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Case No 187/85
WHN

AVENUE DELICATESSEN First Appellant
SCALA CINEMA Second Appellant
SCALA CAFE Third Appellant
SCARWICK CENTRE (PTY) LTD Fourth Appellant
SCALA GROCERIES Fifth Appellant

and

NATAL TECHNIKON Respondent

JOUBERT JA

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

AVENUE DELICATESSEN First Appellant

SCALA CINEMA Second Appellant

SCALA CAFE Third Appellant

SCARWICK CENTRE (PTY) LTD Fourth Appellant

SCALA GROCERIES Fifth Appellant

and

NATAL TECHNIKON Respondent

CORAM : RABIE CJ, JOUBERT, VAN HEERDEN, GROSSKOPF
JJA et GALGUT AJA

Heard: 12 November 1985

Delivered: 28 November 1985

J U D G M E N T

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The respondent is the owner of certain business premises in Warwick Avenue, Durban, occupied by the appellants as separate tenants. On 27 July 1983 the respondent gave separate notices in writing to them to vacate their respective premises by not later than 30 September 1983. It was common cause that the notices were not given in terms of section 27 or 29 of the Rent Control Act 80 of 1976 (the "Rent Control Act"). On 17 February 1984 the respondent commenced separate ejectment proceedings on notice of motion in the Durban & Coast Local Division against the appellants on the ground that the premises which had previously been

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subject to the provisions of the Rent Control Act were no longer subject thereto. The appellants resisted the applications by claiming the protection of the Rent Control Act. When the respondent's application against the first appellant was heard by WILSON J it was agreed between the parties that the order to be made in that application would also apply to the applications against the other appellants. On 2 August 1984 WILSON J refused the respondent's application against the appellants. The respondent's appeal to the Natal Provincial Division against the judgment and orders of WILSON J was successful. The

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Natal Provincial Division granted the application of the respondent against the first appellant and made similar orders in the applications against the other appellants. The Court a quo refused to grant the appellants leave to appeal to this Court against the whole of its judgment and orders but such leave was thereafter granted to them pursuant to a petition therefor addressed to the Chief Justice.

The crucial question is whether the appellants are entitled to rely on the protection of the Rent Control Act. The essential facts and events giving rise to the dispute between the parties may be briefly summarized as follows.

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The Rents Act 43 of 1950 (the "Rents Act")
as originally enacted applied to dwellings or business
premises occupied before 21 October 1949 (sec 33(1)(f)),
that is to say, to what may conveniently be designated
as pre-1949 premises. The premises in question were
first occupied after 20 October 1949 and before 1 June
1966, that is to say, they are post-1949 business premises.
It followed that the provisions of the Rents Act as
originally enacted did not apply to them as post-1949
business premises. The fact that the relevant Minister,
acting in terms of sec 4(1) of the Rents Act, established
rent boards for the area in which the premises in question

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were situated merely affected pre-1949 premises by bringing them within the purview of the Rents Act.

The existence or dissolution of such rent boards did not affect post-1949 premises such as the premises in question since they were not subject to the provisions of the Rents Act. By Government Notice 2218/1968 dated 6 December 1968, the relevant Minister, acting in terms of sec 4(2)(a) of the Rents Act dissolved certain rent boards and in terms of sec 4(1) of the said Act established the Regional Rent Board of the North Coast for the area mentioned in paragraph (b) of the Schedule thereto. I may add in parenthesis that the premises in question were situated

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in the said area. In paragraph (d) of the said Government Notice he dissolved the Regional Rent Board of the North Coast in so far as its jurisdiction in the said area over business premises (with certain exceptions) was concerned. The effect thereof was that the Regional Rent Board of the North Coast had jurisdiction over pre-1949 premises other than business premises (with certain exceptions) in the area in which the respondent's business premises were situated. By Government Notice 459/1969 dated 28 March 1969, the relevant Minister acting in terms of sec 4(2)(b) of the Rents Act withdrew paragraph (d) of Government Notice 2218/1968 in respect of

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the area for which the Regional Rent Board of the North Coast had been constituted as described in paragraph (a) & (b) of the Schedule thereof. The effect of the withdrawal was that the jurisdiction of the Regional Rent Board of the North Coast revived in respect of business premises in certain areas which included the area in which the premises of the respondent were situated.

