IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0024 OF 94S
(Judicial Review No. 16 of 1987)

BETWEEN:

AHMAD — APPELLANT

-and-

THE CENTRAL AGRICULTURAL TRIBUNAL
TRUSTEES OF THE METHODIST CHURCH IN FIJI — RESPONDENTS

Mr. G. P. Shankar for the Appellant
No appearance for the First Respondent
Mr. V. Mishra for the Second-named Respondent

Date and Place of Hearing : 8 May 1996 Suva
Date of Delivery of Judgment : 17 May 1996

JUDGMENT OF THE COURT

The appellant's family have been cane farmers near Ba since 1921. In 1963 he entered into a share farming agreement over an area of 16 acres and on 21 April 1969 was given notice to quit by its owners the Trustees of the Methodist Church in Fiji who said they wanted the land for a boys' home. He applied to the Agricultural Tribunal for extension of tenancy under s.13 of the Agricultural Landlord and Tenant Ordinance (now Act, Cap.270). In July 1969 that application was settled by the appellant surrendering 6 acres, in return being granted a 20-year lease for the remaining 10 acres. The Church did not construct the home and in 1975 the appellant re-occupied the 6 acres and resumed cane farming on it. Then followed the series of legal proceedings detailed later.

The genesis of this appeal was the appellant's fourth application to the Agricultural Tribunal of 22 October 1985 (WD 143/85) in which he sought a declaration of tenancy under ss.5 and 23 of the Act in respect of the 6 acres. That application was refused by the Tribunal (Mr. Nair) on 19 November 1986 after a hearing lasting 3 days. An appeal to the Central Agricultural Tribunal was dismissed on 31 August 1987, leading to an application to the High Court for Judicial Review of that decision on 3 September 1987. It took over 6 years for this to reach a hearing and the application was dismissed by Scott J in a judgment delivered on 4 July 1994. The present appeal is against that judgment.

The Legislation and History

The appellant's case was presented under s.4(1) of the Act which reads:

> *"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, a tenancy shall be presumed to exist under the provisions of this Act."*

The Central Agricultural Tribunal found there were no steps taken by the Church to evict the appellant. Accordingly, a tenancy of the 6 acres will be presumed to exist as a result of his

occupancy and cultivation over 3 years, unless the Church satisfies the onus of proving that such occupation was without its consent.

It is now necessary to survey the convoluted history of the dealings between the parties by way of the following chronology:

21.4.69	Notice to quit 16 acres given to appellant Appellant's first application to Tribunal 87/69
1.7.69	Settlement of application whereby 6 acres reverted to Church: lease of remainder to appellant for 20 years.
1969 - 70	6 acres surveyed and fenced off by Church and crops planted by it.
1970 - 74	Discussions and correspondence between solicitors about preparation and registration lease of the 10 acres to appellant.
14 July 1975	Letter from appellant's solicitors disputing settlement as boys' home had not been built, and threatening further proceedings.
1975	Appellant pulled down fence, and reoccupied the 6 acres, planting cane.
3.7.75	Two further applications by appellant to Tribunal (Nos. 15 and 16 of 1975) for fixing of boundaries and declaration of tenancy covering the 16 acres - discontinued on 16/10/75 in the light of the settlement reached in 1969, as noted by Tribunal.
13.10.75	Appellant issued Supreme Court writ alleging fraud and seeking rescission of 1969 settlement, damages and declaration of entitlement to 16 acres.
5.12.75	Withdrawal of Church's application for injunction to prohibit appellant interfering with the 6 acres, on his agreeing it could retain cane proceeds in trust pending determination of the fraud action.
27.10.76	Fraud action discontinued but with leave to bring further proceedings.

2.11.77	Appellant issues further proceedings for fraud in same terms.
22.10.85	Appellant's fourth application to Agricultural Tribunal.
1986 - 87	Fraud action adjourned by order of judge pending determination of Agricultural Tribunal hearing (Counsel advise this action is still pending)
19.11.86	Decision of Agricultural Tribunal
31.8.87	Decision of Central Agricultural Tribunal
4.9.87	Leave granted for Judicial Review application.
23.6.93	Church applied for order dismissing Judicial Review application because of undue delay. Order refused on 7.12.93 on grounds that principal cause of delay was Tribunal's failure to provide its record.
4.7.94	High Court judgment dismissing application for review after hearing.

