

IN THE HIGH COURT OF FIJI
CIVIL JURISDICTION

Civil Action No. HBC 311 of 2018

IN THE MATTER of an application
seeking vacant possession of land under
Order 113 of the High Court

BETWEEN: **LONI PROPERTIES LIMITED** is a limited liability company having
its registered office at Loni Settlement, Sakoca.

PLAINTIFF

AND: **ROHENDRA PRAKASH** of Sakoca Subdivision, Tacira.

1ST DEFENDENT

AND: **JITENDRA PRASAD** of Sakoca Subdivision, Tacira.

2ND DEFENDENT

AND: **BIMLA WATI** of Sakoca Subdivision, Tacira.

3RD DEFENDENT

Counsel : Plaintiff: Mr Nand. A
: Defendants: Ms Qioniwasa. B
Date of Hearing : 22 &24, February, 2021
Date of Judgment : 22.03.2021

JUDGMENT

INTRODUCTION

1. Plaintiff is a legal entity that obtained a development lease (DL) for an area described in the said agreement. DL was granted by iTaukei Land Trust Board (TLTB) for five years from 2017. Defendants were on the said land prior to 2017, but they were unable to obtain an 'existing freehold or leasehold title' from TLTB, in order to exclude the area where they occupy, in terms conditions of DL. There was no dispute that Defendants were possessing certain areas within DL and there was no dispute as to the said areas, as shown in survey plan

and subdivision plan approved, by Department of Town and Country Planning. Plaintiff was granted DL and it could not fulfill its obligations, when unauthorized occupations of Defendants. This action was instituted in terms of Order 113 of High Court Rules 1988(HCR). Master had converted it to a writ, on the basis that facts were required to be ascertained from oral evidence, but in oral evidence there were no dispute as to relevant facts. In terms of DL all the Defendants and their occupation becomes unlawful, within the area stated in DL. The Plaintiff cannot grant rights in contravention DL and iTaukei Land Trust (Lease and Licences) Regulations 1984. Plaintiff was entitled to file an action for eviction of Defendants including an action in terms of Order 113 of HCR. The development of the area was required to be in accordance with the approval granted. Defendants' occupation of land, contravene DL and also site plan approved, hence a hindrance to complete development of land in terms of DL. Defendants could not show an existing leasehold right to exclude the area they occupy, hence are ordered to vacate the occupation inside DL, within three months from this order. TLTB had informed Plaintiff that first and second Defendants occupation was not under a valid lease and fifth Defendant's occupation was terminated by TLTB.

FACTS

Following facts were admitted in Pre Trial Conference

- a. Plaintiff is a Limited Liability Company and is at all material time the Lessee of Agreement for Lease dated 19.9.2017 for a land more fully described in the said DL.
 - b. Plaintiff obtained DL from TLTB for a term of five years from 2017.
 - c. Plaintiff's solicitors had served first and second Defendants notices of eviction dated on 23.1.2018 and they were served on 31.1.2018.
 - d. Fifth Defendant's Tenancy at will was purportedly terminated on 20.2.2018 by TLTB.
2. For Plaintiff only one witness gave evidence and marked documents and neither his evidence nor the documents were challenged by Defendants through cross examination.
 3. Plaintiff had filed DL (P1), eviction notices to first and second Defendants dated 23.1.2018 P2, P3), Termination of Tenancy at Will issued to fifth Defendant by TLTB (P9), Approved Subdivision Plan (P4 and P5 – amended subdivision), P7 communication from TLTB as to the validity of their occupation on the land.
 4. All three Defendants also gave evidence and their evidence could not establish an existing freehold or leasehold right to any part of land within DL.
 5. Defendants filed documents D1 to D9, but none of them contained even an offer from TLTB to occupy a land within DL.

6. Plaintiffs witness said that they could not complete development, due to Defendants' occupation on Lot 1, 2 and 3 of P4.
7. He said that some houses were existing on the land when they got the project to develop. The position of the said occupation was clarified by letters from lessor (P7 and P9).
8. Defendants filed written submissions and raised legal position whether Plaintiff could institute action for eviction of Defendants in terms of DL.

