

Hoo Yan Meng

v

Esah**[1969] SGHC 13**

High Court — District Court Appeal No 5 of 1969

A V Winslow J

8 October 1969

Landlord and Tenant — Rent-controlled premises — Recovery of possession — Landlord claiming possession of premises from family of deceased tenant — Family residing at premises at time of tenant's death and continuing to reside there since — Whether family of deceased tenant protected under Control of Rent Ordinance (Cap 242, 1955 Rev Ed) — Whether landlord entitled to recover possession — Section 16(c) Control of Rent Ordinance (Cap 242, 1955 Rev Ed)

Facts

The plaintiff sued for the recovery of certain rent-controlled premises. At the time of the defendant's father's death, the defendant's father was the statutory tenant of the premises, and the defendant resided at the premises and thereafter continued to reside at the premises. The district judge dismissed the application on the basis that the defendant was protected under s 16(c) of the Control of Rent Ordinance (Cap 242, 1955 Rev Ed) ("the Ordinance"). The plaintiff appealed.

Held, dismissing the appeal:

A member of the family of the deceased tenant, whether contractual or statutory, enjoys protection under s 16(c) of the Ordinance but does not, by virtue of this protection, acquire any kind of tenancy merely by virtue of such protection. Such a person cannot be removed by the landlord so long as he tenders the equivalent of the monthly rent to the landlord and resides in the premises. Since the landlord cannot recover premises from such a person so long as he continues to reside therein and to pay rent and abides by such other obligations as formerly existed between the deceased tenant and the landlord, it follows that the Ordinance compels the landlord to recognise a right on the part of such person to quiet enjoyment. He is not merely a licensee. He is in a stronger position than that. He is, to all intents and purposes, a tenant even though he is neither a contractual nor a statutory tenant. He is a "compulsory quasi-tenant" (even though the Ordinance has not clearly defined his status) who enjoys the protection of s 16(c) which carries with it a right to quiet enjoyment like any other tenant: at [20], [23] and [26].

Case(s) referred to

B T Hassan v G A Scully [1951] MLJ 141 (refd)

Foo Kok Hui v Saraswathy [1961] MLJ 91 (refd)

Indo Australian Trading Co Ltd v Lim Hoon [1961] MLJ 259 (refd)
Indo Australian Trading Co Ltd v Masahat [1962] MLJ 123 (not folld)
Khadijah bte Abdullah v S I A Alsagoff [1957] MLJ 90 (refd)
Ramasamy Pillai v Meyappa Chettiar [1955] MLJ 105 (refd)
Tan Khio Soei v Ban Hin Lee Bank Ltd [1964] MLJ 71 (distd)
Yeo Seow Inn v Chan Khit [1965–1967] SLR(R) 582; [1965–1968] SLR 602 (refd)

Legislation referred to

Control of Rent Ordinance (Cap 242, 1955 Rev Ed) s 16(c) (consd);
s 2
Control of Rent Ordinance 1947 (No 25 of 1947) s 2

Eric Choa and T P B Menon (Oehlers & Choa) for the appellant;
N A D’Rozario (Director of Legal Aid) for the respondent.

8 October 1969

A V Winslow J:

1 This appeal poses a problem which has taxed the ingenuity of the courts from time to time during the last 20 years or more, *ie* for as long as the Control of Rent Ordinance (Cap 242) and its immediate predecessor, the Control of Rent Ordinance 1947, have been in force in Singapore.

2 On the one hand, it can be argued that the Legislature has not expressed its intentions as clearly as it could have done, whilst on the other, it can be argued with almost equal or greater force that the meaning of the legislation in question is clear despite any ambiguity some people may see in it. I refer, of course, to s 16(c) of the Ordinance which reads as follows:

In the case of any domestic premises such an order or judgment as is referred to in s 14 of this Ordinance may without prejudice to the provisions of s 15 be made in any of the following additional cases namely:

(c) where neither the tenant nor any member of his family is residing in the premises or any part thereof.

