IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 31 of 1983

Between:

NARPAT SINGH s/o Jagan Singh — Appellant

and

1. ATTORNEY GENERAL OF FIJI
2. MINISTER OF LANDS
3. DIRECTOR OF TOWN & COUNTRY PLANNING
4. DHARAM SHEELA d/o Parshu Ram Shukla
5. DAYA WATI d/o Parshu Ram Shukla
6. KRIPA CHANDRA s/o Parshu Ram Shukla
7. BASANT KUMAR s/o Parshu Ram Shukla — Respondents

S.M. Koya & H.K. Nagin for the Appellant
S. Sharma & J.K.L. Maharaj for 1st, 2nd & 3rd Respondents
M.S. Sahu Khan for the 4th, 6th & 7th Respondents

Date of Hearing: 9th November, 1983
Delivery of Judgment: 22nd November, 1983

JUDGMENT OF THE COURT

Gould V.P.,

This is an appeal against a judgment dated the 7th June, 1983, of the Supreme Court at Suva dismissing with costs the appellant's claim for declarations touching land known as Lot 5 on Deposited Plan No. 2513 being part of the land comprised in Certificate of Title No. 10219 containing 14 acres 2 roods 27 perches.

The land in question had been occupied and cultivated by the appellant since 1946. There were

originally seven defendants in the action but it was discontinued against the fifth defendant, Daya Wati, and she is not a respondent in the appeal.

In his judgment the learned Judge said that the facts were not in dispute and we will set them out as found.

When the appellant went into possession of the land one Hubraji d/o Hari Charan was the registered proprietor and he paid rent to her from 1946 to 1969. On the 20th March, 1970, the appellant lodged an application with the Agricultural Tribunal for a declaration of tenancy against Hubraji pursuant to sections 5 and 22 of the Agricultural Landlord and Tenant Ordinance, 1966 (ALTA).

On the 1st October, 1970, Lot 5 (inter alia) was transferred to the fourth, fifth, sixth and seventh defendants. On the 28th March, 1972, the Tribunal declared that the plaintiff was the tenant of Lot 5 but ordered that the instrument of tenancy should not be made until the rent was agreed or fixed.

The learned Judge's view, interpolated here, was that the appellant had a tenancy at that stage expiring on the 28th December, 1977. As will be seen, the length of the tenancy has not been made an issue on this appeal.

The appellant continued to pay rent to the fourth-seventh defendants to the end of 1982. On the 8th May, 1981, the appellant lodged another application with the Tribunal seeking a declaration of tenancy under section 5 of the Act. In this application the fourth-seventh defendants pleaded that ALTA had no application because a plan for residential subdivision of the land contained in C.T. 10219 had been approved by the third respondent, the Director of Town and Country Planning. It was contended that this approval brought into effect regulation 4 of the Agricultural Landlord and Tenant (Exemption) Regulations.

This regulation (omitting paragraph (c)) reads :

> "4. The provisions of sections 6, 7 and 13 of the Act shall not apply to any agricultural land -
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> (a) situated within the boundaries of any city or town;
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> (b) situated outside such boundaries which the Director of Lands may, by notice published in the Gazette, declare to be land required for non-agricultural purposes;
>
> (c) .....
>
> (d) approved by the Director of Town and Country Planning for subdivision for residential, industrial or commercial purposes. "

Sections 6, 7 and 13 regulate the terms of a contract of tenancy, restrict its termination and make provision for extension respectively. We do not need to set them out, for the learned Judge found that the effect of their being denied operation would be that the tenancy receiving no protection from the Act, could be terminated in the manner provided by law or the agreement for tenancy, and this finding has not been challenged in the appeal.

Although in the Supreme Court the appellant sought declarations (which were refused) based on the proceedings before the Agricultural Tribunal, Mr. Koya, for the appellant, did not seek before this Court to re-agitate such questions. There remains only the declaration following this was also refused.

> "(b) A Declaration that the purported approval of a proposed subdivision for residential purposes under Plan No. 609/1 made on the 26th day of October, 1981 in respect of the said agricultural land aforesaid by the Third Defendant under his powers in the Town and Planning Act, Cap. 139 and/or the Subdivision of Lands Act, Cap. 140 is null and void at law. "

It is common ground that the land in question was agricultural land within the meaning of ALTA, apart from the effect of the Exemption Regulations, and that it was freehold land.

In the Supreme Court lengthy written submissions were made by counsel: Mr. Koya made six of them. Before this Court Mr. Koya's submissions appear again, as their rejection is put forward as the only grounds of appeal. With respect this is not the way grounds of appeal should be framed. What is required is a statement of the findings or facts of the judgment under appeal which are alleged to be wrong and a concise statement of the reasons and facts relied upon.

The gist of the grounds is that the third respondent in approving the application for subdivision did not comply with the Town Planning Act (Cap. 139 - 1978) and the Subdivision of Lands Act (Cap. 140); that the decision to approve "affected" the tenancy of the appellant; that Exemption Regulation 4(d) was void on the ground of uncertainty; that it was also null and void on the ground that it was arbitrary, unjust, oppressive or unreasonable; that in approving the application in his discretion the rules of natural justice had not been observed and; that the approval was null and void because the applicants concealed material facts from him in submitting the application.

In considering these matters the learned Judge in the Supreme Court first commented that under the Subdivision of Land Act (s.4) no land within its purview can be subdivided without the prior approval of the Director of Town and Country Planning. The Act specifies the procedure for applying for approval and the Director is given wide powers (s.8) to either refuse or approve an application: the Act does not limit his discretion or spell out in detail factors which he has to consider. He has only to consider whether building development is desirable

or whether, with regard to considerations of health amenity or convenience (s.8(2)(3)) of the neighbourhood the subdivision is desirable.

