

IN THE HIGH COURT OF FIJI
AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. HBJ 34D OF 2007S

IN THE MATTER of an application by
UDAY VIR SINGH father's name Uday
Raj Singh of Tavarau, Ba, Cultivator for
a Judicial Review of a decision or order
of **CENTRAL AGRICULTURAL**
TRIBUNAL made on the 12th day of
September 2007.

BETWEEN : **UDAY VIR SINGH** father's name Uday Raj Singh of Tavarau, Ba,
Cultivator

APPLICANT

AND : **PARVATI**

RESPONDENT

AND : **DIRECTOR OF LANDS**

INTERESTED PARTY

Counsel for the Applicant : R. Prakash : Mishra & Prakash

Ms J. Jattan : Mishra & Prakash

Counsel for the Respondent : D. Gordon : Messrs Gordon & Co

Counsel for the Interested
Party : Ms N Karan : Attorney-General's
Chambers

Date of Decision : 22 February, 2008

Time of Decision : 9.30a.m.

DECISION

At the beginning of this hearing leave was granted for the Director of Lands to be added as the Interested Party to this proceedings.

This is a Motion for leave to apply for Judicial Review by the applicant against the decision of the 1st Respondent the Central Agricultural Tribunal, disallowing his appeal for a declaration of tenancy under the Agricultural Landlord and Tenants Act ("ALTA") (Cap. 270).

The law governing leave is set out under Order 53 of the High Court Rules (as amended by the Supreme Court (Amendment) Rule 1981 – LN2/81) Order 53 Rule 3(1) states that no application for judicial review shall be made unless the leave of the Court has first been obtained. The purpose of Leave requirement is to eliminate frivolous, vexatious or hopeless applications. In other jurisdictions the requirement of leave has been done away with altogether leaving the issue of vexatious, frivolous or hopeless applications to costs later. As it is, this Court is guided by statement of principle set down by our Court of Appeal in National Farmers Union -v- Sugar Tribunal & Or FCA 8/1990. The Court said,

"We accept at the leave stage of an application for judicial review the Court is not required to do more than decide whether the applicant (leaving aside the issue of locus standi and delay, which are not at issue here) has shown prima facie and arguable case on the merits of each ground of relief."

The position then is if the Applicant can establish he has locus standi, that is, he has a sufficient interest in the matter (O.53 r.3(5)), and there has not been undue delay in the making of the application (O 53 r.4), than the Court need only be satisfied that there is a prima facie and arguable case advanced by the Applicant as apparent from the grounds of the claim.

There is no question in this instance that the applicant has sufficient interest in the matter to which the application relates. His right to the tenancy over CL11775 is in issue. There is furthermore no arguments on whether there was delay in the filing of this claim.

The remaining consideration is whether there is a prima facie and arguable case. Both Counsels have ably argued on the finer points of the law on this issue, even to the extent of the Court allowing some indulgence in addressing the substance to the claim, if only to emphasise the merit or otherwise of allowing leave.

The preliminary objections raised by the Interested Party, who is principally the Respondent in this claim, on the application of Section 61(1) of ALTA, does not prevent a judicially review proceedings. I do not have to refer to various authorities that counsel had cited in their arguments. It is sufficient to say that the finality of the Central Agricultural Tribunal's judgment, determination or award protected under Section 61(1) may only be so provided that the decision making process was properly carried out. Whether the Appellant's claim is in effect an appeal on the merits as argued by the Respondent is denied by the Applicant. The Court is not prepared at this juncture to rule on it. It is a matter that is to wait for substantive arguments.

The principal ground on which the Applicant's claim is based is that the Central Agricultural Tribunal had erred and went beyond its jurisdiction in not declaring, on the facts presented and apparently accepted by the Tribunal, that there exists a tenancy in favour of the Appellant, in accordance with Section 4 of ALTA. The presumption of the existence of the tenancy is, according to counsel, by operation of law, and by not declaring its existence, the Tribunal had made an error of law. This error of law goes to the excess of jurisdiction which is capable of being judicially reviewed.

Relying on the National Farmers' Union test, I am satisfied that the Applicant has shown a prima facie and arguable case for leave to be granted. Whether the Tribunal was obliged to exercise its statutory powers under Section 4 for the benefit of the Applicant and whether there were clearly evidence established to support lends credence to the application.

Leave to claim judicially review is hereby granted.

The matter will now take its normal course. Costs in the cause.



F Jitoko
JUDGE

At Suva

22 February, 2008