

JONE NANUAPA

A

v.

MORRIS HEDSTROM LIMITED

[COURT OF APPEAL—Gould V. P., Spring J. A.,]

B

Civil Jurisdiction

Date of Hearing: 27 July 1982

Delivery of Judgment: 30 July 1982

Landlord and Tenant—Fair Rents Act s.25—onus on summons for possession—bona fide requirement—for purpose of subdivision—land must not already have been subdivided.

C

A. B. Ali for Appellant

F. S. Lateef for Respondent

Appeal against an order of the Supreme Court made at Suva on 12 June 1982 that appellant give up possession of the piece of land occupied by him at Naroro Street, Suva and owned by the respondent.

D

The proceedings were by originating summons for the possession of a piece of land let at rental of \$2 per month. The total area owned by the respondent of which the piece occupied by appellant formed part was 16 to 17 acres approximately. Appellant had for 2 years occupied about 12 perches of this and built a house thereon.

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On 11 May 1981 a notice to quit was served terminating his monthly tenancy. Respondent had instructed Surveyors to prepare a plan of subdivision. When the originating summons came before the court, the respondent was directed to furnish evidence if bona fide required possession for the purpose of subdivision. The direction was complied with.

On 2 November 1981 the surveyors informed the respondent that before further survey work could be carried out on the subdivision all existing buildings and other structures were required to be removed.

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On 12 January 1982 an order was made in favour of the respondent that appellant forthwith vacate the land.

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The ground of appeal was summarised thus—

“That the trial judge erred in law and in fact in excluding the provisions of section 19 of the Fair Rents Act (Cap. 269) by incorrectly interpreting section 25(2) (a) of the Fair Rents Act and in reading the subsections (a) and (b) of section 25 thereof disjunctively.”

A Section 25 of the Fair Rents Act says:

"25. Where any piece of land is separately leased as a site for a dwelling-house thereon or to be erected thereon, this Act shall apply in respect of such lease as if the site were a dwelling-house:

Provided that—

- B (1)
 (2) section 19 shall not apply to any such piece of land where—
 (a) it is not an area or does not form part of an area subdivided, whether before or after the commencement of this Act, with the approval, under the provisions of any legislation relating to the subdivision of land, by the authority competent to give such approval; and
 C (b) the lessor bona fide requires possession for the purpose of a subdivision of the land or an area including the land."

Held: By s.25 the appellant would be protected by the Fair Rents Act s.19 precluding the Court from making an order for possession unless s.25(2) applies. That subsection meant that s.19 (affording protection) did not apply to any such piece of land separately leased as a site for a dwelling house and—

D Not being part of an area subdivided with the approval of the competent authority.

or

Where the land did not form part of an area so subdivided.

AND

E The lessor bona fide required possession of the piece of land or an area including that piece of land for the purpose of subdivision.

So the court had to be satisfied on the evidence that the piece of land on which appellant had erected his house had not itself been subdivided (with the approval aforesaid) or did not form part of a larger area so subdivided. These matters of proof had to be complied with.

F And the lessor had to prove a bona fide requirement for the piece of land for or an area including it for purpose of subdivision. It followed that lessor (respondent) should show that neither the piece of land nor area including it had already been subdivided with the requisite approval.

G The finding of facts quoted in the judgment satisfied this onus. The learned judge had read and applied s.25(2) (a) and (b) as required, conjunctively.

Appeal dismissed.

Case referred to:

H *Metropolitan Board of Works v. Steed* 8 Q.B.D. 445.

SPRING, Judge of Appeal.

Judgment of the Court

Appellant appeals against an order given by the Supreme Court of Fiji at Suva on 12th January 1982 that the appellant vacate and give up possession of the piece of land occupied by him, and owned by respondent at Naroro Street Suva being part of the land known as Raiwai comprised in Certificate of Title No. 9968. The facts briefly are as follows.

Proceedings were brought by the owner Morris Hedstrom Ltd. by way of originating summons to recover possession of that piece of land owned by it and let to appellant at Naroro Street Suva at a rental of \$2 a month. The total area of land owned by respondent of which the piece occupied by appellant forms part would appear to consist of at least 16 to 17 acres although no direct evidence was given on this point. Appellant was occupying a small portion of the total land owned by respondent—about 12 perches. A notice to quit issued by respondent dated 11th May 1981 was served upon appellant on 14th May 1981 terminating his monthly tenancy. Appellant had resided on the land for a number of years and had erected his house thereon. The respondent had instructed a firm of surveyors to prepare a plan of subdivision of the block.

In a letter dated 10th July 1979 the surveyors advised respondent that scheme plans had been prepared showing the block subdivided into 59 residential sections with areas ranging from 1037 M² to 1315 M².