Section 9 of the Subdivision of Land Act, however, does provide, without limiting the Director's discretion, that a number of matters may provide sufficient reason for the refusal of approval. Two of them are :

> "9. (a) any such land is the subject of a registered lease of native or Crown land issued ostensibly for agricultural or pastoral purposes whether or not such lease contains any specific condition limiting the use of such land to such purposes; or
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> (b) any such land is the subject of a registered lease of native or Crown land which will normally expire by effluxion of time within a period of ten years from the date of any application for permission to subdivide such land; "

It is to be noted that these provisions are confined to native or Crown land subject to registered leases while we are concerned here with an unregistered tenancy of freehold land.

There can be nothing in Ground 1 of the Notice of Appeal unless it can be shown that the Director was under a duty to take into consideration, in exercising his discretion whether to approve the subdivision, the fact that the land in question was occupied by a tenant. As a matter of mechanics the Director observed all the requirements of the Acts. Application and plans were submitted in the normal way under section 5 of Cap.140 on the 2nd July, 1981. On the 21st July the materials were sent to the relevant local authority, in this case the Nadi Rural Local Authority, as required by section 6. Under section 7 the Local Authority made recommendantions which were received by the Director on the 31st August, 1981, and the subdivision was approved, subject to certain conditions,

on the 26th October, 1981. The letter of the Local Authority dated the 19th August, 1981 conveying its approval ("The proposal is indeed a worthy one as the need for more residential lots in Nadi area is quite evident") also shows that the Local Authority was aware that the land was devoted to sugarcane plantation. This information then was in the possession of both the Authority and the Director before the approval was given. The Director, however, stated that he was not given any information about any tenancy but believed there was no lawful requirement to go beyond the representations of fact made to him by the appellant.

As the learned Judge pointed out in his judgment none of the matters pointed out in the Schedule to the Town Planning Act to which the attention of the Director and the Local Authority is directed by section 7(4) of the Act requires the Director to consider who is in occupation of the land. The emphasis in the Schedule is more on the proposed future use of the land than on its past use.

We have quoted the relevant portions of section 9 of the Subdivision of Land Act. It is idle to speculate why the legislature drew special attention to native and Crown leaseholds but the absence of reference to tenancies of ordinary freeholds is marked. Possibly it was considered that such a freeholder could be expected to deal with his own difficulties.

We agree with the Supreme Court that there was no departure from correct procedure in the granting of the approval. The Director was not called upon to institute an inquiry into possible tenancies. This disposes also of Ground 2.

It follows that Ground 5, claiming want of compliance with the rules of natural justice, also fails. The learned Judge said on this subject :

" No breach of natural justice or unfairness is involved. On the contrary the regulation when it can be invoked removes some of the initial arbitrary restraint imposed on landowners by the Act. The Act was designed for the benefit of tenants initially with little regard to the rights or wishes of landowners and in complete denial of legal agreements freely entered into between landowners and their tenants. Nothwithstanding that situation, the legislature did not lose sight of the need to exempt agricultural land from the Act where the interests of the public generally are considered paramount and for other reasons considered valid. "

If in the circumstances of the case the Director was not required to inquire into possible tenancies this question does not arise.

We come now to the questions concerning regulation 4(d) of the Agricultural Landlord and Tenants (Exemption) Regulations made by the Minister under section 58 of ALTA. The relevant part of the section reads :

"58. The Minister may make regulations -

(f) exempting any agricultural land .... or classes of such land...., with or without conditions, from all or any of the provisions of this Act. "

There can be no doubt that the Minister, in making regulation 4 of the Exemption Regulations acted within the wide powers of section 58. Why should it be said that the Minister in exercising his powers to facilitate the efficient operation of the functions of the Director of Town Planning (in co-operation with local bodies) was being arbitrary, unjust, oppressive or unreasonable (Ground 4). Certainly ALTA was brought into existence for the benefit of a large and important body of people - Agricultural tenants. But it is not designed to operate to the exclusion of all other potential users and uses of land and it contains in itself recognition of this fact in section 58(f). Mr. Koya's argument included that other exemption powers relate to classes of people whereas

the present situation results in a benefit for an individual. Section 58 refers to either land or classes of land and it is relevant to consider that some 86 sections are included in the subdivision. The argument tended to develop into a social one touching on national policy. We have to construe the legislation as it stands and it is clear that the powers of exemption are almost untrammelled and were deliberate.

Under Ground 3 it was argued on the same lines as under the last ground that the lack of particulars in regulation 4(d) resulted in uncertainty and that the regulation should "be treated as null and void". The operation of regulation 4(d) may depend on the approval of the Director but that does not, in our opinion, make the regulation itself uncertain.

The last ground of appeal asserts that the approval was null and void upon the ground that the fourth-seventh respondents concealed material facts from the Director when submitting the application for subdivision. Mr. Koya added that there was no suggestion of mala fides made against the Director. This ground was argued on the basis of a finding of fact by the learned Judge that the four defendants before the Tribunal delivered their defence on the 30th June, 1981, and alleged therein that the Director had approved the plan of the subdivision. That was not factual as the formal approval was not given until the 26th October, 1981. It was submitted that this gave the Tribunal a wrong picture of the situation. From the Director's own affidavit and correspondence with Mr. Koya's firm it was clear that the Director had no knowledge of the proceedings before the Tribunal and in fact the application was not made until two days after the defence was filed.

We find it difficult to regard this as concealment of material facts from the Director, who

had no knowledge of the proceedings before the Tribunal. Whether the Tribunal itself was materially misled or whether the matter was corrected by evidence, is not before us. We do not think there is anything in the ground which could affect the result of the appeal.

The appeal is dismissed with costs.

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Vice President

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Judge of Appeal

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Judge of Appeal