

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

WD No. 10 of 2019

BETWEEN : **Abhinesh Kumar** of Kabisi, Sigatoka. **Applicant**

AND : **Rajesh Kumar** of Kabisi, Sigatoka. **1st Respondent**

AND : **Director of Lands** of Tavewa Avenue, Lautoka. **2nd Respondent**

AND : **Office of the Attorney General** of Tavewa Avenue, Lautoka. **3rd Respondent**

Date of Hearing : 19th of November, 2021

Date of Judgment: 4th of March, 2022

Appearance

Mr. Patel of Legal Aid Commission (Suva) for the Applicant

Ms. Radrole and Mr. Makengi of Legal Aid Commission (Sigatoka) for the 1st Respondent

Mr. Chauhan of Office of the Attorney General for the 3rd and 4th Respondent(s)

Judgment

Introduction

1. The Applicant filed an application for declaration of tenancy in the subject land described as State Lease No. 839403, on CT 950 (PT. OF) CL 102606 known as Waqaliqali subdivision, Lot 34 on Plan No. N1093 with an area of 8.5389ha in the district of Malomalo, in the Province of Nadroga. The Respondents are opposing the application and have filed the relevant Statements of Defence to that effect.

The Law

2. Section 4(1) of the Agricultural Landlord and Tenant Act (herein referred to as '**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.'

3. 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...'

4. In addition, section 9 of ALTA is also relevant herein.

The Hearing

5. In light of the documentary evidence submitted by all the parties. A hearing under Regulation 33 of the ALTA (Tribunal Procedure) Regulations ensued.

The case for the Applicant

6. The submission by the Applicant is summarized as follows:

- a. That the parties are biological brothers.
- b. It was the Applicant, and the 1st Respondent inclusive of their father (Lek Ram) that entered into occupation and cultivation of the original State Lease No.102606 in 2001 under a Sale and Purchase Agreement with the previous registered leasee Surendra Singh.
- c. The old State Lease No. 102606 has since expired and the 1st Respondent was issued with a new State Lease No. 839403 in 2012.
- d. Despite the issuance of a new State Lease No. 839403, the Applicant continued with his occupation and cultivation over 8 acres of the subject holding for 17 years.
- e. The inspection report by the Director of Lands confirms that the Applicant is also cultivating and occupying the land.
- f. The Applicant has fulfilled the requirements under section 4 and section 5 of ALTA and should therefore be granted a declaration of tenancy herein.
- g. There is no need to prove an existence of an expressed tenancy agreement when bringing an application for declaration of tenancy. This is the reason for the omission in answering questions 8, 9 and 10 of the reference.
- h. The Applicant is relying on the case authority of **Narayan v Kumari** [2018] FJAGT 1 and the legal principles under section 4 and section 5 of ALTA.
- i. The case of **Prasad v Singh** [2021] FJAGT 5 is not applicable herein.
- j. The only arrangement was for the management of the farm. There was no family arrangement.
- k. The DVRO order by the Sigatoka Court is direct evidence that the Applicant is solely occupying and cultivating the subject land.
- l. The Applicant is entitled to a declaration of tenancy.

The case for the 1st Respondent

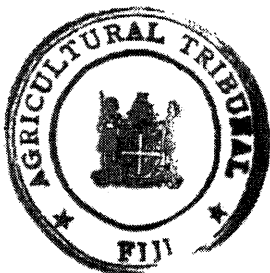
7. The submission of the 1st Respondent is summarized as follows:
 - a. He is the registered leasee of State Lease No. 839403.
 - b. He had initially bought the old State Lease No. 102606 from Surendra Singh in 2001 for the purchase price of \$40,000.00.
 - c. Upon taking possession of the land, the 1st Respondent invited his family members that included his parents and the Applicant to reside on the subject holding.
 - d. All the parties remain in occupation and cultivation of the same until a 2019 DVRO order that forced the 1st Respondent to vacate the subject holding.
 - e. The Applicant did not financially contribute to the acquisition of the subject land.
 - f. There is crop lien imposed on the subject land as security for a loan agreement with the Fiji Sugar Cane Growers Fund.
 - g. The Applicant is residing on the subject land by virtue of his familial relationship with the 1st Respondent. He is not a tenant or a landlord.
 - h. The 1st Respondent is relying on the legal principles advocated in the case of **Prasad v Singh** [2021] FJAGT 5 as applicable under the circumstances.
 - i. The decision by the Applicant to omit answering question 8, 9 and 10 under the reference is to his detriment. It is proof of a lack arrangement but only a domestic relationship that cannot be elevated to a tenancy. The application by the Applicant is irregular because of the omission.
 - j. By instituting the DVRO, the Applicant is indirectly 'acquiring the land by adverse possession'. It is therefore an abuse of the process.
 - k. The 1st Respondent is also relying on the legal principles highlighted in the case of **Nath v Kumar, Director of Lands** WD No. 44 of 1997.