A far-reaching change to the Rents Act was brought about by sec 9(e) of the Rents Amendment Act 54 of 1966 which repealed subsections (1) bis, (1) ter and (1) quat of sec 33 and replaced them by subsections (1A) and (1B) to authorise the State President to extend the operation of the Rents Act, by proclamation,

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to post-1949 premises. On 7 January 1972 Proclamation 3 of 1972 was promulgated by the State President by virtue of the powers conferred on him by sec 33 (1A) of the Rents Act as amended. In the Proclamation he declared that as from 28 March ¹⁹⁶⁹ the provisions of the Rents Act would apply in respect of all business premises situate within the areas described in the Schedule thereto in so far as such premises were occupied or used for the first time after 20 October 1949 and before 1 June 1966. The effect thereof was that the State President extended the provisions of the Rents Act to apply to post-1949 business premises used for the first

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time in the stated period in the areas described in the Schedule thereto. Schedule (a) to the Proclamation described the area in which the respondent's premises were situated. The combined effect of the Proclamation and Government Notice 459/1969 was that the respondent's premises were as from 28 March 1969 within the purview of the Rents Act and also subject to the jurisdiction of the Regional Rent Board of the North Coast.

On 23 June 1976 the Rent Control Act came into operation. It superseded the Rents Act, as amended, but according to sec 54(2) anything done under the provisions of the Rents Act, as amended, is deemed to

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have been done under the corresponding provisions of the Rent Control Act. The Rent Control Act is a consolidating legislative measure with a new arrangement of sections.

In Proclamation 105 of 1983, promulgated on 15 July 1983, the State President acting in terms of sec 52(1) of the Rent Control Act amended Proclamation 3 of 1972 by the withdrawal of paragraph (a) of the Schedule to the latter Proclamation. As stated earlier, paragraph (a) of the Schedule to Proclamation 3 of 1972 described the area in which the premises in question were situated. I should also point out that sec 33 (1B) of the Rents Act which empowered

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the State President at any time to withdraw or amend any proclamation promulgated pursuant to sec 33 (1A) of the Rents Act has not been re-enacted in the Rent Control Act.

By Government Notice 2629/1983, dated 2 December 1983, the relevant Deputy Minister, purporting to act under the powers vested in him by sec 51(g) of the Rent Control Act, amended Government Notice 459/1969 by the withdrawal of paragraph (a) of the Schedule thereto. Paragraph (a) of the said Schedule described the area of jurisdiction of the Regional Rent Board of the North Coast in which the premises in question were situated.

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The appellants, as tenants, have at all material times been occupying the premises in question as business premises. The question to be resolved is whether they are entitled to resist the respondent's applications for their ejectment from the premises in question by invoking the protection of the Rent Control Act.

The combined effect of Proclamation 3 of 1972 and Government Notice 459/1969, as stated supra, could be nullified if either of them was withdrawn or appropriately amended to render the premises in question no longer subject to the provisions of the Rent Control Act.

Mr Wulfsohn, on behalf of the appellants, challenged the validity of Government Notice 2629/1983. His contention was that sec 51 (g) of the Rent Control Act did not empower the relevant Minister to issue the said Government Notice. A reading of sec 51(g) makes it clear that it empowers the relevant Minister to exempt business premises from the provisions of the Rent Control Act by notice in the Gazette and thereafter by like notice to withdraw or amend such notice of exemption. In the present matter the relevant Minister was not concerned with the issuing of a notice of exemption. I am prepared to assume without deciding that sec 51(g) did not give the relevant Deputy Minister the appropriate

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power to issue Government Notice 2629/1983. On

this assumption the reference in Government Notice

2629/1983 to sec 51 (g) as the empowering section

was erroneous. Sec 2 (2) and (3) of the Rent Control Act

is the proper empowering section for the amendment or

withdrawal of the jurisdiction of a rent board. Where

the relevant Minister had the power in terms of sec 2 to

withdraw paragraph (a) of the Schedule to Government Notice

459/1969 the fact that he purported to issue the notice

under the wrong section did not invalidate the notice.

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See Latib v The Administrator, Transvaal, 1969(3)

SA 186 (T) at p.190B - 191A:

The relevant sub-sections of sec 2 of the Rent

Control Act provide as follows:

"(1) The Minister shall establish so many rent boards as he may deem necessary, and notice shall be given in the Gazette of the establishment of every such rent board and of the area for which it is established.

