1989 May 31

(A. LOIZOU, P., DEMETRIADES, KOURRIS, JJ.)

APEX LTD.,

Appellants-Plaintiffs,

v.

MARY ARGYRIDOU,

Respondent-Applicant.

(Civil Appeal No. 7196).

Rent Control — Building Leases — Lease of a plot of land on condition that the tenant will erect a building that will belong to the owner after 30 years — The case is outside the ambit of the Rent Control Law, 1983 (Law 23/83) — Therefore, its provisions cannot be invoked for evicting the tenant before expiration of such period.

Immovable property — Building and fixtures erected on land — The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, sections 2 and 22 — Owner of land becomes the owner of any buildings and fixtures erected thereon, but that does not operate against a tenant under a «building lease».

Words and phrases: «Immovable» and «Owner» in section 2 of The Rent Control Law, 1983 (Law 23/83).

On 21.9.72 the appellants leased from the predecessor-in-title of the respondent a plot of land, on condition that they would build a building worth more than £100,000, which would belong to the owner of the plot after 30 years. In the meantime, the appellants would pay rent to the owner.

When the appellants completed the building, they sub-let it to «Woolworth» in accordance with the main purpose of the contract.

Eventually, the respondent applied to the Rent Control Law for the tenants' eviction on the ground that the latter was making an unreasonable profit from the sublease, having regard to the rent payable by them (Law 23/83, section 11(1)(e)).

The appellants objected to the application on the ground that the case was outside the ambit of the Rent Control Law. The point was heard preliminary to the hearing. The Rent Control Court decided that the appellants were statutory tenants Hence this appeal.

Held, *allowing the appeal:* (1) The provisions of sections 2 and 22 of Cap. 224 that the owner of a plot of land becomes the owner of any building that may be erected thereon do not operate against the tenants-appellants, because of the agreement hereinabove described; they only operate against third parties.

(2) In view of the definition of the word «immovable» «ακίνητο» (which includes business and residential premises, but not plots of land) in section 2 of Law 23/83, and in view of the definition of the word «owner» in the same section and the words «completed» and «let», which denote a structure and not a plot of land, this case is outside the ambit of the Rent Control Law, 1983.

(3) The purpose of the legislator in enacting the Rent Control Law was to protect the tenants and not to confer rights to the owners.

Appeal allowed with costs.

Cases referred to:

Kyriakides v. Council for Registration of Architects (1966) 3 C.L.R. 640;

Hjipavlou v. Jinaro Terra Co. Ltd. (1982) 1 C.L.R. 433;

Considine v. Ryan (1938) 72 Ir. L.T.R. 80;

Gulamali Jetha v. Jadavji Chhagen (1955) 22 E.A.C.A. 312.

Appeal.

Appeal by applicant against the ruling of the Rent Control Court of Nicosia in Appl. No. E.152/84 dated the 29th January, 1986 by which it decided that the subject matter premises are subject to the provisions of the Rent Control Law, 1983 (Law No. 23/83).

A. Triantafyllides, for the appellants.

St. Erotocritou (Mrs.), for the respondent.

Cur. adv. vult.

A. LOIZOU P.: The judgment of the Court will be delivered by Mr. Justice Kourris.

KOURRIS J.: This is an appeal against the Ruling of the Rent Tribunal of Nicosia by which it decided that the premises, the

subject matter of this appeal, are subject to the provisions of the Rent Control Law, 1983 (Law 23/83).

The respondent maintained that she was the owner of the premises and that she leased to the appellant the premises in question and filed an application before the Rent Tribunal of Nicosia claiming for an Order for the recovery of the possession of the premises, now in the possession of the sub-tenant under the provisions of s.11(1)(e) on the ground that the tenant, appellant company, by sub-letting the whole of the premises, was making a profit, which having regard to the rent paid by the appellant-company, was unreasonable. This section reads as follows:

«(ε) εις περίπτωσιν καθ' ην ο ενοικιαστής, διά της προσλήψεως ενοίκων ή διά της υπενοικιάσεως ή άλλως αποχωρισμού της κατοχής ολοκλήρου ή οιουδήποτε μέρους της κατοικίας ή του καταστήματος πραγματοποιεί τοσούτο κέρδος, είτε αμέσως είτε εμμέσως, το οποίον εν σχέσει προς το υπό του ενοικιαστού πληρωμένον ενοίκιον είναι παραλόγως δυσανάλογον και το Δικαστήριον θεωρεί λογικήν την έκδοσιν τοιαύτης αποφάσεως ή τοιούτου διατάγματος».

