nuisance it considered that this was a minor issue which ought not to affect the costs of the appeal which it accordingly ordered to be paid by the Appellant. p.126, 1.24.

18. The value of the demised premises is more than £300 sterling.

19. The Appellant humbly submits that this appeal should be allowed and that the judgment of the Full Court should be reversed or varied by declaring that the Appellant is entitled to damages for the wrongful act of the Respondents in entering on the demised premises and removing the said balustrade and windows situate thereon, by dismissing the Respondents counterclaim for possession of the

demised premises and by substituting an appropriate order as to costs for the following amongst other

REASONS

(1) BECAUSE the Respondents did not enter upon the demised premises for the purpose of repairing the said balustrade and windows nor did in fact repair them but removed them. It is immaterial that the balustrade could not be repaired without replacing the balcony roof and that to do so was thought by Mr. Justice Lewis to have been unreasonable. The fact that it was unreasonable to effect repairs did not confer upon the Respondents a right to do something different which they had otherwise no right to do. The question is not whether they acted reasonably but whether they acted lawfully. The service of the notice on the Respondents by the City Engineer in itself conferred no right of entry on the demised premises. See Trotter -v- Louth (1931) 47 T.L.R. 335.

(2) BECAUSE the requirement of the City Engineer that the Respondents should demolish part of the structure of the demised premises was not a requirement of law merely because served in exercise of a statutory power, any more than would be a notice served by a tenant on a landlord requiring him to grant a new tenancy pursuant to the English Landlord and Tenant Act 1954. A requirement of law involves that disobedience to the requirement can be immediately visited by some legal penalty without the exercise of any further discretion. But under Section 208 of the Port of Spain Corporation Ordinance no penalty is imposed for breach of a notice but only for breach of an order of the magistrate. The provision for such order is not therefore comparable, as was suggested by Mr. Justice Lewis, to provision for a right to appeal. The notice is a preliminary step to obtaining an order, and it is only if and when an order is obtained that there is a requirement of law.

(3) BECAUSE the notice served by the City Engineer was a notice to demolish part of the structure of the demised premises and not to demolish "the building" within the meaning of Section 14(1)(1) of the Rent Restriction Ordinance. The definition of "dwellinghouse" in Section 2 of the Ordinance shows that the draftsman well knew the importance of distinguishing between a building and a part of a building. Moreover it would be unjust to tenants if possession could be obtained of the whole premises merely because a small part thereof was required to be demolished.

(4) BECAUSE upon the evidence it was not expedient in the interests of public health or safety to make an order for possession pursuant to Section 14(3) of the Rent Restriction Ordinance.

(5) BECAUSE the relevant date for deciding expediency is the date of the order of the Court. It was irrelevant therefore to consider, as did Mr. Justice Phillips in the passage cited in paragraph 13 hereof, the conflict of evidence between the witnesses as to the earlier state of the premises before the work effected thereon by the Respondents. The learned judge nevertheless said that he preferred the evidence of Mr. Moore (who never inspected the premises after the work had commenced) to that of Mr. Archibald (who had inspected them the day before he gave his evidence) because Mr. Archibald's evidence was largely a matter of inference based upon what he saw a considerable time after the windstorm when the removal of the greater part of the main roof had clearly been completed.

(6) BECAUSE in fact Mr. Archibald inspected the premises on the 27th November 1958 about a fortnight before the work of removing the roof had commenced.

(7) BECAUSE at the relevant date the balustrade and windows had been removed and the only dangerous structure

remaining on the demised premises was the exposed face of the roof which had been rendered dangerous by the Respondent's own actions.

(8) BECAUSE Mr. Archibald (who was stated by the learned judge to have given his evidence fairly and impartially) gave uncontradicted evidence that this remaining danger could be removed by work which did not involve the Respondents being given possession of the demised premises. The learned judge failed to refer to this evidence when considering the question of expediency.

(9) BECAUSE it was unreasonable to deprive the Appellant of the protection of his statutory tenancy when the danger in respect of his premises was caused without his fault, when the Respondents were under a contractual duty to repair the damage caused, and when the only remaining danger at the date of the action could be remedied without the necessity of making an order for possession.

MICHAEL ALBERY

JEREMIAH HARMAN

No. 21 of 1961.

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF TRINIDAD AND TOBAGO

B E T W E E N :

ALBERT JAMES MAURITZEN Appellant

- and -

GORDON GRANT & COMPANY LIMITED ... ... Respondents

CASE FOR THE APPELLANT

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Agents for:

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Solicitors for the Appellant