ANALYSIS

9. There was no dispute as to Plaintiff's DL and all the Defendants were in occupation on three distinctive areas, within DL.
10. Defendants were in occupation as shown in lot 1, 2 and 3 of approved Site Plan marked P4.
11. According to said approval Lot 1 of P4 was not residential, hence no residential lease could be granted on that land lawfully in the sale.
12. Defendants' contention was that Plaintiff cannot institute an action for eviction, without formal lease due to a condition contained in DL where certain areas within DL was deemed excluded and or that there was no proprietary rights to Plaintiff to bring an eviction action.
13. Plaintiff's DL granted by ILTB contained following condition
"In the event of it being shown by survey that the land agreed to be lease forms part of an area of land the subject of an existing freehold or leasehold title this agreement to lease shall be deemed to exclude such area"
14. Plaintiff's rights under DL was, for specific purpose, to develop and to transfer said developed are. This grants the lessee, the right to exclusive possession subject to the conditions contained in DL and also to evict any existing occupants or future occupiers who could not show that they have a leasehold or freehold right to any area within DL.
15. Plaintiff through survey had shown that all the Defendants were occupying certain parts of said DL which was approved for subdivision. This survey was not challenged or these facts were denied.
16. Accordingly, Defendants had dispossessed certain parts of land contained in DL from Plaintiff to develop the same in accordance with approved subdivision. Plaintiff is entitled to file an action based on DL against Defendants.
17. Defendants gave evidence and said they were all in occupation of three areas of land comprised in DL.

18. First Defendant in the evidence stated he had paid some money to late Cama Sukanavlaue and it was around \$15 per month. There were no receipts, but stated that he was drunk when money was requested, hence no receipts were requested.
19. First Defendant had made an application for lease from TLTB contained in D4 and D3 indicated statement of account in his name but these were not sufficient to exclude any area contained in DL or to undermine Plaintiff's exclusive rights under DL to evict other parties and develop the area in terms of approval granted.
20. Plaintiff marked letter P7 which stated that first and second Defendant's predecessor from whom second Defendant was claiming rights to the land had no valid leases issued from TLTB. This position is an admitted fact.
21. There was not even an offer made by TLTB for a lease in favour of any of Defendants. The fact that first Defendant and second Defendant's predecessor had made an application, but no offer was made hence, occupation was not valid.
22. First and second Defendant do not have a right to occupy any area inside DL, though they and predecessors have dealt with TLTB in order to obtain leases, yet they were not granted legal right to occupy. Hence, they do not have right to occupy land contained in DL.
23. Document marked P7 which was not disputed state that Plaintiffs occupation on land was unlawful.
24. Fifth Defendant was in occupation subject to tenancy at will which was cancelled by TLTB through a notice served 16.2.2018. This letter was marked P9. Said letter dated 16.2.2018 had granted six months for the fifth Defendant to vacate the premises while cancelling her rights as tenant at will.
25. In the absence of any existing freehold or lease hold right for Defendants over the land comprised in DL their occupation on the said land were illegal. Hence they are evicted from said land to the extent they had encroached DL. Considering long occupation on the land I grant them three months to vacate the land. Considering the circumstances of the case I do not award any costs.
26. Though Plaintiff had claimed for damages this was not sought in the evidence. Evidence in chief did not state that Plaintiff had incurred any loss from Defendants' occupation. So the claim for damages contained in statement of claim is refused.

CONCLUSION

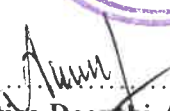
27. First, Second and Fifth Defendants are occupying certain parts of land contained in DL. Plaintiff as the lessee in terms of the said agreement with TLTB is entitled to exclusive right to develop and possess the said land within time period of DL. Hence Plaintiff under said agreement can institute an action in terms of Order 113 of HCR to evict unauthorized occupants from area stated in DL. Though the action was converted by Master, facts were not disputed. Defendants had failed to establish leasehold or freehold right to any area inside DL in order to exclude such are from DL so that eviction from that area in DL is granted. Considering the circumstances of case and the structures were dwellings, three months granted for Defendants to evict. I have considered that first and second Defendants had ample time from eviction notice issued in January, 2018. Tenancy at will granted to fifth Defendant was also terminated in February, 2018 and six months granted for eviction at that time. Plaintiff is entitled to an order of eviction of Defendants from land contained in DL after expiration of three months from today.

FINAL ORDERS

- a. First, Second and Fifth Defendants are ordered to vacate the land contained in Development Lease TLTB No 4/3/40584.
- b. They are granted three months from today to vacate the said land.
- c. No costs.

Dated at Suva this 22nd day of March, 2021.




.....
Justice Deepthi Amaratunga
High Court, Suva