

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE AGRICULTURAL TRIBUNAL
WESTERN DIVISION AT LAUTOKA

Reference No. WD 07 of 2015

BETWEEN: **Hemant Kumar** of Tavua, Cultivator.

Applicant

AND: **Saha Deo** of Wailailai, Ba, Retired.

1st Respondent

AND: **Director of Lands** of Government Buildings, Suva.

2nd Respondent

Appearance

Ms. Naidu of Jyoti Legal for the Applicant.

Ms. Singh of Legal Aid Commission for the 1st Respondent.

Ms. Taukei of the Office of the Attorney General for the 2nd Respondent.

Judgment

1. The Applicant had filed an application on the 13th of July, 2015 seeking a declaration of tenancy in the subject land described in Crown Lease No 759428 as Lot 1 on DP 8195 known as Koro No. 2 (Part of) the Province of Ba in the district of Tavua containing an area of 8.8789 hectares vide LD4/4/699. The 1st Respondent is opposing the application and has filed a Statement of Defence on the 6th of October, 2016. The Applicant has filed a Reply to the Statement of Defence on the 27th of January, 2017. The 2nd Respondent is yet to file any Statement of Defence. The Hearing of the substantive matter was held on the 20th of June, 2017 and oral submissions held on the 21st of September, 2017. The Applicant and the 1st Respondent have both filed written submissions.

The Preliminary Issue

2. On the day of the Hearing, the 1st Respondent raised a preliminary issue, it is prudent that I deal with this question first. The issue raised is that the Sale and Purchase Agreement between the Applicant and the 1st Respondent is without the

consent of the Director of Lands as such it is void ab initio and the substantive application herein should therefore be dismissed with costs. The 1st Respondent is relying on the case of **Kumari v Singh** [2015] FJHC 942.

3. Counsel for the Applicant is opposing the preliminary issue. She stated that the application before the Court is one of tenancy under section 4 and section 5 of ALTA and not under the Sale and Purchase Agreement. Counsel further submits that the reference to the Sale and Purchase Agreement is evidentiary and not the basis of the application as the test is highlighted under the relevant provisions.
4. I have considered the submissions raised by all the parties herein. The case of **Kumari v Singh** [2015] FJHC 942 cited by the 1st Respondent is to be distinguished. It was a case for vacant possession under the Land Transfer Act, Cap 131 of Fiji and was based on a Sale and Purchase Agreement which required the consent of the landlord under section 13 of the State Lands Act, Cap 132 of Fiji. The Court in that case held that without the consent of the landlord, the subject dealing was considered unlawful therefore the dealing was void ab initio.
5. The matter before this Tribunal is entirely different. It is an application for tenancy under section 4 and section 5 of the Agricultural Landlord and Tenant Act, Cap 270 of Fiji (herein referred to as 'ALTA'). In the case authority of **Reddy v Samy** [1982] 28 FLR 69, the Court held that: '

'Under ALTA, the fact that a person is in occupation and cultivation of an agricultural holding and has done so for not less than 3 years without any objection from the landlord raises a rebuttable presumption of tenancy'. The Court further held that: ***section 18 (2) of ALTA is intended, in our opinion to protect persons who innocently become tenants by virtue of ALTA in circumstances which are unlawful in that the consent of the Native Land Trust Board (as it was then known) and (where requisite) the Director of Lands is lacking'***. The Court further concluded that: ***'the Tribunal may make declarations of tenancy in certain circumstances where the consent of the Director of Lands has not been obtained'***. This principle was adopted and followed in the case of **Pati v Kamal** [1987] 33 FLR 165.

6. Furthermore, in the celebrated case authority of **Re: Azmat Ali** [1986] FJCA 8, the Court held that:

'It is true that a person who is occupying and cultivating land under an unlawful agreement may nevertheless qualify for a declaration of tenancy if he satisfies the requirements of section 4 but he would then be applying under section 5, and not under the agreement, whose contents would be mere evidence to establish those requirement'.

7. The case of **Re: Azmat Ali** (supra) is a persuasive precedent on the issue raised. It is a good law that has stood the test of time and this Tribunal is duty bound to follow it. In light of the foregoing, I hold that the Applicant is entitled to invoke the jurisdiction of this Tribunal under ALTA. The preliminary issue raised is made without any legal basis and is hereby dismissed accordingly. I will now proceed to the substantive matter herein.