Legal Analysis

8. I have considered the submissions by the parties.
9. The common thread of evidence between the parties is that, the Applicant and the 1st Respondent are biological brothers. Similarly, the parties along with their father (Lek Ram) entered the subject holding in 2001 vide a Sale and Purchase Agreement with one Surendra Singh who at the relevant time was the registered leasee of the original State Lease No. 102606.
10. Suffice to say, that none of the parties tendered a copy of the said Sale and Purchase Agreement in evidence. Be that as it may, it seems that the consent of the Director of Lands was not obtained in relation to the said dealing as required under the relevant legislation. This is relevant given that, there is no evidence that the original State Lease No. 102606 was ever transferred to either the Applicant or the 1st Respondent at any time. The obvious conclusion is that Surendra Singh remained as the registered leasee of original State Lease No. 102606 until the expiry of the same. This is significant for the Applicant.

11. Consequently, the original State Lease No. 102606 enjoyed a full term that was subject to an extension under section 13 of ALTA. However, the subject lease expired on its legal termination date on 11th January, 2012 and was not renewed. In essence, whatever arrangement the parties may have had upon taking possession of the original State Lease No. 102606 in 2001 is now moot as Surendra Singh remain the registered proprietor of the said Lease. Secondly, he was not made a party to the proceedings. Similarly, any such arrangement (if any) by the parties cannot subsist after the expiry of the subject lease except for maybe a proprietary interest under Section 13. However, that is not the case here. The law is clear that upon the expiry of an agricultural lease, the subject holding reverts back to the landlord absolutely. Section 9 of ALTA is applicable.
12. Significantly, the 2nd Respondent has issued a new State Lease No. 839403 to the 1st Respondent. This is a new and a stand-alone agricultural lease. It was therefore incumbent upon the Applicant to provide answers to all the questions under the reference. The omission by the Applicant is detrimental to his case. In any event, he is bound by his pleadings. In light of the omission, I find no evidence that the Applicant and the 1st Respondent contemplated entering into a legal relationship. I accept and uphold the submission by the 1st Respondent that the relationship between the parties was a familial relationship and nothing else. It therefore follows that I also accept and uphold the submission by the 1st Respondent that there was no legal reason to evict his brother the Applicant.
13. On the other hand, even if I am wrong, it is undisputed that the Applicant and the 1st Respondent are biological brothers. This is also decisive. The law is clear that whatever arrangements (if any) the brothers may have, the same cannot be elevated to a contract of tenancy (see: Goundar v Zundal & Others WD No. 32 of 1972). The decision in Prasad v Singh [2021] FJAT 5 is applicable.
14. At this juncture, I wish to state that the Applicant has misconstrued the rationale of the decision in Narayan v Kumari [2018] FJAT1. Similarly, the case of Prasad v Singh [2021] FJAT 5 is a case authority in this jurisdiction and a legal precedent on the issue before the Court. The Applicant further state that he is not required to prove the existence of an expressed tenancy agreement under section 4, only under section 5 of ALTA. This is the reason why he failed to complete questions 8, 9 and 10 of the reference.
15. I cannot accept this line of reasoning as a 'contract of tenancy' means 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 create a right to cultivate or use any agricultural land'. The relevant question herein is whether (upon the issuance of the new State Lease No. 839403) there was any agreement/arrangement between the Applicant and the 1st Respondent that created a right for the Applicant to cultivate or use the subject holding? There is none.

16. Similarly, ALTA defines a 'tenant' as 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. The relevant question then is whether the Applicant (upon the issuance of the new State Lease No. 839403) is lawfully holding the subject land under any agreement/arrangement that qualifies him as a Tenant under the relevant Act and/or whether the Applicant derives any title from or through the 1st Respondent? The answer is again No.
17. The Applicant is relying on the inspection report by the 3rd Respondent dated 21st February, 2018. The report confirms that the Applicant and the 1st Respondent are biological brothers and that the Applicant is also occupying and cultivating part of the subject holding. Be that as it may, the occupation and cultivation by the Applicant falls short of the test of exclusive possession advocated in Nath v Kumar, Director of Lands WD No. 44 of 1997 and Singh v Kumari CAT Appeal No. 4 of 1975.
18. In saying this, I wish to address the question of the DVRO Order issued against the 1st Respondent by the Sigatoka Court in DVRO Case No. 3 of 2018. The Applicant in that case, Roshni Kumar is not the registered proprietor of State Lease No. 839403. As such, she had no legal right to seek a non-contact order against the 1st Respondent who is the registered proprietor of the subject land in question. I agree that this is an indirect attempt at 'acquiring the subject land by adverse possession'. It is therefore an abuse of the court process. Essentially, a Court Order must be capable of enforcement. I hold the view (with the greatest of respect) that the said DVRO order is defective and incapable of enforcement. Consequently, the 1st Respondent is at liberty to lodge the necessary application in the proper forum for setting aside.
19. In light of the foregoing, I hold that the substantive application for tenancy discloses no bona fide right for the Tribunal to intervene. In exercise of powers under Regulation 33, I find that the Applicant is not entitled to seek the protection of this Tribunal under ALTA. I therefore decline to intervene herein. The full orders of the Tribunal is as follows:
- i. The application for tenancy is dismissed forthwith.
 - ii. Each party to bear own costs.
 - iii. Appeal within 28 days.



As Ordered,

Jeremaia N. Lewaravu [Mr.]

RESIDENT MAGISTRATE

4th March, 2022