

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0020 OF 1997
(High Court Civil Case No. JR 10 OF 1993)

BETWEEN:

JANARDHAN GOUNDER AND
KUMARAN SEGRAN GOUNDER

Appellants

AND:

DENNIS ALLAN MCELRATH AND OTHERS
WATSON BROTHERS LIMITED
CENTRAL AGRICULTURAL TRIBUNAL

Respondents

Coram:

The Hon. Sir Moti Tikaram, President
The Rt. Hon. Sir Maurice Casey, Justice of Appeal
The Hon. Justice I.R. Thompson, Justice of Appeal

Hearing:

Monday, 23rd November 1998

Counsel:

Mr. V. Mishra for the Appellants
Mr. C.B. Young for the 1st and 2nd Respondents
Mr. J. Udit of the State Law Office for the 3rd Respondent
(to abide the decision of the Court)

Date of Judgment:

Friday, 27 November 1998

JUDGMENT OF THE COURT

On 14 March 1997 in the High Court at Lautoka, Lyons J. dismissed the appellant's application for judicial review of a decision by the third respondent, the Central Agricultural Tribunal (CAT) in which it had confirmed rentals for two successive 5-year terms from January 1987 to December 1996 assessed by the Agricultural Tribunal in respect of land the appellants occupied as tenants of the first two respondents (hereinafter called "the landlords"). The central issue in this appeal is whether the Tribunal acted within its jurisdiction in assessing these rents because of the failure of the landlords to comply with the term implied

in their tenancy contract by s.9 (1) (g) of the Agricultural Landlord and Tenant Act (Cap 270) (ALTA) for three months' notice to be given of a requirement to have the rent re-assessed.

The tenancy commenced on the 1st of January 1966, and His Lordship accepted that a 20-year extension was granted by the Agricultural Tribunal on 12 August 1981, effective from January 1979. As the parties were unable to agree about the rental for the new term, the landlords applied to the Agricultural Tribunal on 10 November 1981 for it to be assessed in accordance with s.24(1)(b) of ALTA. The application was called on 7/12/81 and adjourned for the tenants to give particulars of their defence. The Tribunal records disclose numerous adjournments requested by counsel for various reasons and the matter did not reach a hearing until 10 June 1991. On 27 August 1991 the Tribunal assessed the rentals for each of the three 5-year periods which had elapsed since January 1981 in terms of the assessment provisions implied in their tenancy by s. 9(1)(g) of ALTA. That section relevantly reads:-

*'9(1) The following conditions shall be implied in every contract of tenancy of an agricultural holding subsisting at or after the commencement of this Act ... -
(g) on the part of both -*

(i) in relation to contracts of tenancy made after the commencement of this Act, that the rent shall be liable to reassessment at the expiry of the fifth year of the term of the tenancy and thereafter at the expiry of each successive period of five years on either party to the agreement serving notice on the other party at least three months prior to expiry of the five-yearly period that he requires the rent to be re-assessed;

(ii) in relation to contracts of tenancy subsisting at the commencement of this Act, that the rent shall be liable to reassessment at any time on either party serving not less than three months notice in writing on the other party that he requires the rent to be re-assessed, and thereafter, after each successive period of five years, on either party serving a notice

in writing on the other party at least three months prior to the expiry of each such five-yearly period, that he requires the rent to be re-assessed.'

The Tribunal fixed the annual rental for the periods as follows:-

January 1981 to December 1986 - \$3,864.00

January 1987 to December 1990 - \$7,597.00

January 1991 to December 1996 - \$8,356.00

In reaching this decision the Tribunal rejected an objection by counsel for the tenants that the landlords had not served the required 3-months' notice on the tenants before filing their application. The tenants appealed to the CAT, again complaining of the lack of notice and in its decision of 1 September 1993 that Tribunal held the application for re-assessment had to be preceded by notice which was not given, so that the appeal in respect of the first 5-year period succeeded and the rental remained for that term at its original figure of \$1600.00. However, it dismissed the appeal against the assessment for the two succeeding 5-year terms, holding that notices were not necessary in respect of them because the original application for re-assessment was before the tenants and they must have realised that the rent was an issue and that it would hinge upon section 9 of the Act.

