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DAVID CLAYTON EAST

v.

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THE VALUERS REGISTRATION BOARD

[HIGH COURT—Jesuratnam, J.,—13 October 1988]

Appellate Jurisdiction

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Valuers—Application for registration—initial failure to give reasons for refusal—eventually inadequate reasons provided—vast experience of applicant—decision to refuse set aside—quare as to Court's powers under Valuers' Registration Act 1986—matter remitted to the Board to reconsider.

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B. N. Sweetman for the Appellant
S. Banuve for the Respondent

David Clayton East appealed pursuant to s.19 of the Valuers Registration Act 1986 against a decision of the Valuers Registration Board (the Board) refusing his application for registration as a valuer.

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On 7 April 1986 he wrote to the Secretary of the Board requesting the registration; then on 10 December 1986 he completed an application form with a covering letter which stated he had done valuation work for 16 commercial institution in the country. He received a reply advising he could not be registered. On 20 January 1987 he submitted to the Board further evidence comprising copies of valuations he had made. On 16 February 1987 the Board advised it had reconsidered the application but had not altered its decision.

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It was noted that neither this nor the earlier letter gave any reasons for the refusal. The appellant continued to write requesting reasons. On 30 October, 1987 the Secretary to the Board wrote advising the appellant had not had sufficient knowledge of the practical experience in valuation in Fiji.

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In his affidavit appellant gave indications of "vast" practical experience as a valuer in Fiji for 20 years; he had experience inside and outside Fiji.

At one stage he was the valuer for the Suva City Council. A supporting affidavit by Mr Dakuidreketi a registered valuer of the firm Harrison & Grierson Consultants Limited set out additional experience including that appellant had done over 2000

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valuations from 1966 to 1985 in Fiji. The deponent gave a list of the valuations, or various kinds appellant had carried out.

Held: It was the Board's duty to call specifically the appellant's attention to the failure to reveal experience in the valuation of agricultural property, if that experience was considered vital. It could have sent someone to inspect documents bearing in this matter at Griersons. It could have requested the appellant attend personally before the Board so that it could question him and satisfy itself as to his qualification. It took 19 months to furnish the appellant with any reasons as s.18 of the Act required. If findings and reasons had been recorded; a copy could have been sent to him as s.18 also requires.

Although applied under s.9(1)(c) of the Valuers Registration Act (1986) (the Act) the Board replied as to lack of qualifications under other sub-paragraphs of s.9.

There was a preponderance of information indicating the Board had not taken into account available material before refusing the application. It did not address itself to the real question.

Order of the Board refusing registration set aside.

Having so orderd. quaere as to the Court's power. See s.19 of the Act.

Matter remitted to the Board.

Directed that the Board should reconsider the application in the light of this judgment by considering all the material which appellant would make available, if necessary requiring appellant to attend before the Board.

JESURATNAM—J.

Judgment

This is an appeal under Section 19 of the Valuers Registration Act 1986 by David Clayton East against the decision of the Valuers Registration Board refusing his application for registration as a valuer. The appellant states in his affidavit that he wrote to the Valuers Registration Board on 7th April 1986 requesting that he be registered as a valuer. Again on 10th December 1986 he furnished to the Secretary, Valuers Registration Board a completed application form with a covering letter marked "B". He received a reply from the Secretary, Valuers Registration Board dated 30th December 1986 advising him that he could not be registered as a valuer. Then after he had oral discussions with the Secretary he submitted to the Board on 20th January 1987 further evidence comprising copies of valuations he had carried out with a covering letter marked "E".

The Secretary replied by letter dated 16th February 1987 stating that the Board had reconsidered his application but did not find any reasons to alter its previous decision. The copy of that letter is marked "F".

It is noteworthy that neither this letter nor the earlier letter gave any reason for refusing to register the appellant as a valuer, except that the earlier letter stated that on the basis of information supplied by him it could not register him. Thereafter

A appellant's Company and later the appellant himself wrote to the Board several times requesting the Board to give its reasons for refusing the appellant's application. At long last on 30th of October 1987 the Secretary to the Board replied by letter marked "O" that the appellant did not have sufficient knowledge of the practical experience in valuation in Fiji.

B In the affidavit filed by the appellant in this court he has given undoubted indications of vast experience in practical experience of valuation in Fiji. Going by the averments in his largely uncontroverted affidavit he seems to possess wide experience of valuation for a period of nearly 20 years in and outside Fiji. The very first averment in his first letter of 7.4.86 that he was the Suva City Council's valuer should have alerted the Board that the appellant's case was worthy of full consideration.

C There has also been filed an affidavit by Mr Keni Dakuidreketi a registered valuer employed by the firm of Harrison and Grierson Consultants Limited (of which Mr David East is a Director) in which additional material of Mr East's experience as a valuer has been set out. According to Mr Dakuidreketi's affidavit Mr East has done over 2,000 valuations from the year 1966 to 1985 in Fiji.

D In his letter of 10.12.86 sent with his application Mr East has stated that he has done valuation work for about 16 leading commercial institutions in the country. This is no mean performance, if true.

