IN THE CENTRAL AGRICULTURAL TRIBUNAL

Reference Nos. ND 01 / 11 and ND 02 / 11

CAT Appeal No. 02 of 2019

BETWEEN

DURGA PRASAD GAUTAM

FIRST RESPONDENT-APELLANT

AND

BHAN PRATAP CHAND of Boca, Bululeka, Labasa.

APPLICANT-RESPONDENT

AND

DIRECTOR OF LANDS

SECOND RESPONDENT-RESPONDENT

Counsel : Mr. A Sen for the 1st Respondent-Appellant

Mr. S Prasad for the Applicant-Respondent

Mr. J. Pickering for the 2nd Respondent-Respondent

Date of Hearing : 27th September 2019

Date of Judgment : 17th October 2019

JUDGMENT

[1] The applicant-respondent made two applications to the Agricultural tribunal (Form 3 & Form 6) on the basis that he is the tenant of the Crown Lease 512285 LD Ref 4/9/5054, Lot 3 Section 6, Bulileka Settlement.

[2] In one application (01/11) the Applicant-respondent states the landlord does not complain of anything but says that he must vacate the land and in the other application (02/11) the applicant says he lived on the land and cultivated and paid rent to the 1st defendant-appellant.

[3] After the hearing the Tribunal made the following orders:

a. The application for declaration of tenancy and relief from eviction against the 1st respondent is hereby granted.
b. The 2nd respondent is hereby ordered to issue a new instrument of tenancy with effect from 31st June 1997 over the subject land described in former Crown Lease No. 512285 to the applicant under the provisions of ALTA forthwith.
c. Each party to bear own costs.
d. Appeal within 28 days.

[4] The date given in the order b. above is 31st June 1997 but the month of June has only 30 days.

[5] Being dissatisfied with the above orders the 1st respondent-appellant preferred this appeal on the following grounds:

1. That the learned Referee of the ALTA tribunal erred in law and in fact in failing to consider all the relevant matters and took into consideration irrelevant matters into coming to his decision.

2. That the learned Referee failed to take into consideration the maters contained in the application as opposed to the evidence of the applicant against the respondents' response which was filed at the Tribunal.
3. That the learned Referee erred in making a declaration of tenancy in favour of the 1st respondent when the evidence was clear that the 1st respondent has moved into the land of the appellant under a family agreement to occupy the house that was built by the appellant.
4. That the learned Referee erred in making a declaration of tenancy in favour of the 1st respondent when there was no evidence before the tribunal that the 1st respondent was in occupation and cultivation of more than two and half acres of appellant's leasehold.
5. That the learned Referee erred in making a declaration of tenancy in favour of the 1st respondent when the appellant had rebutted the presumption of tenancy relevant facts of which was not considered by the Tribunal.
6. That the learned Referee failed to take into consideration the evidence provided by the 2nd respondent that there was no agricultural activity of any nature been undertaken by the 1st respondent which was unchallenged.
7. That the learned Referee failed to take into consideration the totality of the evidence presented at the hearing together with the submissions filed by the applicant and evidence tendered by the 2nd respondent.

[6] Sections 4(1) and 5(1) of the Act Agricultural Landlord and Tenant Act 1966 (the Act) provide as follows:

> 4(1) 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:

Provided that any such steps taken between the 20 June 1966 and 29 December 1967, shall be no bar to the operation of this subsection.

5(1). 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:

Provided that rent shall only be recoverable where the tribunal is satisfied that it is just and reasonable so to order.

[7] The applicant respondent went before the Tribunal on the basis that he is the tenant of the property and also that he was in occupation of the property while cultivating it. If he seeks a declaration of tenancy under section 4(1) of the Act he has to establish that he was in occupation of the property for 3 years or more and cultivated it. If he goes before the Tribunal under section 5(1) of the Act he has to establish that he is the tenant. Sections 4 and 5 of the Act deal with two different categories of occupants of agricultural holdings.

[8] Under section 4(1) of the Act once the occupier establishes that he is in occupation of the property which is the subject matter of the proceedings and he was cultivating the land for a minimum period of 3 years a presumption is created and the burden of rebutting the presumption is on the landlord.

[9] The Tribunal preferred the evidence given by the applicant-respondent over the evidence of the 1st respondent-appellant. The only finding found in the judgment of the Tribunal is on the question whether there was an understanding between the 1st respondent-appellant and the applicant-respondent. The Tribunal has found that there is evidence that the applicant cultivated and occupied the subject lease hold. There is no dispute that the applicant-respondent occupied the land but the question is whether he was successful in establishing that he cultivated the land. He has failed to tender a single document or receipt for payment made in respect of the land preparation or cultivation. There is no requirement in law of evidence that every piece of evidence must be corroborated by documentary evidence but in this case the evidence of the applicant-respondent is such it cannot be relied on without any supporting evidence. It is more so because when he was cross-examined on this issue his answer was that

he did not have it. There is absolutely no evidence that the applicant-respondent cultivated this land. In cross-examination when he was asked whether he cultivated the land in 2011, 2012, 2013 and 2014 his answer was in the negative and he has forgotten whether he cultivated the land in 2009 and 2010.

[11] The Tribunal without first considering whether the applicant-respondent cultivated the land for three years says in the judgment that within first 3 years of initial occupation the 1st respondent-appellant had not given notice evict the applicant-respondent.

[12] For the reasons given above it is clear that the Tribunal has failed to consider whether the applicant-respondent has satisfied the tribunal one of the grounds that is required to create a presumption of tenancy under Section4(1) of the Act, that is whether the applicant-respondent in fact cultivated the land.

[13] The learned tribunal referred to the decision in **Narayan v Kumari** [2018] FJAGT 1 where it was held:

> Under section 5(1) a person who maintains that he is the tenant of a particular agricultural holding can make an application to the Agricultural Tribunal if the land lord refuses to accept him as a tenant. Under section 5(1) there is no presumption in favour of the person who claims to be the tenant. He has to establish before the Agricultural Tribunal that he is a tenant.

[14] The finding of the Tribunal on this issue is that there is evidence that the applicant had cultivated and occupied the subject lease hold on 50/50 share arrangement until 2006 and in the light of the facts, it is clear that the applicant was a tenant of the 1st respondent.

[15] According to section 2 of the Act a "tenant" means a person lawfully holding land under a contract of tenancy and includes the personal representatives, executors, administrators, permitted assigns, committee in lunacy or trustee in bankruptcy of a tenant or any other person deriving title from or through a tenant.

[16] I could not find any evidence that there was a written contract of tenancy between the applicant-respondent and the 1st respondent-appellant. When there is no written contract the best evidence to establish the existence of a tenancy is the evidence of payment of rent. The applicant-respondent's evidence is that the understanding was

to share the income from the property equally between them. In cross-examination he had admitted that he had no evidence of payment of rent. This evidence of the plaintiff shows that there had been no intention between the applicant-respondent and the 1st respondent-appellant to create a contract of tenancy.

[17] For the reasons set out above the Tribunal has erred in arriving at the conclusion that the applicant-respondent is a tenant of the lease hold in question.

ORDERS

1. The appeal of the 1st respondent-appellant is allowed.
2. The application of the applicant-respondent is dismissed.
3. The applicant-respondent is ordered to pay $500.00 as costs of this appeal.

HIGH COURT OF FIJI SUVA

Lyone Seneviratne

CENTRAL AGRICULTURAL TRIBUNAL

17th October 2019