An originating summons was issued out of the Supreme Court under section 169 of the Land Transfer Act seeking possession of the piece of land occupied by appellant. When the summons first came before the Supreme Court the learned judge directed the respondent to furnish evidence that it bona fide required possession of the land occupied by appellant for the purposes of subdivision.

An affidavit by the respondent's property manager was duly filed complying with this direction of the Supreme Court.

On 2nd November 1981 the surveyors informed the respondent that before further survey work could be carried out on the subdivision all existing buildings and other structures were required to be removed.

On 12th January 1982 after a defended Chambers hearing an order was made in favour of the respondent that appellant forthwith vacate the land and give up possession thereof. Appellant has refused to vacate the lands and has appealed to this Court.

Mr Ali counsel for appellant in an ineptly drawn notice of appeal listed 6 grounds of appeal but only one ground calls for our consideration and this may be summarised as follows:

That the trial judge erred in law and in fact in excluding the provision of section 19 of the Fair Rents Act (Cap. 269) by incorrectly interpreting section 25(2)(a) of the Fair Rents Act and in reading the subsections (a) and (b) of section 25 thereof disjunctively.

Section 25 of the Fair Rents Act says:

"25. Where any piece of land is separately leased as a site for a dwelling-house thereon or to be erected thereon, this Act shall apply in respect of such lease as if the site were a dwelling-house:

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Provided that—

- (1)
- A (2) section 19 shall not apply to any such piece of land where—
- (a) it is not an area or does not form part of an area subdivided, whether before or after the commencement of this Act, with the approval, under the provisions of any legislation relating to the subdivision of land, by the authority competent to give such approval; and
- B (b) the lessor bona fide requires possession for the purpose of a subdivision of the land or an area including the land.”

The effect of this section is that the appellant would be protected by the provisions of the Fair Rents Act (section 19) and the Court precluded from making any order for possession unless the provisions of section 25(2) apply.

- C Mr Ali submitted that for the exclusion of section 19 it was necessary for the learned judge to find that the piece of land let to appellant was not an area subdivided with the approval of the competent authority or that the piece of land does not form part of an area subdivided with the approval of the competent authority.

- D It will be noted section 25 provides that “where any piece of land is separately leased as a site for a dwelling house thereon or to be erected thereon this Act shall apply in respect of such lease as if the site were a dwelling house”. Section 25(2) therefore means that section 19 (which accords protection) shall not apply to any such piece of land separately leased as a site for a dwelling house where the piece of land is not an area subdivided with the approval of the competent authority etc. or where the piece of land does not form part of an area subdivided with the approval of the competent authority etc.; and further that the lessor bona fide requires possession of the piece of land for the purpose of a subdivision or the lessor bona fide requires possession for the purpose of a subdivision of the area including that piece of land.
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“Area” is defined in ‘The Shorter Oxford English Dictionary’ as “vacant piece of level ground”, “a level piece of ground not built over or occupied”.

- F In our view it is clear that the learned judge has to be satisfied on the evidence that the piece of land on which appellant had erected his house was not in itself an area subdivided with the approval of the competent authority etc. or that it does not form part of a larger area subdivided with the approval of the competent authority etc.

The requirements mentioned in section 25(2)(a) must both be complied with not merely complied with in the alternative. (*Metropolitan Board of Works v. Steed* 8 Q.B.D. 445).

- G Subsection (2)(b) of section 25 is to be read conjunctively with subsection (2)(a) and the lessor must prove that it bona fide requires possession of the piece of land for the purposes of a subdivision of the land itself or that the lessor bona fide requires possession for the purpose of a subdivision of an area including the land in respect of which an order for possession is sought. But on the other hand the lessor must also show that neither the piece of land upon which the appellant resides nor the larger area of which that piece forms part is already subdivided with the approval of the competent authority etc.
- H

Our construction of section 25 (a) is according to the ordinary use of language although the subsection contains an ellipsis and it is necessary to read the section as we have demonstrated. A

In the instant appeal the learned judge said:

"I am satisfied from the evidence before me that the area occupied by the defendant is not a subdivided area and that the company bona fide requires possession of it for the purpose of a subdivision of its land which includes the defendant's site." B

This statement of the learned judge would in our view have been better expressed if he had used the words "piece of land" occupied by defendant instead of the words "the area occupied by the defendant". However we are satisfied reading the judgment as a whole that the learned judge understood and correctly interpreted and applied section 25(2) (a) and (b) to the facts of this case. There was ample evidence that the respondent required the piece of land on which the appellant resided for the purposes of a subdivision of a large area of land of which the portion let to appellant formed part not previously subdivided within the meaning and intent of the subsection. C

The learned judge read and applied section 25(2) (a) and (b) conjunctively and we reject Mr Ali's submission to the contrary. D

For the reasons we have given we are satisfied that Mr Ali's argument fails and the appeal is dismissed with costs to respondent to be taxed if not agreed.

Appeal dismissed.