

Kenneth Morgan

Appellant

v.

The Attorney General of Trinidad and Tobago

Respondent

FROM

THE COURT OF APPEAL OF TRINIDAD
AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER 1987

Present at the Hearing:

LORD KEITH OF KINKEL
LORD TEMPLEMAN
LORD GRIFFITHS
LORD GOFF OF CHIEVELEY
SIR ROBERT MEGARRY

[Delivered by Lord Templeman]

The Rent Restriction (Dwelling-Houses) Act 1981 of the Parliament of Trinidad and Tobago enacted *inter alia* that, subject to modifications not material in the present case, it was unlawful after the passing of the Act on 24th December 1981, for the landlord of a dwelling-house let unfurnished on 31st December 1978 at a monthly rent of \$1,000 or less to receive rent at a rate exceeding the rent payable on 31st December 1978. The appellant landlord, Mr. Morgan, owns a dwelling-house which was let unfurnished on 31st December 1978 at the monthly rent of \$150. The same dwelling-house was let unfurnished on 24th December 1981 at the monthly rent of \$500. By force of the Act the landlord has been unable to recover more than \$150 per month since 24th December 1981.

The landlord submits that the Act of 1981 is void because the Act infringes "the right of the individual to ... enjoyment of property and the right not to be deprived thereof except by due process of law" which is protected as a fundamental human right by sections 4 and 5 of the 1976 Constitution of Trinidad and Tobago. Section 13 of the Constitution provides that an Act supported by the votes of not

less than three-fifths of all the members of each House of Parliament and expressly declaring that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution shall have effect accordingly, "unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual". The Act of 1981 was passed by the requisite majority and duly contained a declaration that it was to take effect even though inconsistent with sections 4 and 5 of the Constitution. The Act of 1981 interferes with the right of the landlord to the enjoyment of his property by depriving him of \$350 per month which he was enjoying by way of rent in 1981 pursuant to a contract of letting freely and lawfully negotiated. The landlord submits that this interference was not "reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual". The Act of 1981 is therefore, according to the landlord, invalid under the Constitution notwithstanding that the Act was passed in the manner and contained the declaration required by section 13 of the Constitution.

Statutory rent restrictions imposed on dwelling-houses have long been features of many societies (including the Republic of Trinidad and Tobago) which maintain proper respect for the rights and freedoms of the individual, including the right to enjoy property. The legislature of such a society considers that it is reasonably justifiable to limit the income which a landlord derives from his investment in order to limit the rent which a tenant must pay for his home. Rent restrictions are justified by the need to prevent a landlord exploiting a shortage of housing accommodation. This justification is not universally approved. Some political parties believe that society should not interfere with freedom of contract, that rent controls are unjust, that rent controls exacerbate conditions of housing shortage and that rent controls are in general productive of more harm than good for the nation. Rent restriction legislation is a blunt instrument which may benefit a tenant who can afford a higher rent and may cause hardship to a poor landlord.

Nevertheless Dr. Ramsahoye, in a thoughtful submission on behalf of the landlord, frankly and correctly conceded that rent restriction legislation is a reasonably justifiable interference with the enjoyment of property. Dr. Ramsahoye attacked the Act of 1981 as being an unjustifiable interference because the Act does not contain machinery for a judicial body or independent tribunal to increase rents in order to take account of changed circumstances after 31st December 1978 and to take account in particular of increases in prices and in

the general level of inflation since that date. It is not reasonably justifiable, according to Dr. Ramsahoye, for the legislation to relieve tenants from the burden of rent increases while leaving landlords to bear the burden of price increases.

Many societies which pay proper regard to the rights and freedoms of the individual conclude that it is reasonably justifiable to control housing rents without at the same time making any attempt to control other incomes or to control other prices. Landlords have no fundamental right to increases of rent which reflect inflation. A landlord who buys property in 1978 for \$18,000 and is content with a return of 10% represented by a rent of \$1,800 per annum has no fundamental right to a return in 1981 of 33% represented by a rent of \$6,000 per annum. Every purchaser and owner of housing property as an investment knows that rent controls are liable to supervene. Every administration in a democratic society retains power to counter rent rises by rent control. The likelihood of rent control legislation and the form of rent control legislation depend on the current state of housing shortages and on the current political and economic philosophy of the administration.

Rent restriction legislation takes a variety of forms and differs from country to country from time to time. Some rent controls are inflexible and permit no increase. Other rent controls are more flexible and provide machinery for increases of rent generally or for increases of rent in particular circumstances. Under the Act of 1981 the Minister of Finance may by Order specify rates of permitted increases after 31st December 1982 for rents controlled by the Act. A Rent Assessment Board may sanction an increase if the landlord effects repairs to the premises. It is impossible to draw any distinction for present purposes between rent restriction legislation which is admittedly justifiable because it is flexible and the Act of 1981 which only allows increases within narrow limits. The Court of Appeal rightly came to the same conclusion. Their Lordships accordingly dismiss this appeal with costs.

