

A VINODCHANDRA SHANKARBHAI PATEL & OTHERS

v.

RAJENDRA PRASAD

[SUPREME COURT, 1976 (Stuart J.), 13th December]

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Civil Jurisdiction

*Native land—rights of members of mataqali to be registered as electors—Local Government Act 1972 ss. 2, 11—Native Land Ordinance (Cap. 114) ss. 4, 8, 9(1), 10.*

C *Local government—electorate—rights of members of mataqali to be registered as electors—Local Government Act 1972 ss. 2, 11—Native Land Ordinance (Cap. 114) ss. 4, 8, 9(1), 10.*

*Interpretation—proprietary unit—Interpretation Ordinance 1967 s. 2(1).*

By originating summons, the plaintiffs sought declarations from the court regarding the rights of members of a mataqali to be registered as electors.

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*Held:* 1. The term “owner” in Local Government Act 1972 s. 2 sufficed to comprehend Fijian or native owners of unalienated land.

2. The term “owner of land” in Local Government Act 1972 s. 11 comprehended the individual members of a Fijian landowning proprietary unit, a mataqali.

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3. Members of a mataqali living outside a town and holding land inside the town were entitled to enroll as electors.

4. Members of a mataqali owning land within a town which was leased out to tenants were to be regarded as owners and thus entitled to be enrolled as electors.

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*Per curiam:* Once an elector’s name had been placed on the roll (Local Government Election 1972, (Local Government Election Regulations 1972 Schedule 1 rule 6) the burden fell on an objector to satisfy the Registration Officer that his objection was well founded.

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Cases referred to:

*Charlie Ravono Thomas & Ors v. Native Land Trust Board* 8 F.L.R. 223.

*Meli Kaliavu & Ors v. Native Land Trust Board* 5 F.L.R. 17.

*Wylde v. Silver* [1963] Ch. 243; [1962] 3 All E.R. 309.

*Ujagar Singh & Ors v. R.* 22 F.L.R. 146.

*Derby (Earl of) v. Bury Improvement Commissioners* (1869) L.R. 4 Ex. 222.

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Applications by way of originating summons for declarations relating to the registration as electors of members of a mataqali in varying circumstances.

*H. M. Patel* for the plaintiffs.

*G. P. Shankar* for the defendant.

*M. Scott* for the Attorney-General intervening.

STUART J.: [13th December 1976]—

This is an originating summons which in its final state asks the court to decide:

1. On the true construction of the word 'owner' in section 2 of the Local Government Act 1972 in relation to unalienated Native Land situated in Ba town.
2. What is the true construction of section 11 of the above Act.
3. Whether members of a mataqali living outside the limits of Ba town but owning unalienated native land in the town are entitled to register as voters.
4. Whether members of a mataqali owning land within the town but leased out to tenants by the Native Land Trust Board are entitled to be registered as voters.

The plaintiffs are certain ratepayers in the municipality or town or Ba, and one of them is presently a member of the Town Council. The defendant is sued as the registration officer of Ba Town Council and is in fact, so I am informed, the Town Clerk of Ba. The Attorney-General of Fiji claimed the right to intervene upon the ground that a decision in this sort of action is a matter of public policy, and as there was no objection by either plaintiffs or defendant he was allowed to intervene. I may say that counsel for the registration officer seemed concerned to support the plaintiffs' application and the only real argument came from counsel for the Attorney-General. It is perhaps desirable at this stage to set out the section. It reads:

"11. (1) Every person of or over the age of twenty-one years who is a citizen of Fiji and who is the occupier or owner of land within the municipality shall be entitled to be enrolled as an elector.

(2) In the case of a municipality divided into wards, a person registered to be an elector shall be entitled to be enrolled only in respect of the ward in which he occupies or owns land.

(3) The name of an elector shall not appear more than once on the electoral roll of any ward.

(4) A person shall be an occupier for the purpose of this section if—

(a) he has, during the three months immediately preceding the date of closing of the electoral roll in the year in which he applies for registration been in joint or several occupation as a lawful tenant of land within the municipality; or of land included in the municipality by virtue of an extension of its boundaries?

