

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 102 of 2015

BETWEEN : RAJENDRA DEO PRASAD

PLAINTIFF

AND: LAND TRANSPORT AUTHORITY

DEFENDANT

Counsel : Plaintiff: Mr. Pal. A
Defendant: Ms. Colati. T

Date of Judgment : 30.06.2020

JUDGMENT

INTRODUCTION

1. This is Plaintiffs application seeking injunctive relief against Defendant, a statutory body, regarding an area of operation (i.e along **Qawa Road**) under Road Route Licence (RRL). Plaintiff state that his licence was amended in 2001 to include passengers in a particular area (i.e **Qawa Road Junction**). According to Plaintiff this amended area could not be operated by Plaintiff due to an injunction issued in 2002. There were no details of the said injunction which related to restraining Plaintiff in '**Bulika/Boubale Road** as instructed by letter of Land Transport Authority (LTA) dated 26.9.2002'. Plaintiff had not filed said letter of LTA dated 26.9.2002 referred in the said injunctive orders, and there was no reference as to Bulika/Boubale Road in the RRL issued to Plaintiff. Without perusal of those, Plaintiff's position regarding Qawa Road Junction cannot be ascertain in an injunction through perusal of affidavits. According to Plaintiff, he had realized in 2015 that said injunctive orders were no longer applicable, as the said action was struck off in 2006 and had allegedly started operating in the said area. Why he was not aware of the said striking off, when he was the sole Defendant in the said case where he was restrained from an injunction was not explained. This was peculiar if he was already granted permission by LTA to operate in said area restrained by injunction. LTA

was not a party to said action. Plaintiff state that since injunction was no longer operational he had started operating in Qawa Road. Defendant state that the area stated in the amended RRL in 2001 was renamed in or around 2004 hence the present area stated in RRL cannot include disputed area. Defendant also raised issue as to the jurisdiction of the court to determine this matter as there is a specialized Land Transport Appeals Tribunal (LTAT) for such issues relating RRL. It is clear that RRL No 12/23/34 was issued under Part 6 of Land Transport Act 1998. Any matter that requires decision under Part 6 was within the jurisdiction of LTAT. It had over the years acquired specialized tribunal status with knowledge about prevailing local conditions, roads, and or issues of facts with regard to delegated jurisdiction in terms of Section 40 of Land Transport Act 1998. Plaintiff was seeking injunctive orders, on the basis of certain facts regarding an area or road covered under RRL, which are best dealt by specialized tribunal such as LTAT. Without prejudice to what were stated earlier, present application fails as the status quo that prevailed from 2002 should prevail. The injunction issued against Defendant had got dissolved in 2006 and the fact that Plaintiff did not take any action for nearly a decade, indicates that there was no urgency to grant injunctive relief, as Plaintiff can wait till this issue was resolved by LTA. There is no reason to grant interim relief, when Defendant had requested not to operate in Qawa Road until LTA clarify the issues (See annexed I to affidavit in support). The injunction application is premature as LTA had requested to maintain status quo that prevailed before Plaintiff's additional operations till the issue was resolved. Plaintiff needed to wait and cannot steal a march over other stake holders through interim relief, by way of injunction. So the application for injunction relate to this issue and all orders sought are struck off.

FACTS

2. Plaintiff is seeking *inter alia* following orders in the *inter partes* summons:
 - a. "An Order that the Defendant, its agents, servants, contractors, persons under the direction, instructions or control of the Defendant be restrained from interfering with the plaintiff's operation of bus services as per the provisions of Road Route Licence No. 12/23/34 including operations on the Labasa-Qawa Road junction-Labasa route via Vulovi Road;
 - b. An Order restraining the Defendant from issuing any Road Route Licenses, permits, consents, directions or instructions to any bus operators that run either parallel service or competes against the plaintiff's bus service under the routes set out in RRL 12/23/34 including operations on the Labasa-Qawa Road junction Labasa route via Vulovi Road;

- c. An Order restraining the Defendant from any manner or from dealing with, suspending, cancelling, terminating RRL 12/23/34 or taking any actions which may limit or diminish the rights of the plaintiff can contained in RRL 12/23/34;
 - d. An Order restraining the Defendant, its agents , servants, contractors, persons under the direction, instruction, or control of the Defendant from harassing, intimidating or threatening the plaintiff, his agents, servants and contractors during the ordinary provision of bus services by the plaintiff under RRL I 2/23/34 including operations on the Labasa-Qawa Road junction -Labasa route via Vulovi Road.”
3. Plaintiff had obtained RRL 12/23/34 and its previous route was not known but after amendment was sought and obtained its route was annexed as A.
 4. He had sought amendment to said RRL and the said application was annexed , and Defendant through its letter 25.7.2002 had approved route Labasa /Qawa Road Junction/Labasa.
 5. There was no sketch or plan annexed to the said RRL hence names of roads stated in the said RRL was general usage and especially official usage of names of the roads. If it differs the Plaintiff needed to submit any material at the interlocutory injunctive application to support its allegation.
 6. According to Defendant’s affidavit in opposition roads in the area had been renamed with change of certain areas and in the annexed ‘B’ from an government official (i.e engineer (North) Ministry of Infrastructure) relating to subject of road stated:

“This is to confirm that the former Boubale Road which branch off from the Bulileka road at Bulileka village and end at Boubale Primary School was renamed Qawa Road in 2004 by PWD management after consultation were carried out with relative stakeholders to confirm the correct location name as stated in the proclamation detail....”
 7. Defendant disputed the Plaintiff’s position that his RRL authorized the additional area where he had started operation about a month before this application was filed. These are facts that cannot be deter.
 8. Plaintiff did not operate along disputed are from 2002 till recently, about one month before insinuation of this action.

9. In the affidavit in support the reason for Plaintiff not operating in the disputed area was an injunction of the court which was struck off in 2006. From this time nearly a decade Plaintiff did not operate in the said area where the dispute arose.
10. Defendant had requested Plaintiff to stop operations in the disputed area immediately till the dispute is resolved and after issuance of this matter within 21 days this action was instituted.
11. Defendant objected the jurisdiction of this matter and said this is a matter in terms of Section 40 of the Land Transport Act 1988.

ANALYSIS

12. I have dealt the issue of jurisdiction as a preliminary point of law. Defendant submits that the court does not have jurisdiction to deal with matter raised by Plaintiff. According to Defendant proper forum was LTAT.
13. Jurisdiction of LTAT is stated in Section 40 of Land Transport Act 1998. It states;
“40(1) This section establishes the Land Transport Appeals Tribunal.
(2) The function of the Tribunal is to hear and determine appeals against decisions of the Authority relating to—
(a)licensing of drivers under section 56;
(b)**any matter requiring a decision of the Authority under Part 6**,and any other matter prescribed by the Minister by regulations.”
14. Part six of Land Transport Act 1998 deals with Public Service Vehicle Licensing. Plaintiff was issued with RRL in terms of said part of the Act this is clearly visible on the first page of the RRL 12/23/34 annexed as A to the affidavit in support.
15. It is axiomatic that it was the Land Transport Authority, that determined the routes of operation of RRLs and also regulation of that and this authority derived from part 6 of Land Transport Act 1998.
16. According to Plaintiff he had started operating in an additional are just over a month before filing of this injunction application and Defendant had ‘started to disrupt’ his operations.
17. In the affidavit in support at paragraph twenty six, it was stated that reason given by LTA or abovementioned disruption was that the road that he operated was not covered under

his RRL, and this was not a new issue and it had prevailed over time. So, Plaintiff knew about the dispute when it started operation in an area where it did not operate over a decade, hence the *staus quo* should be that he stop operations in the disputed area immediately. Defendant had accordingly warned the Plaintiff and or its agents or drivers from operating in disputed area and also issued a letter to that effect that warned them of serious consequences if their warning was not heeded. All these efforts of Defendant were legitimate and proper. Plaintiff had attempted to stole a march over others through this application for injunction, which was not the purpose of discretionary remedy of an injunction.

18. Defendant had requested Plaintiff not to operate on Qawa Road, until they clarify the issue. This was an interim measure till full ventilation of the issue, that had prevailed over a decade. Plaintiff had filed this action within a month from that letter of Defendant to stop operations, without allowing time for them to resolve the issue. This action of the Plaintiff was not justified.
19. Plaintiff was also seeking injunction against Defendant, regarding incidental issues arising from this main issue as stated previously. So all the injunctive orders had arisen from Plaintiff's action to start operations in an area it did not operate more than a decade. There is no issue as to operation of his RRL, excluding disputed area as he had done so for fifteen years.
20. This injunctive application fails due to number of reasons, first it was a matter that require determination of Defendant under part 6 of Land Transport Act 1998 as the issue was regarding the area of operation under RRL. This is sole prerogative of Defendant taking in to consideration of various factors. These factors keep changing over the years and accordingly adjustments are also needed. The sole purpose of establishment of statutory body such as LTA was to deal with such situations more efficiently and independently. Any decision taken under part six of Land Transport Act 1998 must be dealt by LTAT in the first instance. This is to consider multifaceted nature of such decisions and also to create specialized body to deal with all the facts promptly. An appeal form LTAT is also restricted to point of law.
21. This was purely a factual matter that needs local and industry specific knowledge with local naming of roads and usage of commuters and their requirements which was exclusively with LTAT. One cannot expect the population and their requirements, development of an area, road infrastructure and their network to remain same over fifteen years. Plaintiff as an operator should be mindful of these factors. This was the reason for creation of an independent LTAT to deal with all factual matrix of an issue of a decision under part six of the Land Transport Act 1988. Finding of such facts by LTAT were not