The tenants' application for judicial review challenged the CAT decision dismissing their appeal to the extent that it upheld the Agricultural Tribunal's ruling that notice was not required for each successive period of 5 years under s9(1)(g). In his ruling dismissing the application Lyons J. held that such a notice was immaterial to the existence of the Tribunal's jurisdiction, but that an applicant for reassessment could not succeed if notice had not been given. In the light of the CAT finding that there was no evidence of a notice in respect of the

first 5-year period, he agreed that the landlord could not succeed in having a re-assessment for that period and observed that there was no argument from either party about that point.

He then went on to consider whether the Tribunal had fallen into error in holding that the application constituted a sufficient notice within the meaning of section 9(1)(g) in respect of the second and third 5-year periods. He concluded that it was sufficient, by analogy with the rule that service of a writ can constitute good notice of demand in a claim for debt; and that the intention of section 9(1)(g) is to give notice in a wide form to the person to be affected by the desired reassessment, so that it was difficult to argue that the notice [presumably application] still proceeding before the Tribunal was not such a notice. He considered it was within the Tribunal's power to decide that it was, and thought it a proper interpretation of the requirements of the section in the circumstances. In any event he held that if there was an error of law in this respect, it occurred within the Tribunal's jurisdiction so that the privative provisions of section 61 protected the decision from review, citing the decision of the Supreme Court in *Venkatamma v Ferrier Watson* (CBV 2/92; 24 November 1995).

For these reasons he dismissed the application and the result of the proceedings to that stage was to leave standing the original rental of \$1600.00 per annum for the first five years of the tenancy to 31st December 1986 while the rent for the next two periods to 31st December 1996 remained at the Agricultural Tribunal figures of \$7597 per annum and \$8356 per annum respectively.

The grounds of appeal to this court against his Lordship's decision are as follows:-

- 1. The Learned Judge erred in law in holding that Section 61 of the Agricultural Landlord and Tenant Act prevents the High Court from granting Judicial Review.*

2. *The Learned Judge erred in law in holding that the error of law by the Central Agricultural Tribunal relating to Statutory Notices under section 9(1) (g) of Agricultural Landlord and Tenants Act in this case was an error within jurisdiction and therefore not subject to Judicial Review.*

3. *The Learned Judge erred in law in holding that the Agricultural Tribunal had jurisdiction to entertain an application for reassessment for the subsequent two five year period when no Statutory Notices had been given.*

4. *The Learned Judge erred in law in holding that it was incorrect for the Appellants to say that the non-provision for the Statutory Notices goes to the jurisdiction of the Tribunal.*

5. *The Learned Judge erred in allowing reassessment when there were no references (application) to the Tribunal for reassessment for the second and third periods.*

6. *The Learned Judge erred in law in holding that the Central Agricultural Tribunal was correct in deciding that the application for reassessment for the first five year period was enough notice under Section 9 (1) (g) for the subsequent two five year period.*

It will be seen that the issues raised about the notices required in terms of s(9)(1)(g) are confined to those in respect of the rental assessments for the second and third 5-year periods, and there is no challenge by either the landlords or the tenants to His Lordship's decision in respect of the first period.

At the outset of the hearing we were asked to consider an application by the landlords for leave to adduce further evidence consisting of three letters passing between them and the tenants' solicitors in November and December 1979. Rule 22(2) gives this Court full discretionary power to receive further evidence upon questions of fact, provided that no such evidence (other than that relating to matters which have occurred after the hearing date) may be admitted except on special grounds, which are by now generally well settled: see *Ladd v*

Marshall [1954] 3 All ER 745. We decided to admit the letters provisionally, leaving a final decision on this point until we heard the remainder of the case in order to understand their significance.

In reaching his decision as outlined above, His Lordship in effect treated the requirements for notice as a procedural provision imposed on the parties by their tenancy contract, but which could not affect the Tribunal's jurisdiction to deal with the assessment of rent once an application had been made. The only effect was that the party in default could not succeed on that application. This view accorded with the opinion of the House of Lords in *Kammins Ballrooms Co. Ltd. V Zenith Investments (Torquay) Ltd* [1970] 2 All ER 871, dealing with a statutory provision requiring an application for a new tenancy to be made within certain time limits.

Their Lordships held that compliance with the provision could be waived or acquiesced in by the other party, and it was submitted by Mr. Young that this had occurred in the present case, having regard to the tenants' conduct over the years in failing to raise any objection about lack of Notice, and to some comments of their solicitors in that period suggesting their acceptance of the fact that the application for reassessment could proceed. However, if waiver or acquiescence were available (and in the light of s.24(3) discussed below, we do not think they were), we are satisfied that this evidence could be relevant only to the assessment of rental for the first 5-year period, which was the only period at issue when the application was made. There is no suggestion from the record that the tenants had any later period in mind up to the time the application was heard. As noted above, this appeal is not concerned with that first period.