Comment on this saga of procrastination and delay would be superfluous and it is difficult not to sympathise with the Agricultural Tribunal's view that there has been a gross abuse of its process, having regard to the appellant's failure for so many years to prosecute his Supreme (now High) Court action challenging the 1969 settlement.

The Evidence

In his judgment the Tribunal reviewed the evidence relating to the 1969 settlement whereby the appellant gave up the 6 acres, accepting that this state of affairs continued until 1975 when the appellant forcibly re-entered that land. The Church applied for an injunction restraining the appellant from interfering but it was withdrawn in December 1975. The appellant had agreed that

the Church could retain the cane proceeds pending determination of the Supreme Court action he had commenced in October. We agree with Mr. Mishra's view that it was unlikely an injunction would have been granted at that stage. Accordingly, the withdrawal of the application in these circumstances cannot be taken as evidence of consent to continued occupation. Counsel informed us that the cane proceeds have since been paid to the appellant.

The Supreme Court action was discontinued on 27 October 1976 prior to hearing, for reasons not apparent in the record, and the appellant paid costs to the Church. He was given leave to institute further proceedings if he wished, which he did in November 1977. The affidavit of Satyadevi Bali of 15 September 1987 in opposition to the Judicial Review application suggests the reason. She was matron of Ba Mission Hospital and deposed that in the absence of the Minister in charge of the Mission she acted for him in its affairs, and had worked for the Church at Namosau, Ba since 1968, when the Boys Home Project was first mooted. She said that the second action was commenced when the Church attempted to re-enter the 6 acres in 1977.

Satyadevi Bali also gave evidence at the Tribunal hearing to the effect that there had been several attempts to have the appellant quit the land. She was aware of his destruction of the fence. Mr. K. P. Mishra, as the Church's solicitor, gave evidence that no rent was ever taken for the 6 acres and that after the first action was discontinued he advised his client to

go in and occupy the land and that it attempted to do so. This tends to confirm Satyadevi Bali's evidence to the same effect, which was criticised in this Court by Mr. Shankar as being hearsay. We doubt whether it was, in view of her close association with these matters; but in any event the Tribunal was entitled under s.29 to receive such evidence, its weight being a matter for him. He accepted her evidence and Mr. Mishra's testimony about the attempts to gain possession after the appellant's forcible entry. The latter agreed in cross examination that the Church Minister had called in the police when he started harvesting cane on the 6 acres.

The Decisions

The Tribunal directed himself properly on the effect of s.4 of the Act. He held there was ample evidence that the onus of proof on the Church had been discharged.

In its judgment on the appeal against this decision, the Central Agricultural Tribunal also reviewed the history of the matter and rejected the untenable submission that there had been no valid surrender in 1969. He accepted there had been no steps taken to evict the appellant, but rightly rejected his counsel's proposition that simply because he had been in possession without such an attempt, he was presumed to be a tenant. In agreement with the Agricultural Tribunal, he found there was ample evidence that the church had discharged the onus of proof of lack of consent under s.4(1).

On the application for judicial review of the Central Agricultural Tribunal's decision, Scott J referred to s.61 of the Act providing that the proceedings, hearing, determination and orders etc of the Tribunal "shall not be called into question in any court of law". He applied the approach to such a privative provision adopted by this Court in Manoa Bale v Public Service Appeals Board (1985) 31 FLR 89 and in subsequent cases, whereby the Court on review does not examine the correctness of the decision; it asks only whether the Tribunal had exceeded its jurisdiction in reaching the challenged conclusion. Has it acted in a matter properly committed to it, properly understanding its function and directing its consideration to the matter so committed? Scott J cited decisions by the Privy Council and Australian and New Zealand Courts to the same effect.

Appellant's counsel in the High Court had submitted that the Tribunal erred in law in finding that the tenancy of the .6 acres had been surrendered, claiming that such surrender was subject to a condition subsequent that the boys' hostel would be built. Scott J rightly held there was no such condition, adding that, even if there had been an error of law, he had to be satisfied it was outside Tribunal's jurisdiction for the appellant to succeed. Instead, he expressed himself as being satisfied that the Tribunal had acted entirely within its jurisdiction and its rulings and decisions were therefore not open to review. He added that if he had thought otherwise, he would not have exercised his discretion to grant the application because of the lapse of time.