3 The appellant’s claim for recovery of domestic premises known as 40 Everton Road was dismissed by the second civil district judge on the ground that the respondent, who is the daughter of one Awang bin Noor Ali who died whilst a statutory tenant to the said premises in 1963, was protected under s 16(c) of the Ordinance by virtue of her having resided as a member of his family at the time of his death at the said premises and still continuing to reside therein.

4 It was contended with some vigour by Mr Eric Choa, counsel for the appellant, that this particular provision is misleading and has been misunderstood in the past. He claimed that whilst this provision confers rights on landlords to recover possession of domestic premises in the circumstances set out therein, it confers no rights whatsoever on tenants.

5 It may be useful at the outset to set out the agreed facts of the case which were as follows:

- (a) the defendant accepts the validity of the notice to quit dated 26 September 1956, which expired on 31 October 1956;
- (b) Awang bin Noor Ali died a statutory tenant in 1963;
- (c) the defendant is the lawful daughter of Awang bin Noor Ali residing at the time of his death at 40, Everton Road and continues to reside at the said premises;
- (d) premises in question are domestic premises.

6 In the first place, I can think of no reason, in view of the definition of “tenant” in s 2 of the Ordinance, why the tenant in s 16(c) should not include a statutory tenant and the courts have constantly construed s 16(c) in this way because there is nothing in the context of s 16(c) which requires a different construction. It is clear from *Khadijah bte Abdullah v SIA Alsagoff* [1957] MLJ 90 (a Singapore Court of Appeal decision) that a statutory tenant, despite his ceasing to reside in the premises in question, remains under the protection of the Ordinance if a member of his family resides therein, and is within the contemplation of s 16(c) as a tenant.

7 Secondly, it is clear from this provision that a landlord can only recover possession, where reliance is placed on this ground alone, if neither the tenant nor any member of his family is residing in the premises. It follows, by necessary implication, that the landlord has no right in such circumstances to recover possession if either the tenant or any member of his family resides therein, whatever the intention of the Legislature might have been.

8 In *Foo Kok Hui v Saraswathy* [1961] MLJ 91, Ambrose J held that the widow of a statutory tenant who died in 1958 enjoyed the protection conferred by s 16 of the Ordinance by virtue of her residing in the premises with her two children by the deceased after his death. The learned trial judge gave no reasons for his conclusion and it was contended that, because counsel had conceded that the widow was protected by s 16, if the premises were domestic premises, this case was no authority for this proposition and that it was only authority for the question which fell to be considered, *viz* whether the premises were used chiefly as a separate dwelling and thereby constituted domestic premises. Although Ambrose J gave no reasons for his decision as to why the widow was protected, it is implicit from his judgment

that he must have regarded the deceased statutory tenant as a tenant for the purposes of s 16(c).

9 In *Indo Australian Trading Co Ltd v Lim Hoon* [1961] MLJ 259 Chua J held that no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or given where the premises are occupied by any of the persons specified in s 2 as members of the tenant's family and that this restriction is not affected by the death of a tenant. In his judgment Chua J said:

In the definition of 'members of his family' it is to be noted that the words 'widow', 'widower' and 'legal personal representative' are used. To my mind that clearly indicates that the legislature intended that the tenancy should continue after the death of the tenant where the widow continues to reside in the premises. There is no doubt whatsoever that the legislature intended to protect the widow. I am confirmed in that view by a consideration of the judgment of Mr Jobling J in the Federation of Malaya case of *BT Hassan v GA Scully*.

10 Which brings me to a consideration of the judgment of Jobling J in *B T Hassan v G A Scully* [1951] MLJ 141. The facts in this case were on all fours with the facts in the current appeal except that the member of the family concerned was a son instead of a daughter of the deceased statutory tenant. Jobling J reached the same conclusion as that subsequently reached by F A Chua J. It should be pointed out, however, that Jobling J was dealing with the case of a son of a deceased statutory tenant, whereas Chua J was dealing with the widow of a deceased contractual tenant.