The Law

8. The Agricultural Landlord and Tenant Act (herein referred to as '**ALTA**') defines a ***contract of tenancy as' any contract express or implied or presumed to exist under the provisions of this Act that creates a tenancy in respect of agricultural land or any transaction that creates a right to cultivate or use any agricultural land'.***

9. Section 4(1) of ALTA state that:

'Where a person is in occupation of, and is cultivating, an agricultural holding and such occupation and cultivation has continued before or after 29 December 1967 for a period of not less than 3 years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent and, if the landlord fails to satisfy such onus of proof, tenancy shall be presumed to exist under the provisions of this Act..'

10. Section 5(1) of ALTA further provides that:

'A person who maintains that he is a tenant and whose landlord refuses to accept him as such may apply to a tribunal for a declaration that he is a tenant and, if the tribunal makes such a declaration, the tenancy shall be deemed to have commenced when the tenant first occupied the land...'

Legal Analysis

11. I have heard the evidence and considered the submissions by the parties herein.
12. It is clear from the facts that the parties had an arrangement in 2010 for the Applicant to work the farm. He was to cultivate and harvest the sugar cane for which he was going to be paid by the 1st Respondent for work done. This arrangement took a new twist in 2013 when the parties entered into a Sale and Purchase Agreement.
13. This Tribunal had inspected the subject property on the 16th of May, 2016. The main feature that stands out is the remoteness of the subject property. It is located in an isolated hinterland of Toko, Tavua with no neighbors for miles. There is no electricity and/or piped water, in addition, there is no public road. The subject property is only accessible via a farm road maintained by the registered lease holder.
14. It is clear from the facts that the parties had intended to enter into a Sale and Purchase Agreement. I am convinced that the decision by the 1st Respondent to enter into the said Sale and Purchase Agreement was largely influenced by his circumstances at the subject leasehold. It is an undisputed fact that the 1st Respondent had deserted the subject holding soon after signing the Sale and Purchase Agreement in 2013.
15. The inspection report dated 10th May, 2015 that was tendered by the 2nd Respondent as Exhibit 'D2A' is significant. In reference to land use, the report stated that '*Hemant Kumar is cultivating the subject land*'. Further, in reference to land occupation, the report stated that '*Hermant Kumar is occupying the subject land*'. In reference to the particulars of the leasee, the report state that '*Saha Deo moved to Ba and he sold the land to Hermant for \$18,000.00*'.
16. It is evident that the 1st Respondent breached the Lease Agreement firstly, when he entered into a Sale and Purchase Agreement without the consent of the 2nd Respondent and secondly, when he deserted the subject holding. Despite, the inspection report dated 10th May, 2015, the 2nd Respondent is yet to take any further action by either way of a re-entry proceedings and/or an application for cancellation of Crown Lease No. 759428 under ALTA.

17. In light of the facts, I hereby make the following findings. The Applicant had entered into occupation and cultivation of the subject holding pursuant to the Sale and Purchase Agreement dated 1st October, 2013. I find that the Applicant is a tenant albeit an unlawful one for lack of consent from the Director of Lands. He has been occupying and cultivating the same for more than 3 years, there has been no attempt by the 1st Respondent to evict him, as such, in applying the principle laid down in **Reddy v Samy** (supra) a tenancy is presumed to exist herein. In light of the foregoing, the application for tenancy herein is hereby granted.

18. The full orders of the Court are as follows:

- a. The application for tenancy against the 1st Respondent is hereby granted.
- b. The 2nd Respondent is hereby ordered to issue a registered instrument of tenancy under ALTA in the subject land described in Crown Lease No. 759428 as Lot 1 on DP 8195 known as Koro No. 2 (Part of) the Province of Ba in the district of Tavua containing an area of 8.8789 hectares vide LD4/4/699 over 18 acres to the Applicant forthwith effective on 1st October, 2013.
- c. The 2nd Respondent is further ordered to facilitate with the Registrar of Titles the cancellation of Crown Lease No. 759428 that was issued to the 1st Respondent forthwith.
- d. The 1st Respondent is hereby ordered to pay costs to the Applicant in the sum of Two Hundred Dollars (\$200.00) to be paid within 21 days.
- e. Any party aggrieved by this decision is entitled to lodge an appeal within 21 days.

Ordered Accordingly,



Jeremaia N. Lewaravu [Mr.]

RESIDENT MAGISTRATE

17th November, 2017