(b) he is nominated in writing as an elector by a body corporate which is, or by trustees who are, in occupation as aforesaid or as owners of land within the municipality:

Provided that the body corporate or trustees shall not nominate more than three persons for enrolment as electors as occupiers in any ward; or

- A (c) he is of or over the age of twenty-one years and has resided in the municipality or in a place included in the municipality by virtue of an extension of its boundaries for a continuous period of twelve months at the time of enrolment."

B I think that the first matter to be mentioned is that this section in stating the requirements of an elector appears to refer to human beings rather than corporate or incorporate units. It will be seen that an elector has to be over the age of twenty-one years, and a citizen of Fiji, both of which are attributes of human beings and although corporate bodies may be more than twenty-one years old and may be registered or domiciled in Fiji, I would regard it as stretching the phraseology of the statute to say that a corporate body is of or over the age of twenty-one years or is a citizen of Fiji. The construction which I put on the section is, I think, supported by subsection (4) (b) which states that a person shall be an occupier for the purposes of the statute if he is nominated by a body corporate which is in occupation of land

C within the municipality. Although 'person' may, of course, include a corporate body subsection 4 (d) seems to indicate that a corporate body is not meant here. I will have to return to this section later.

The term 'owner' is defined in section 2 of the Act in the following terms:

- D " 'owner' in relation to land means a person other than a mortgagee not in possession who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a registered lease or registered agreement;

Provided that in the case of unalienated native land the term 'owner' shall mean the proprietary unit;"

- E To the ordinary layman that may not appear very clear, but the proprietary unit is obviously something which refers to native or Fijian land, and it is defined in section 2(1) of The Interpretation Ordinance 1967 in the following manner: "proprietary unit" in the case of native land means the proprietary unit registered under the provisions of the Native Lands Ordinance as being the owner of the land. I pause here to observe that the correct spelling of the unit 'proprietary' is as shown in the Interpretation Ordinance rather than 'proprietory' as in the Local Government
- F Act.

- I turn, then, to the Native Lands Ordinance (Cap. 114). Section 8 provides that when the description of the boundaries and situation of land is recorded and settled it is to be entered in a register called the 'Register of Native Lands' and the Commission—the Native Lands Commission—has power to order the owners of the land to mark off the boundaries upon the ground. It will be noted that the word used is
- G 'owners', not 'owner'. Moreover, in that Ordinance the term 'native owners' has a meaning assigned to it and means "the mataqali or other division or subdivision of the natives having the customary right to occupy and use any native lands", so that there the term 'mataqali' is used distributively not collectively, as Mr Patel seeks to persuade me it should be used.

Section 9(1) of the Ordinance then begins:

- H "In all cases in which the Commission"—that is the Native Lands Commission—"decides the ownership of any land it shall record the boundaries of such land and in all cases in which the land is decided to be the proper-

ty of a native Fijian it shall record the names of the persons comprising the proprietary unit in respect of that land. . . ”

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Section 10 of the Ordinance provides that the volumes of the register are to be transmitted to the Registrar of Titles, and it also provides that if the name of any Fijian has been improperly placed on the register or inadvertently omitted therefrom the register may be corrected. It would appear therefore that the register is a register of individual Fijians comprising proprietary units. I cannot see any warrant for thinking that the term “proprietary unit” (properly as I have said “proprietary unit”) used in section 2 means anything other than the individuals comprising such unit. If it is said that the legislature could have said ‘the members of a proprietary unit’ if that is what it meant, I think that the answer is to point to the definition of the term “proprietary unit”. The result is that for the purpose of the Local Government Act 1972 it is the persons comprising the proprietary unit who are to be regarded as owners and they are the owners who are entitled under section 11 of the Act to be enrolled as electors.