And in English it may be translated as follows:-

«Where the tenant, by taking in lodgers or by subletting or otherwise parting with the possession of the whole or any part of the dwelling house or business premises, is making a profit, whether directly or indirectly, which, having regard to the rent paid by the tenant, is unreasonable, and the Court considers it reasonable to give such Judgment or make such order».

The appellants, by their defence, raised certain objections including, inter alia, the point that the case did not come within the ambit of either the Rent Control Law 1975 (Law 36/75) or the Rent Control Law 1983 (Law 23/83). They also alleged that the definitions of the words in s.2 of the said Laws do not apply to the case.

The Rent Tribunal, with the consent of the parties, heard the objections raised preliminary to the hearing and came to he conclusion that the case came within the ambit of the Rent Control Law, 1983, (Law 23/83).

An appeal was taken by the tenants against the ruling of the Rent Tribunal submitting that the Rent Tribunal erroneously came to the conclusion that the provisions of the Law applied to the present case.

The appellant company, called Apex Limited, on 21.9.1972, entered into a written agreement with a certain Constantinos Kouloumbris of Nicosia, and by virtue of this agreement they erected on a plot of land belonging to Kouloumbris, a department store which was sub-let to Woolworth Company and it is known as «Woolworth».

It was in dispute before the Rent Tribunal and it is in dispute before us what the contents of the agreement are. The respondent maintained that she was the owner of the premises and that she leased to the appellant the premises in question and so she filed an application before the Rent Tribunal.

The appellants, on the other hand, maintained that they merely leased a plot of land, upon which they erected the «Woolworth» building which would belong to the owner of the plot of land after 30 years and that in no way this case came within the ambit of the Rent Control Laws.

We have carefully examined the agreement entered into between the parties and from its whole tenor, we are satisfied that its terms are as follows:-

On 21.9.1972 the appellants entered into a written agreement with the predecessor-in-title of the respondent to lease a plot of land under No. 759, situate at Nicosia, Trypiotis Quarter, sheet/plan XXI/54.3.1 and under Registration No. 2370 on condition that they would build a building worth upwards of £100,000 and which would belong to the owner of the plot after 30 years. On the one side of the plot there was a house of Mrs. Argyrides and on the other part there were some very old buildings and the owner undertook to deliver to the appellant vacant possession and that the appellant would demolish them at their expense in order to build.

The appellants proceeded and built the «Woolworth» building costing at the time about £150,000 and they sub-let it to Woolworth, which was the main purpose of the contract for £3,000. The appellants were bound to maintain the building so that when the owners get it after 30 years, they will get a building in

good condition. The appellants would pay to the respondents for the lease of the plot of land £50.- per month for the first two years and £125 per month from the completion of the building which was later increased to £2,000.- per year.

Learned counsel for the appellants in arguing the case before us, made three submissions:

The first submission is that the appellants leased a plot of land and that the provisions of the Rent Control Law, 1983 do not apply to the present case.

The second submission is that if it were held that the appellants became statutory tenants under Law 36/75, again Law 23/83 does not apply to the present case because they are contractual tenants.

The third submission is one of unconstitutionality to the effect that Laws 36/75 and 23/83 contravene Articles 23 and 26 of the Constitution.

In accordance with the established practice, we do not propose to deal with the question of constitutionality (*Kyriakides v. Council for Registration of Architects,* (1966) 3 C.L.R. 640) unless the appellants fail in their first and second submissions.

With regard to the first issue, he argued that a plot of land is not included in the definition of the word «Akiniton» (immovable property) under s.2 of Law 23/83. He said that «akiniton» given in s.2 is a «house» or a «shop» which lies within the controlled area which was completed on or before the enactment of the law. The definition of «akiniton» is given in s.2 of the law which reads as follows:-

> «'Ακίνητον' σημαίνει ακίνητον υπό ή προς ενοικίασιν διά κατοικίαν ή κατάστημα το οποίον κείται εντός ελεγχομένης περιοχής και συνεπληρώθη προς της ημερομηνίας ενάρξεως της ισχύος του παρόντος Νόμου».

He said that the only reason the appellants leased the plot was to erect a building which will belong to the landlord after 30 years. Appellants were not using the plot for trade or business and it was never leased to the appellants for being used in trade or business. He also argued that the definition of «akiniton» states that the «akiniton» was «completed» before the date of coming into

operation of the law. He said what the appellants leased was only a plot of land and there was no question of the plot «completed». Further, he said that the respondent does not come within the definition of «owner» under s.2 of the law, because the appellants leased land and not a house or a shop.