The Appeal

The appellant's first ground of appeal was that the judge was wrong in deciding he would exercise his discretion against granting the application because of the delay. Secondly, that he erred in holding that review was available only if the Tribunal had acted outside its jurisdiction; and thirdly, that the decision was wrong in law and could not be supported having regard to the principles of law and the materials before the Court. We observe that counsel must understand it is quite inappropriate to advance such a ground in these general terms without identifying the errors of law complained of.

The second ground raises the question whether we should re-assess the approach taken in Manoa Bale in the light of subsequent decisions of the House of Lords culminating with R v Hull University Visitor ex p. Page [1993] AC 682; [1993] 1 ALL ER 97. The present position in England, according to the opinion of Lord Browne-Wilkinson in that case, is that Parliament created the decision-making power [of the Tribunal] on the basis that it was to be exercised on the correct legal basis: a misdirection in law in making the decision therefore renders the decision ultra vires.

On this approach, which he submitted we should now adopt, Mr. Shankar advanced in his third ground of appeal a catalogue of errors from which we have attempted to distil what we gather to be his essential points - namely, that the Agricultural Tribunal

wrongly admitted the evidence of Satyadevi Bali about attempts to obtain possession (a point we have already dealt with) and ignored evidence by the appellant and other witnesses of cultivation of the 6 acres by him before 1975. Indeed the appellant said he had been doing this since 1970, a proposition which even on its face seems at odds with the 1969 settlement and the Church's action in fencing off the land and planting cassava and other crops. The letter from its solicitor, Mr. Mishra, of 24 August 1973 made the Church's attitude quite clear, and the Agricultural Tribunal quoted the following extract:-

> *"Your client desires that the Mission may permit him to continue planting on the Mission Share of the land. This the Mission are not prepared to do. It is the desire of the Mission that all terms and conditions of the Court Order be strictly carried out .....*
>
> *It has been made very clear to your client that he cannot continue cultivation of the Mission part of the land ....."*

The Tribunal found the appellant an untruthful witness, pointing to the inconsistency between his evidence of cultivating the land since 1970, and his claim for damages in the Supreme Court writ for the loss of cane for the following 6 years, which took matters up to his forcible entry involving the destruction of the fence and uprooting the Church's crops in 1975. Mr. Shankar failed to persuade us that the Tribunal was mistaken in its assessment of the evidence over the period 1969 - 75 to justify a conclusion that it erred in law in deciding that the Church had not discharged the onus of proof upon it.

The Supreme Court proceedings issued in October 1975 introduced a new dimension into the relationship of the parties as did the fresh appplications to the Agricultural Tribunal which were discontinued about the same time. The Church had issued injunction proceedings aimed at stopping the appellant's activities, and they were withdrawn in late 1975 pending determination of the Supreme Court action. The reality is that they and the subsequent Court action commenced in 1987 constrained any further action by the Church to recover possession until the appellant's allegation of fraud by it in securing the 1969 settlement had been determined by the Court. One can only speculate why he thought it necessary to make another application to the Tribunal in 1985 while that action was still pending; or why a judge adjourned it to await the Tribunal's decision.

The Church's attitude to these claims has been consistent: it denied the allegations in the respective statements of claim and opposed the applications to the Agricultural Tribunal. Throughout this period it was in the situation of having to put up with an occupation forcibly commenced by the appellant in 1975 and maintained under the protection of his Court actions and Tribunal applications for an almost unbelievable 20 years. In these circumstances it would be a travesty of the meaning and purpose of s.4(1) to hold that the Church's unwilling submission to this state of affairs amounted to consent to the appellant's occupation of the 6 acres.

Accordingly, along with Scott J, we are satisfied that the Central Agricultural Tribunal did not err in its conclusion that there was ample evidence that the church had discharged the onus of proof placed on it by s.4(1). It is therefore unnecessary for us to consider whether **Manoa Bale** should be revisited; nor need we deal with his first ground relating to the proposed exercise of discretion against the appellant because of the delay.

The appeal is dismissed with costs to the Church Trustees.

M.C. Casey

.....

Sir Maurice Casey
Justice of Appeal

I.R. Thompson

.....

Mr. Justice I. R. Thompson
Justice of Appeal

.....

Mr. Justice J. D. Dillon
Justice of Appeal