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I return then to section 11. As I have said earlier, the section appears to contemplate that electors are individual human beings, and when you get the proprietary unit consisting of individual Fijians it is seen that the description given there fits in with the state of affairs contemplated by the Act. The matter can indeed be pressed further still. I think that I must take cognisance of the fact that in this country a very considerable amount of land is what is called ‘native land’, governed by the provisions of the Native Lands Ordinance and the Native Lands Trust Ordinance and that is indeed recognised by the proviso to the definition of ‘owner’ in section 2 of the Local Government Act, I think, then, that I must take notice of the fact that the intendment of the Local Government Act, is that Fijian landowners, that is to say, the members of a Fijian proprietary unit are to be entitled to become electors. Mr Patel tried to argue from section 11 (4) (b), but the fallacy there is that the particular subsection from which he sought assistance refers to ‘occupiers’ not ‘owners’ and it is with Fijian owners that this application is concerned.

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There is nothing in the Ordinance which shows that a corporation can be an elector. Mr Patel argued that the Native Land Trust Board was a trustee for the Fijian owners, but although that may be so generally, the Board has only the control of native land. It collects rents from native lands and pays them out to the individual owners. This aspect of the Board’s duties is referred to in the judgment of Hammett J. in *Charlie Ravono Thomas and Ors v. Native Land Trust Board* (1962) 8 F.L.R. 223. But this does not mean that the Board owns native land, nor does it mean that it can exclude the native owners from being registered as electors. In this respect the defendant’s answer contained in his reply to the plaintiffs of 3rd November 1976 when he gave the Native Land Trust Board as owner of several leases in the town, is incorrect. He should have said that the Fijian owners owned the land, and he should have the names of the proprietary units. If the argument put forward is correct, it would mean that every beneficiary of a deceased person in the country would lose his vote. I do not think that is the law. All parties referred to *Meli Kaliavu & Ors v. Native Land Trust Board* (1956) 5 F.L.R. 17. There five members of a mataqali comprising 150 members sued the Native Land Trust Board for damages and an injunction restraining the Board from leasing part of their land to a certain person. They failed because they were suing personally and not as members of the mataqali. Mr Patel argued that if individual members of a mataqali cannot obtain an injunction they cannot be registered as electors. The short answer to that is they are registered as electors because

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A the statute says they can be. Mr Shankar argued that Meli's case established that a mataqali is a collective unit. With respect I do not think that it establishes anything of the sort. To my mind it makes clear that individual members of a mataqali cannot establish any rights in respect of mataqali land. Nor can a shareholder in a company or even a director of a company establish any right to company land. Still less, of course, can a member of a club or other unincorporated body establish a right to club property. However, the position in *Meli Kaliavu's* case might have been different had the five members sued in a representative action as in *Wyld v. Silver* [1963] Ch. 243, cited by Mr Scott. That indeed is, I think, what Hammett J. refers to when he says that if any damage had been suffered by the mataqali, the mataqali could recover.

C The answer to the first question posed by the originating summons is that the term 'owner' suffices to comprehend Fijian or native owners of unalienated land. Unalienated land is land which is not alienated whether by sale, transfer, lease or sublease or, in the words of section 12 of the Native Land Trust Board in any other manner whatsoever. The answer to the second question is that the owner of land in section 11 comprehends the individual members of a Fijian landowning proprietary unit, a mataqali.

D The originating summons then asks whether members of a mataqali living outside the limits of Ba town but owning unalienated land inside the municipality are entitled to enrol. It appears to me that section 11(1) requires three and only three qualifications in a person who aspires to be an elector under the Local Government Act. They are (a) that he be over 21 years of age (b) that he be a citizen of Fiji (c) that he be the owner or occupier of land within the municipality. I have used the term 'he' to include both male and female, for the Act makes no discrimination as to sex. Nor is there any discrimination as to residence. An elector may reside anywhere subject to the provisions of section 11(4) which circumscribes the residence of an occupier, but not of an owner. Unalienated land I take to be land within the meaning of the proviso to the definition of owner and I think that the meaning of that term 'unalienated' is that it refers to native land which has not been alienated whether by sale, transfer, lease or sublease or in any other manner whatsoever but alienation must not be confused with dealing nor extended to include a mortgage, for in Fiji land is not alienated by mortgage but simply charged, although land can be dealt with by being mortgaged. So that the answer to the third question is that members of a mataqali living outside the town but holding land inside the town are entitled to enrol as electors.