In a nutshell, he invited the Court to find that the owner of the plot is not now the owner of the building; that what was let was a plot of land which is not an «immovable» within the meaning of s.2 of Law 23/83. In the present case there is no sub-letting of the plot of land because this has disappeared on the basis of the relevant contract and what is being sub-let is the building which belongs to the tenant and not to the landlord; the definition of «immovable» speaks of «completed» and «let» which implies that plots of land do not come under the definition of «immovable».

Learned counsel for the respondent contended that from the moment the building was completed, the respondent became the owner of the building and this, in view of ss.2 and 22 of the Immovable Property (Tenure Registration and Valuation) Law, Cap. 224, which provides that buildings and fixtures erected on land become the property of the landlord, she said that this view is supported by the decision of the Supreme Court in the case of *Stavros Hjipavlou v. Jinaro Terra Co. Ltd.*, (1982) 1 C.L.R. 433. She cited to the Court several passages from Megarry, on the Rent Acts, 10th edn. and to two cases cited therein which are *Considine v. Ryan,* (1938) 72 Ir. L.T.R. 80, and *Gulamali Jetha v. Jadavji Chhagen,* (1955) 22 E.A.C.A. 312. to convince the Court that the building in question, although built at the expense of the appellants, it became the property of the respondents. She concluded that, once the appellants became statutory tenants under Law 36/75, they continued to be statutory tenants under the Law 23/83 in view of the definition of statutory tenant in s.2 of Law 23/83 and that the provisions of s.11 for the recovery of possession of controlled premises are available to the respondents.

The agreement between the parties in this case is commonly known in England as a «building lease» and no provision is made in the Rent Control Laws about these contracts and indeed there is no statutory provision in Cyprus regulating building leases. In England, building leases are regulated by legislation and since there is no legislation in Cyprus about building leases similar to the

legislation in England, the English legislation cannot be relied upon as guidance in Cyprus. Consequently, we have to look at the agreement between the parties and decide whether it comes within the ambit of the Rent Control Law 1983 (Law 23/83).

The facts of the *Jinaro* case (supra) differ from the facts of the present case. In that case the tenant leased one room standing on a plot of land and he obtained the consent of the owner to add another building to be used as a cinema, and he undertook to demolish any additions upon the determination of the lease. The tenant sub-let the building for a profit and he then went to Spain to establish himself there permanently and the Court decided that the fact that the tenant added to the existing tenement does not disentitle the owner from relying on the relevant provisions of the Rent Control Law for recovering the premises on the ground that the tenant made a profit which, having regard to the rent paid by the tenant, was unreasonable. In the present case the tenant appellant leased a plot of land with the object of erecting premises thereon which would belong to the owner of the land after about 30 years.

Again, the provisions of sections 2 and 22 of Cap. 224 which provide that any buildings and fixtures erected on land become the property of the landlord, do not operate against the tenant in view of the said agreement, but it operates only against third parties.

We think that, in view of the definition of «immovable», of the relevant Law, which includes only business premises and residential premises and not plots of land, and in view of the definition of the word «owner», in the same section and the words «completed» and «let» which denote a structure and not a plot of land, this case does not come within the ambit of the Rent Control Law 1983 (Law 23/83).

We have no doubt in our mind that the legislator intended to afford protection to tenants of premises only. The object of the rent restriction is to protect the tenant and not to confer rights to the owners. If the argument of learned counsel for the applicant would stand, then one who leased a plot of land and erected thereon a building worth thousands or even millions of pounds, in circumstances such as the present, then he (landlord) could apply to the Court under the provisions of the Rent Control Law to have the tenant evicted on the ground that he intends to demolish it and

build thereon another building. Certainly that was not the intention of the legislator.

We conclude that the contract entered into between the parties leaves no room for doubt that the appellant leased a plot of land on which he erected a building, and that the building for all intents and purposes belongs to the tenant and not to the owner for exploitation, use or occupation purposes. The owner of the land will be entitled to possess it upon the expiry of the agreement, albeit he is the owner of the building against third parties

For all the above reasons, we conclude that this case does not come within the ambit of the Rent Control Law 1983, nor within the ambit of the Rent Restriction Law, No. 36/75.

In view of the decision of the first sumbission of learned counsel for the appellants, which disposes of this appeal, we do not propose to examine the second and third submission made by counsel.

The appeal is, therefore, allowed and we set aside the ruling of the Rent Tribunal of Nicosia. Respondent to pay costs of this appeal.

Appeal allowed with costs.