appealable to Court. So findings of facts under part 6 of Land Transport Act 1998 were excluded from jurisdiction of courts and delegated to LTAT.

22. The application of injunction was premature, as decision of Defendant to stop operating in Qawa Road was not final but to preserve *status quo*, till resolution of long standing issue.(see paragraph 26 of affidavit in support)
23. A according to the admissions of the Plaintiff. He admitted that the issue was a long standing one and he had started operating in an additional area about a month ago, before institution of this proceedings, without resolving the issue with Defendant and other stake holders. There was no urgency to seek injunctive relief as the Plaintiff had on its own admission had refrained from operating in the said are for nearly a decade.
24. His solicitors had written to Defendant few days before commencement of operation in additional area, but in the said letter marked as G1 had not mentioned what was the additional area he was intending to operate. Why this vital fact was concealed in the said letter, if they were genuine about the issue and notice to Defendant?
25. Without specifying the area where Plaintiff was about to operate, he had stated that he will be operating under RRL 12/23/34 knowing well that there was an issue regarding operating in Qawa Road.
26. Plaintiff was obliged to state the area where it intended to operate with clarity, when he knew there were issues in operating in the said are. Plaintiff's solicitors had not clearly indicated these vital facts in the said communication to the Defendant.
27. So, the Defendant was unaware of Plaintiff's impending operations in Qawa Road till operations in the said area commenced by Plaintiff. It had acted promptly to stop Plaintiff's actions.
28. Defendant being the regulatory body, had informed the Plaintiff not to operate in Qawa Road, which they had not operated for nearly a decade. This was prudent thing to do under circumstances. Defendant had done so promptly.
29. So, even balance of convince favours refusal of injunction. Plaintiff had remained inoperative along Qawa Road, till shortly before this application, despite the injunctive orders and the said action being dismissed.
30. Operation of public transport affect lives of people and they adopt their activities accordingly. So injunctive remedy by courts are not suitable to grant Plaintiff access to an area where it had not operated over a decade, even if that was included in RRL. In this

instance there was a real dispute as to the area of his RRL and also change of names of the roads subsequent to RRL. These are factors for LTAT to decide after a final decision by Defendant.

31. There was evidence that during this time roads in the area got renamed and names of areas had changed. These were disputed facts that cannot be determined by court and as stated earlier more apt to be dealt in specialized LTAT, in cost effective and prompt manner.

CONCLUSION

32. The issue before court was to a matter relating to RRL issued under part 6 of Land Transport Act 1998, LTAT acquired jurisdiction in terms of Section 40(1) of Land Transport Act 1998. Specialized tribunals are created in order to ease the workload of the courts and or to create a body with specialized knowledge on the subject and also create uniformity in dealing with similar issues. This is not to exclude a party from redress of the court, but to manage and administer access to justice more efficiently and effectively. LTAT's decision can be appealed to High Court, only on a point of law. This was clearly to restrict parties seeking redress from court for matters stated in terms of Section 40(1) of Land Transport Act 1998. When there are large workload in a certain area that needs quick and effective resolution such tribunals are essential and LTAT is one such body. So the issue relating to Plaintiff operating in Qawa Road was purely a factual matter that was vested with LTAT. Even if I am wrong on the above, the application for injunction was premature as Plaintiff had instituted this action, within twenty one days from receipt of the letter where he was requested to stop operating in Qawa Road till clarification of the issue by Defendant. This was a long standing issue. So balance of convenience also favours maintaining *staus quo*. Application of injunction struck off. Cost of this application is summarily assessed at \$1,000 to be paid by Plaintiff to the Defendant within 30 days. Delay is regretted.

FINAL ORDERS

- a. *Inter partes* motion seeking injunctive relief is struck off.
- b. Cost of this matter is summarily assessed at \$1,000 to be paid within 30 days by Plaintiff to Defendant.
- c. The matter to be listed before Master for directions.

Dated at Suva this 30th day of June, 2020.



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Justice Deepthi Amaratunga