G The final question raised by the summons deals with land leased out to tenants by the Native Land Trust Board. It is to be observed that the fact that the lands are leased by the Native Land Trust Board does not mean that the Board is the owner, it merely exercises the control given it by ordinance—see section 4 of the Native Land Trust Ordinance Cap. 115. Indeed, that section explicitly states that all native land shall be administered by the Board for the benefit of the Fijian owners. But the proviso to the definition of owner in section 2 of the Local Government Act does not include the Fijian owners of alienated native land, for that is how land which has been leased by the Native Land Trust Board must be regarded. However, as I see it, the intention revealed by section 2 is that Fijian owners who are entitled to the rents of the land under a registered lease are to be regarded as owners. I am not asked to, and I do not, express any opinion as to whether a Fijian owner whose land is being leased but of which the lessee holds only a letter of approval falls within the defini-

tion of 'owner'. If the members of a mataqali owning land within the town which is leased out to tenants by the Native Land Trust Board are to be regarded as owners as I hold, they are entitled to be registered as voters or electors. A

I have been able to deal with the questions posed by the summons without reference to the agreed facts. But although I cannot see that they are strictly relevant, I will say something about them in deference to counsel, who, quite obviously took some trouble in preparing them. The preparation of the electoral roll is carried out under the authority of the Local Government Elections Regulations 1972, the first schedule to which contains rules for the preparation of electoral rolls. I think that once a person's application for registration as an elector has been accepted and he is put on the roll, Mr Scott is right in saying that the onus is on the objector to show that the elector is wrongfully on the roll. When a person applies for registration the registration officer has, under rule 6 to satisfy himself as to the qualifications of an applicant and I agree further with Mr Scott's submission that he may satisfy himself by oral or written inquiry, or it may not seem any inquiry at all to be necessary. The agreed facts appear to assume that there is a burden upon the applicants or upon the registration officer to satisfy an objector that the electors' qualifications are proper. Indeed, the position is quite the opposite. Once an elector's name has been placed on the roll, the objector has to satisfy the registration officer must have made the inquiries required by rule 6 and put the names of these Fijian electors upon the roll. Just as in *Ujagar Singh & Ors v. Reginam* 22 F.L.R. 146 the Minster's declaration under the Trade Disputes Act must be assumed to have been lawfully made in the absence of proof to the contrary, so here the registration officer must be presumed to have made the proper inquiries before he registered the Fijian applicants as electors. '*Omnia presumuntur et rite solenniter esse acta* applies. *Bromme's Legal Maxims* (10th Edition) refers to the maxim and says at p. 642: B C D

"Where acts are of an official nature or require the concurrence of official persons a presumption arises in favour of their due execution. In these cases the ordinary rule is—everything is presumed to be rightly and duly performed until the contrary is shown." E

In *Earl of Derby v. The Bury Improvement Commissioners* (1869) L.R. 4 Ex 222, 226 Willes J. in delivering the judgment of the Court of Exchequer Chamber says: -

In the absence of any proof to the contrary credit ought to be given to public officers, who have acted prima facie within the limits of their authority, for having done so with honesty and discretion." F

Para. 8 of the agreed facts states:

"The applicants have not produced any evidence to satisfy the defendant that they are members of a mataqali owning unalienated in each application for registration, in spite of the defendant giving notices to the applicants by registered post after receipt of objections informing them that their names have been objected to and requiring them to show cause why their names should not be removed from the electoral rolls." G

I would observe that if the objections contained no more information than is shown in the annexures to the affidavit in support of the originating summons the objections might well have been dismissed as being without merit. However, the registration officer duly sent registered letters to which I gather he received no answer. That being so, it was then his duty to dismiss the objections. I would, H

A however, add that the registration officer would probably be wise to see that a proposed elector puts in his application form a more precise address of the land he claims to own. To do otherwise imposes a heavy burden on the registration officer. The agreed facts do not point to any instance of an elector wrongly registered. If they did, the whole matter might assume a different complexion.

Counsel informed me that the plaintiffs and the defendants have agreed to bear their own costs, and the Attorney-General is not claiming costs.

B *Declarations accordingly.*