11 I now turn to the case of *Yeo Seow Inn v Chan Khit* [1965–1967] SLR(R) 582 also decided by F A Chua J where, after deciding that the premises in question were not rent-controlled, he proceeded to state as follows at [19]:

But, in case my finding on this point is upset by a higher tribunal then this contention would become relevant and I feel that I should express shortly my opinion on it. I need only say that in my view the widow of a statutory tenant is protected under the Ordinance. When one looks at the definitions of 'tenant' and 'members of the family' there is no doubt that the Legislature intended to protect not only the widow of a contractual tenant but also the widow of a statutory tenant.

12 It is clear from the two decisions by F A Chua J to which I have referred that he adopted the principle laid down by Jobling J in the *Hassan* case ([10] *supra*) to cover the cases of both a member of the family of a deceased statutory tenant as well as a member of the family of a deceased contractual tenant, where such member resides in the premises after the death of the tenant in question.

13 It would seem, therefore, on the cases I have cited so far the courts have been unanimous in deciding that a member of the family of a statutory

tenant who continues to reside in domestic premises after the death of such tenant enjoys the protection conferred by s 16(c).

14 There is only one reported case, however, where the court seems to have reached a different conclusion. This was the case of *Indo Australian Trading Co Ltd v Masahat* [1962] MLJ 123 also decided by F A Chua J where he held that the husband and the daughter of one Mdm Puteh bte Ghani were not protected by s 16 of the Ordinance after having previously reached the conclusion on the facts that Mdm Puteh bte Ghani was a statutory tenant of the premises in question. His decision on the case viewed as a whole is undoubtedly correct inasmuch as he held that the landlords were entitled to recover possession.

15 His Lordship's reasoning in deciding that Mdm Puteh bte Ghani was the statutory tenant of the premises, however, appears to be fallacious. She was the daughter of one Gunny Puteh, who was the contractual tenant of the premises. He died in 1929 after which his daughter, Mdm Puteh bte Ghani, continued to occupy the premises and to pay rent but such rent was received in the name of her father, whom the landlords still continued to regard as their tenant. F A Chua J held that when the Control of Rent Ordinance 1947 came into force on 8 September 1947, Mdm Puteh binte Ghani became a statutory tenant as she was then in possession of the premises and was a member of Gunny Puteh's family within the meaning of s 2 of that Ordinance. It is clear from this that F A Chua J regarded Mdm Puteh bte Ghani as being entitled to the protection conferred on her as a member of the family of Gunny Puteh, her father, who died in 1929, by virtue of her having continued to reside in the premises throughout until the coming into force of the 1947 Ordinance. Strictly speaking, and I think this is where F A Chua J fell into error, although Mdm Puteh bte Ghani may have been protected as a member of her father's family who continued to reside in the premises at the time the 1947 Ordinance came into force, she did not become a statutory tenant.

16 Thomson CJ, as he then was, said in *Ramasamy Pillai v Meyappa Chettiar* [1955] MLJ 105:

Before a person can claim to be a statutory tenant of premises four conditions must be fulfilled:

- (a) he must have been a tenant of the premises;
- (b) his tenancy must have been determined, not assigned or anything of the sort;
- (c) he must have remained in possession of the premises after the determination of his tenancy; and
- (d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises.

17 From this it seems clear that Mdm Puteh binte Ghani could never have become a statutory tenant because as F A Chua J himself held, she had never been accepted as a tenant of the premises. F A Chua J's decision on the case as a whole is undoubtedly correct in that the husband and the daughter of Mdm Puteh binte Ghani could not have been said to be members of the family of any tenant, whether contractual or statutory. This case, therefore, in a way, follows F A Chua J's findings in the two other cases decided by him which I have cited earlier. Looked at from this point of view, F A Chua J has been consistent in his findings that a member of the family of a contractual or statutory tenant who resides in the premises on the death of that tenant is protected. Where the fallacy lay, however, was in his regarding Mdm Puteh binte Ghani as a statutory tenant and not as one merely protected as a member of her father's family.

