In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBJ 04 of 2019

Leone Vakarusaqoli

Applicant

v

Central Agricultural Tribunal

Respondent

Counsel: Mr N. Nawaikula with Ms S. Ratu for the applicant
Mr P. Prasad with Ms S. Chand for the respondent

Date of hearing: 3rd February,2020

Date of Ruling : 24th July,2020

Ruling

1. This is an application for leave to apply for judicial review a decision of the respondent. The respondent set aside a judgment of the Agricultural Tribunal,(AT).

2. The AT granted the applicant a declaration of tenancy over the relevant land described in Crown Lease No. 12625. The Director of Lands,(the second respondent before the AT) and the Registrar of Titles were ordered to cancel the Crown Lease and issue a new instrument of tenancy to the applicant under the provisions of ALTA.

3. Vijendra Prasad,(the first respondent before the AT) appealed the decision of the AT. On 22nd August 2018, the respondent allowed the appeal.

4. The applicant seeks the following reliefs:

   a. A declaration that the respondent acted ultra vires its powers in allowing the appeal by failure to take into account relevant considerations and by taking into account irrelevant consideration and therefore wrongly interpreted the law as follows;

   b. Certiorari quashing the decision of the respondent.

   c. A mandamus restoring the decision of the Agricultural Tribunal Reference No. C & ED No. 2 of 2015 dated 26th January, 2018.

5. The respondent, in its notice of opposition states that the respondent did not err in ruling that the judgment of the AT was contrary to the provisions of section 3(1)(a) of the Agricultural Landlord and Tenant Act,(ALTA) and that the applicant did not commence cultivation in 2010. There was no evidence adduced by the applicant to prove that the Minister, had by Gazette specified that the provisions of ALTA shall apply to Crown Lease No. 12625 nor when the applicant started cultivating the land.

The determination

6. The applicant seeks leave to review a decision of the respondent of 22nd August,2018. This application was filed on 15th April,2019, 7 months, 3 weeks thereafter.

7. Or 53, r 4 provides that the Court may refuse to grant an application for judicial review where there has been "*undue delay*" in making the application. A period of 3 months is stipulated where an order of certiorari is sought.

8. The Court of Appeal in ***Maisamoa v Chief Executive Officer for Health*** [2008] FJCA 41; ABU0080.2007S (10 July,2008) stated:

> *One of the principal features of judicial review as a remedy is that it must be instituted promptly. Indeed, Order 53, Rule 4 makes that plain from the language of the rule which requires that applications for leave must be made promptly and in any event within three months from the date when the grounds for the application first arose. Indeed, so critical is promptness to the remedy of judicial review that is well established that leave may be refused on the ground of undue delay even if the application is made within three months.* (emphasis added)

9. The applicant attributes the cause of delay to the Registry of the High Court, Suva. He states that his counsel submitted the application to the Registry in October, 2018, for approval and in November, 2018, the Registry had not approved the documents.

10. The Deputy Registrar Legal, in his affidavit has stated that no application for judicial review was lodged by the applicant in October, 2018, and quite correctly pointed out that there is no process for approval of documents sought to be filed.

11. In ***Harikisun Ltd v Singh,***[1996] FJCA 15; ABU0019.1995S the Court stated :

> *It is clear that the application was filed after the relevant time of three months had expired, even from that later date, but that in itself does not require leave to be refused. It is a ground on which the judge may exercise his discretion and refuse leave but he was not obliged to do so.* ***We turn, therefore, to consider whether the delay was undue in terms of rule which requires one to consider whether the reasons for it were such as to make it reasonable and justifiable.***(emphasis added)

12. In my view, the explanation provided by the applicant is inappropriate, unacceptable and "*detrimental to good administration*", as provided in Or 53, r 4(1).

13. I conclude that there has been undue delay in filing this application.

14. For completeness, I will consider the grounds of review urged.

15. It is contended that the respondent erred in :

a. failing to properly consider the authority of ***Surji v NLTB,***[1997] 43 FLR 138, on the waiver of the right of the appellant and estoppel forbids the appellant to raise the issue of jurisdiction in the appeal.
b. ruling that the judgment of the tribunal is contrary to the provisions of section 3(1) (a) of the Act.
c. ruling that money that was paid to the brother of the appellant on the basis that there was an informal sale and purchase agreement, when it was clear from the evidence that the appellant was treating that as rent as he totally denied any sale.
d. ruling that the respondent did not commence cultivation in 2010.

16. The first ground contends that the respondent did not consider the decision in ***Surji v NLTB,***(*supra*).

17. The authority relied on does not address the matter in issue. ***Surji v NLTB,*** concerned a claim for compensation by a tenant of an expired native lease for an irremovable dwelling and whether the Magistrates' Court exceeded its jurisdiction in dealing with a counterclaim.

18. Section 3(1)(a) of ALTA provides that the provisions of ALTA shall apply to all agricultural land except holdings of an area of less than 1 hectare, unless specified by the Minister by a gazette notification.

19. The impugned decision states that there was no dispute between the parties that the extent of the relevant land was 0.5958 hectares and there was no evidence of a ministerial gazette notice.

20. In that circumstance, the respondent was correct in finding that the judgment of the AT was contrary to section 3(1)(a).

21. I move on to the third ground.

22. The respondent, in its judgment held that there was no evidence that there was a landlord and tenant relationship between the appellant and Vijendra Prasad. The evidence was that money was paid to the brother of the appellant on the basis of an informal sale and purchase agreement.

23. On the ultimate ground, the respondent found that the appellant did not testify as to when he commenced cultivation.

24. In my view, the respondent reached a correct conclusion on the evidence.

25. In my view, the applicant has failed to present an arguable case.

26. In ***Maisamoa v Chief Executive Officer for Health,*** [*supra*] the judgment of the Court stated:

> *...All that needs to be demonstrated at the leave stage is that there is an arguable case. In* ***State v Connors, ex parte Shah*** *[2008] FJHC 64 Scutt J correctly observed about the process at the leave stage:*
> ***At this stage a full review of the facts is unnecessary. Nonetheless, a court is obliged to sufficiently pursue the material provide to determine whether an applicant raises an issue arguably involving an error in law, a serious error in fact; a violation of natural justice or procedural fairness, or an excess of jurisdiction by the decision-maker the subject of the application.***(emphasis added)

27. ***Orders***

a. The application for leave to apply for judicial review is declined.

b. I make no order as to costs

A.L.B. Brito-Mutunayagam
JUDGE
24th July,2020

HIGH COURT CIVIL
SUVA