If the Tribunal had jurisdiction to assess the rental once the application had been made, regardless of notice, then we think His Lordship was correct in concluding that it had power to decide whether the application constituted valid notice in respect of the second and third 5-year periods, and to assess the rental in respect of them. Any error it made in deciding these matters could not be questioned by the Court because of the privative provisions of s.61. However, for the following reasons we do not think the Tribunal had such jurisdiction.

The powers of the Agricultural Tribunal are set out in section 22 of the Act, and under subsection (1)(a) it may, upon an application of a landlord or a tenant, assess, fix and certify the maximum rent to be paid in respect of an agricultural holding, and specify the date from which such assessment is to have effect. Section 24(1)(b) provides that either party may apply to have the rent assessed, fixed and certified in the event of their being unable to agree to a reassessment under the provisions of section 9(1)(g). Section 24(3) then makes an important qualification. It reads:-

'For the purpose of avoiding doubt it is hereby declared that the tribunal shall not re-assess any rent except in accordance with the implied conditions of a contract of tenancy and any such re-assessment shall not cause any rent to be paid in excess of the maximum rent which can be fixed under this Act.'

From this it is clear that the tribunal has jurisdiction to reassess rent only in accordance with the implied conditions of the contract of tenancy, and it is plain from a study of section 19(1)(g) that under these conditions a separate notice must be given in respect of each specified 5-year period. The application itself could not constitute notice of an intention to make it, either in respect of the first or subsequent periods. As no notices were given we are satisfied that the Tribunal acted without jurisdiction in making its assessments for the second and third 5-year periods.

This brings us to the letters Mr. Young sought to have introduced as new evidence for the landlords. There was one to them of 14 November 1979 from the tenants' solicitors asking for extension of their tenancy for a further period of 20 years. The landlords replied on 21 November agreeing and proposing a rental figure for the first 5-year period up to 31st December 1982. They added: "rent for the succeeding three 5-year periods will be established in the manner and at the time provided by the Ordinance [ALTA]." The solicitors replied on 11 December pointing out that the proposed rental for the first period did not accord with the provisions of the Act, and concluding: "As for rent we cannot agree and are happy to have the Tribunal fix it."

This correspondence may constitute notice by the tenant requiring the rent to be assessed in respect of the first period, but as already remarked this can have no bearing on the present appeal because that rental is not in issue. However, the reference in the landlord's letter to establishing rentals for the succeeding three 5-year periods is no more than a general intimation that steps will be taken under the Act to have the rent assessed in future. In our view this cannot be regarded as satisfying the notice required by s.19(1)(g) to be given three months before the expiry of each succeeding 5-year period. The letters, therefore, have no material bearing on the case subject to appeal, and leave to admit then is accordingly declined. A further barrier to their admission lies in the fact that they were clearly available to the appellants to be produced at the Tribunal hearing, and should have been discovered with the exercise of reasonable diligence.

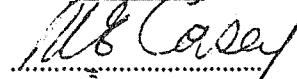
Conclusion

- (1) The application for leave to admit further evidence is dismissed.

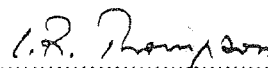
- (2) The appeal is allowed and the order made in the High Court dismissing the appellant's application for judicial review is set aside. Judicial review is granted and the order of the Central Agricultural Tribunal of 1st September 1993 confirming the Agricultural Tribunal's order fixing the rent from 1st January 1985 to 31st December 1989 at \$7597 per annum and from 1st January 1990 to 31st December 1994 at \$8356 per annum is set aside, and so is the order to that effect of the Agricultural Tribunal of 27 August 1991.
- (3) The order made in the High Court that the applicants/appellants pay the respondents cost is set aside, and each party will pay their own costs in that Court. In this Court the appellants will have costs against the first and second respondents of \$1500 inclusive of disbursements.



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Sir Moti Tikaram
President



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Sir Maurice Casey
Justice of Appeal



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Justice I R Thompson
Justice of Appeal

Solicitors:

Messrs Mishra Prakash & Associates, Suva for the Appellants
Messrs Young & Associates, Lautoka for the Respondents
Office of the Attorney-General, Suva for the State Law Office