

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA.**

**C.A.Nos.321/98 (F) and**

**330/98 (F)**

**D.C.Colomb Nos. 14936 and**

**14935/L.**

- 1.Mohamed Abdeen Mohamed Alavi
- 2.Mohamed Abdeen Ifthikar Hussain
- 3.Mohamed Abdeen Mohamed Jiffry
- 4.Mohamed Abdeen Noor Mutheetha
5. Mohamed Abdeen Fathima Rihana
- 6.Mohamed Abdeen Aynul Inaya all  
No.51/15, Zavia Mosque Road  
Dematagoda, Clombo-09.
7. Samul Kareema Mohamed Fazal
8. Mohamed Fazal Fathima Fazla  
both of  
No.07, Chandrawanka Mawatha  
Pallimulla Panadura

**Substituted- Plaintiffs- Appellants**

Vs.

Seeni Muthuraj  
No.51/15 T Zavia Mosque Road,  
Dematagoda, Colombo 9.

**Substituted -Defendant-Respondent**

**C.A.Nos.321/98 (f) and  
330/98**

**D.C.Colombo Nos.14936/L and 14935L**

BEFORE : M.M.A.Gaffoor,J.  
S.Devika de L.Tennakoon, J.

COUNSEL : V.Thevasenathipathi for the Plaintiffs-  
Appellants  
Kamran Aziz with Ershan Ariaratnam for the  
Defendant-Respondent

ARGUED ON : 10.11.2016

DECIDED ON : 25.05.2017

**M.M.A.Gaffor,J.**

The Plaintiff-Appellant brought this action against the Defendant-Respondent seeking her ejection from the premises morefully described in the schedule to the plaint in the suit and damages commencing from 01.01.1990 on the ground that what was a bare land in which the Defendant-Respondent erected an unauthorized structure on the agreement to remove and vacate the premises upon the plaintiff's request. The plaintiff further pleaded that Defendant-Respondent paid only a ground rent and the unauthorized structure has been given an assessment 51/15 T by the Colombo Municipal Council and therefore, the provisions of the Rent Act do not apply to the premises.

The Defendant-Respondent in her answer whilst denying the averments in the plaint prayed for dismissal of the action. This case proceeded to trial with 9 issues and at the conclusion of the case the learned District Judge on 24.04.1988 delivered judgment dismissing the plaint of the Plaintiff-Appellant with costs holding that the Defendant-Respondent is the tenant of the premises in dispute and which is

governed by the Rent Act, and the present Appeal is against the afore said judgment of the learned District Judge.

At the hearing of this appeal learned Counsel for the plaintiff-appellant contended that the premises in the suit is not governed by the Rent Act of 1972, and is an illegal and unauthorized structure erected by the defendant-respondent without any approved plan from the Colombo Municipal Council and by which the Defendant-Respondent is not entitled to the protection of the Rent Act.

The learned counsel for the Defendant-Respondent contended that the Defendant had several rent payments to the Colombo Municipal Council which were all accepted and paid to the Plaintiff- Appellant and that the premises which is an authorized are capable of being let and which comes within the ambit of the Rent Act and thus the defendant is entitled to protection of the Rent Act.

It was common ground that at the outset the plaintiff-appellant had leased the bare land in suit to the Defendant-Respondent commencing from 1964 on monthly rental of Rs.15/- and, subsequently

a sum of Rs.30/-per mensem, it was also revealed that during the tenancy the Defendant-Respondent has constructed the said premises, which the Plaintiff-Appellant chose to refer to as an unauthorized building thus the Plaintiff-Appellant sent a notice to the Defendant-Respondent demanding the vacant possession thereof.

At the trial it was admitted by either parties that the portion of the bare land which was let by the Plaintiff-Appellant to the Defendant-Respondent after commencing the said lease the Defendant-Respondent erected an unauthorized building on the land without approved plan or certificate of conformity for it whereas the premises in question was given an assessment No.51/15T by the Colombo Municipal Council.

In *Weerasena Vs. Perera 1991 (1) SLR121* the Court held that the mere assessment and subdivision of a part of the premises does not give rise to a separate letting or given birth to new premise.

The Counsel for the defendant-respondent relied and contented that the receipts which describing as house rent issued to the plaintiff-

appellant by the Colombo Municipal Council constituting house rent and thus the defendant-respondent is entitled to the protection of the Rent Act. All these receipts were tendered in evidence at the trial before learned District Judge and in common parlance they are considered as common receipts and which are not specifically printed for the purpose of rent for this premise and they are seemingly being used by the Colombo Municipal Council for the common use of the rent.

These receipts would be especially useful to find out the “status of the parties” in the tenancy alone, These receipts describing as house rent shall not be accepted as conclusive evidence on the issue of house rent in *Jinasena Vs. The Commercial Investment and Financial Co.Ltd. 1985 (1) SLR at page 238.*

It is also revealed that the issue of receipts was not clearly settled on part of the defendant-respondent at the trial. However at the trial it was admitted that the house erected is illegal and temporary nature in *Jayasing Vs. Seethawakapur Urban Council and other 2003 (3) SLR at page 40* held that once an area has been declared as a development

activity in any such part without a permit issued by the Urban Development Authority.

It is also revealed that the house built at the instance of the defendant-respondent after the commencement of lease in respect of bare land in contravention of the provisions of UDA. *The law of Property in Sri Lanka (Vol-2) written by G.L. Peiris – at page 88- 89* “Where the thing to be let has no actual existence at the time of the formation of contract, to there is no doubt that it must have at least a potential existence for example a house to be built this lease of which is commence on the completion of the building”

In *DS Mathanayaka Vs. MDR Senaratne 75 NLR at page 349* held that, where lease of a bare land which provides for monthly payment of ground rent contains a condition of the lease to put up with approval of the lessor building and structure of a temporary nature which lessee would entitled to remove at any time the provision of Rent Restriction Act are not applicable to such contract of letting.

*Dharmawardena Vs. Walwattage (1987) 1 SLR L.R.* may be cited thus “one of the essential requisites of a contract of letting and hiring is that the thing should be capable of being let. A lease like any other contract must be legal it must not be prohibited by statute. An illegal lease is invalid on account of its content.

In the instant case there is an express statutory prohibition in the housing and Town Improvement Ordinance against the occupation of a building in respect to which no certificate of conformity has been obtained. The premises in suit was such a building and the landlord could not have delivered to the tenant the use and occupation of the premises let as is required in a contract of letting and hiring. The contract of tenancy is tainted with statutory illegality and is ineffective to create rights”.

The Provisions of the Rent Act do not apply to a contract of tenancy rendered illegal by statute. The applicability of the maxim in *pari delicto potior est conditio defendantis* considered.



We are of the view that the learned District Judge erred in law determining that the defendant-respondent is a tenant of the premises and is entitled to the protection of the Rent Act. As stated afore in the case of *Dharmawardena Vs. Walwattage (1987) 1 SLR* the tainted contract of letting cannot give rise to legal obligations enforceable in the suit.

Therefore we set aside the judgment of the learned District Judge dated 24.04.1988, and make no order as to costs in this appeal. The appeal allowed.

**JUDGE OF THE COURT OF APPEAL**

**S.Devika de L.Tennakoon**

I agree.

**JUDGE OF THE COURT OF APPEAL**