18 This brings me to a consideration of the general principle to be extracted from all these decisions. In the *Hassan* case ([10] *supra*) and in the *Lim Hoon* case ([9] *supra*) decided by Jobling J and F A Chua J respectively, both their Lordships had no doubt whatsoever that the Legislature intended to protect the son and the widow respectively, and that the Legislature intended that the tenancy should continue after the death of the tenant where a member of his family remains in occupation or continues to reside in the premises.

19 Ambrose J in the case of *Foo Kok Hui* ([8] *supra*) and F A Chua J in the case of *Yeo Seow Inn* ([11] *supra*) to which I have already referred, avoided any reference to a tenancy continuing after the death of the tenant but merely contented themselves with stating that the widow of a statutory tenant is protected under the Ordinance.

20 It seems to me that the true principle to be extracted from all these decisions is that a member of the family of the deceased tenant, whether contractual or statutory, enjoys protection under s 16(c) but does not, by virtue of this protection, acquire any kind of tenancy merely by virtue of such protection. Such a person cannot be removed by the landlord so long as he tenders the equivalent of the monthly rent to the landlord and resides in the premises.

21 Mr T T B Koh in his publication entitled "Rent Control in Singapore" first published in 1966 has suggested that such a person is a licensee but has pointed out certain problems which might arise as, for example, where the deceased tenant has sublet parts of the premises and, very correctly, has suggested that these difficulties should be resolved by legislation.

22 There is obviously a lacuna in the law but this is far from saying that a member of the family is not protected under s 16(c) or that a landlord necessarily has any right to recover premises from such a member of the family merely because his exact status has not been clearly defined by the legislation in question.

23 Since the landlord cannot recover premises from such a person so long as he continues to reside therein and to pay rent and abides by such other obligations as formerly existed between the deceased tenant and the landlord, it follows that the Ordinance compels the landlord to recognise a right on the part of such person to quiet enjoyment. He is not merely a licensee. He is in a stronger position than that. He is, to all intents and purposes, a tenant even though he is neither a contractual nor a statutory tenant. If I may be permitted to coin an expression to describe him, he is a “compulsory quasi-tenant” (even though the Ordinance has not clearly defined his status) who enjoys the protection of s 16(c) which carries with it a right to quiet enjoyment like any other tenant. This is probably what Jobling J and F A Chua J had in mind in the *Hassan* case ([10] *supra*) and in the *Lim Hoon* case ([9] *supra*) when they held that the Legislature intended that the tenancy should continue after the death of the tenant where a member of his family continues to reside in the premises.

24 It was urged before me by counsel for the appellant on the authority of *Tan Khio Soei v Ban Hin Lee Bank Ltd* [1964] MLJ 71, a Federal Court decision, that the right of a statutory tenant, being a purely personal right to possession of the premises, is extinguished on his death and that on the facts in the appeal before me, the statutory tenancy of Awang bin Noor Ali became extinguished in 1963. Counsel for the respondent accepted this position but nevertheless maintained that the respondent was protected under s 16(c). The Federal Court decision, however, did not turn on any consideration of s 16(c) because the premises with which that decision was concerned did not constitute domestic premises and the court was not required to determine any such question as arose in the present appeal, *viz* whether a member of the family of a statutory tenant who dies is protected under s 16(c). I have therefore come to the conclusion that that judgment is of no assistance to the appellant or of any relevance so far as the facts in this appeal are concerned.

25 Whilst I am of the view that the matter should be put beyond doubt by an amendment of the Ordinance so as to define with clarity the status of a member of the family of the deceased tenant who is protected under s 16(c), I am sufficiently satisfied on the authorities which I have reviewed earlier that members of the family of a tenant who dies are, in fact, protected by s 16(c) of the Ordinance. I am also inclined to agree with the learned second district judge, where she expressed the feeling that the consequence of holding otherwise would be undesirable on the ground that landlords would resort to terminating existing contractual tenancies, thereby reducing their tenants to the status of statutory tenants so that when they die, landlords could recover possession with impunity.

26 For all these reasons, the appeal is dismissed with costs.

Headnoted by Vincent Leow.