E Mr Dakuidreketi states in his affidavit that Mr East has done valuations of 59 urban freeholds, 13 urban leaseholds, 13 rural freeholds, 2 rural leaseholds, 25 commercial freeholds, 9 commercial leaseholds, 1 industrial freehold and 10 industrial leaseholds among others. His valuation experience spans not only commercial property but agricultural property as well. There is also filed along with the appeal papers, a certificate from Sir Robert Munro stating that Mr East is a leading valuer in Fiji and that Harrison and Grierson Consultants Limited is a leading firm of valuers in Fiji of which Mr East is a Director.

F The affidavit evidence also refers to Mr East's vast experience in valuation not only in Fiji but in other countries including Vanuatu, Western Samoa, Tonga, and American Samoa. I have no doubt whatever in my mind that if all this evidence was available to the Board it would without doubt have approved Mr East's application.

According to the two affidavits filed by Mr Sheik Ushman, Secretary of the Valuation Registration Board, the Board did not have before it all these material.

G In fact the Board stated in its first letter dated 30.12.86 that it could not register him as a valuer on the basis of the information submitted by him.

H Mr Sheik Ushman states in his affidavit that Mr East's experience in respect of valuation of agricultural property owned by Bechari Bhai Holdings Ltd. was evidenced by only 38 pages of an annexure sent by the appellant which did not include any reference to agricultural property. According to the affidavits of Mr East and Mr Dakuidreketi along with Mr East's letter "E" was sent an 82-page annexure on the same project which included as items 23 and 24 valuation of agricultural property. One does not know how 82 pages dwindled into 38 pages when they reached Mr Sheik Ushman. One does not know how the mixup took place.

In any event Mr East in his letter dated 20th January 1987 marked "E" along with A which he sent the annexure in question has clearly indicated that he was forwarding material which covered agriculture too. It should also be noted that right along Mr East had informed the Board that it was not possible for him to send copies of all the material relating to his experience not only because they were bulky but also because they were confidential vis-a-vis his clients.

In that situation it was the elementary duty of the Board to have called Mr East's B attention specifically to the point that experience relating to agricultural property was not revealed in the documents sent by him if indeed the Board thought experience regarding agricultural property was all that vital. A number of other courses were open to the Board before it refused Mr East's application. It could have sent the Secretary or any other official from the Board to inspect the bulky C documents which were at Griersons (as invited by the appellant) to satisfy itself whether Mr East had sufficient experience in agriculture or any other field. Or the Board could have under section 8(3) called the appellant to attend personally before the Board so that it may question him and satisfy itself. The Board never did any of D these things. On the affidavit evidence available in this case it seems to me that the Board had shut its eyes to a consideration of the appellant's case. According to section 18 of the Act it is incumbent on the Board to record its finding on which it bases its decision and its reasons and shall furnish to the applicant a copy of the finding D and the reasons if he so requests.

In the instant case although a number of letters were addressed to the Board by the appellant the reasons were furnished to him only about 10 months after its refusal. If the findings and reasons had been recorded by the Board in its books contemporaneously with its decision, there was no reason why the Secretary could not have performed a mere ministerial duty of copying them out and sending them on to the appellant without waiting for the Board to reassemble for this particular E purpose.

Mr Sweetman, who appeared for the appellant stated that this delay to give reasons was apparently because no reasons had in fact been recorded by the Board when it made its decision. I also observe from the Board's letter dated 30.10.87 that there is a lot of confusion between the various sections in the Act under which the F application specifically under section 9(1)(c). But the Board states in its letter that the appellant did not possess the qualifications required under section 9(1)(a), 9(1)(b)(i) and (b)(ii). It seems to me that the Board did not address its mind to the real question in the matter. According to the parties the appellant's application was probably one of the first applications made under the new Act which came into force on 21.3.86. The appellant's application was made on 7.4.86. There is a preponderance of G evidence before me to suggest that the Board did not take consideration available material before it refused to register the appellant as a valuer.

I therefore set aside the order of the Board refusing to register the appellant as a valuer.

I have some difficulty in making order as regards the next step. There seems to be a plethora of material on record in this case before me to suggest ex facie that the H appellant possesses vast and varied experience of valuation in Fiji.

But this court sitting in appeal is not in a position to sift analyse and evaluate all his material and pick out the relevant criteria and qualifications necessary for the registration of applicants as valuers. A Board, body or court of first instance is better equipped for that task.

A Mr Sweetman urged that already this matter had dragged on for nearly 2½ years and if this court is minded to send it back to the Board there would be further delay. But when the legislature has entrusted to a technically qualified Board the function of registering as valuers persons who are qualified to be so registered it is nothing but proper for this court to send the case back to the Board to reconsider the matter after properly directing itself.

B I do not entertain any doubt that if the Board directs itself properly on relevant matters in the context of this judgment, it will do what is right.

I therefore send the case back to the Valuers Registration Board with the direction that it should reconsider the appellant's application in the light of this judgment by considering all the material which the appellant will make available to the Board on notice and if necessary by requiring the appellant to attend personally before the Board and make a decision. I also direct the Board to give top priority to this matter as already a long delay has ensued. The appellant will be entitled to costs to be taxed if not agreed.

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Judgment for the appellant.