(2) The Minister may by notice in the Gazette dissolve, or, in respect of business premises, withdraw the jurisdiction of, any rent board previously established, and thereupon the area for which such rent board was established, shall, for the purposes of section 51, be deemed to be an area for which a rent board has not been established or has not been established in respect of business premises,

/as....

as the case may be.

- (3) The Minister may from time to time by notice in the Gazette withdraw any notice by which the jurisdiction of a rent board in respect of business premises has been withdrawn, either absolutely or in respect of a specified portion of the area for which such rent board has been established or in respect of any specified business premises or class of business premises, and thereupon the jurisdiction of such rent board shall revive and the provisions of this Act shall apply in respect of business premises situated within the area for which it is established or within the portion of that area specified in such notice or in respect of the business premises or class of business premises so specified, as the case may be."

In this Court Mr Wulfsohn contended that Government Notice 2629/1983 was defective because it purported to withdraw in one step paragraph (a) of the Schedule to Government Notice 459/1969 whereas the correct procedure required two steps which could be embodied in the same notice as had been done in Government Notice 2218/1968. According to this argument step one in terms of sec 2(2) necessitated a total withdrawal of the jurisdiction of the Regional Rent Board of the North Coast in respect of business premises by the withdrawal of paragraphs (a) and (b) of the Schedule to Government Notice 459/1969. Step two in terms of sec 2(3)

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required a partial withdrawal of the notice of withdrawal which comprises step one. That is to say, step two

should have consisted of a withdrawal of the withdrawal in respect of paragraph (b) of the Schedule to Government

Notice 459/1969 whereupon the jurisdiction of the said

Rent Board would have been revived in respect of the

area of jurisdiction ^{described} in paragraph (b) of the Schedule

whereas its jurisdiction in respect of the area

described in paragraph (a) of the Schedule would

have been withdrawn. The procedure suggested

by Mr Wulfsohn is a clumsy circuitous method of

achieving what the legislature, as appears from a reading of subsection

(2) and (3) of sec 2 together, intended to confer on the

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relevant Minister, viz the power to withdraw the jurisdiction of a rent board over business premises either totally (in toto) or partially (pro parte) i.e. in respect of a specified portion of its area of jurisdiction or in respect of any specified business premises or class of business premises. I accordingly see no reason in law why the relevant Deputy Minister could not adopt, as he did in Government Notice 2629/1983, the direct method of withdrawing in one step paragraph (a) of the Schedule to Government Notice 459/1969. In my opinion the attack by Mr Wulfsohn upon the validity of Government Notice 2629/1983 must accordingly fail.

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The alternative contention of Mr Wulfsohn

was that even if this Court found that Government

Notice 2629/1983 was valid then the withdrawal of the

jurisdiction of the Regional Rent Board of the North

Coast in respect of business premises in the area in

which the premises in question were situated could not

affect the acquired or accrued rights of the appellants

under the Rent Control Act. In my opinion this conten=

tion is untenable for the following reasons. The

object of the Rent Control Act is to control^{the} rent of

premises subject to its provisions as controlled premises and

to give tenants thereof security of tenure against

ejectment by landlords by imposing concomitant restrictions

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and disabilities on the contractual and common law rights of landlords. I am satisfied from the context of the Rent Control Act that the legislature intended the protection afforded to tenants to be co-extensive with the applicability of the provisions of the Act to controlled premises. When its provisions cease to be applicable to premises the latter cease to be controlled premises. The tenants of the premises can then no longer invoke the protection of the Rent Control Act. The latter does not in my opinion confer on tenants of controlled premises vested rights which continue to exist after the premises have ceased to be controlled premises. To hold to the contrary would lead to the absurd situation that the freezing of both rent

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and occupation of premises could continue to exist indefinitely after the premises had ceased to be controlled premises. Such a result would be wholly repugnant to the intention of the legislature and the object of the Rent Control Act. In the circumstances of the present matter the appellants did not, in my opinion, acquire any vested rights under the Rent Control Act on which they could rely as a defence against the respondent's application for their ejectment from the premises in question.

In view of the conclusion to which I have come in regard to the validity of Government Notice 2629/1983 it is unnecessary to deal with the attack

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by Mr Wulfsohn upon the validity of Proclamation 3 of
1972.

In the result the appeal fails with costs.

C P JOUBERT JA

RABIE C J)

VAN HEERDEN J A)

GROSSKOPF J A)

GALGUT A J A)

concur.