

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Civil Jurisdiction

Action No. 481 of 1981

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Between

IN THE MATTER of Agricultural  
Landlord and Tenants Act, Cap. 270

Plaintiff

- and -

IN THE MATTER of an Application by  
SHIU PIULA d/o Manohar Singh for Judicial  
Review of an INTERLOCUTORY ORDER

Defendant

Mr. G. P. Shankar

Counsel for the Plaintiff

J U D G M E N T

The main matters for consideration in this application arise firstly whether the Agricultural Landlord and Tenant Tribunal, (hereinafter called the Tribunal) had jurisdiction to make an interlocutory order freezing certain cane proceeds pending determination of the reference to it; secondly whether it can make such an order without hearing evidence; and thirdly whether this Court has power to intervene, or should intervene, in particular unless or until the matter has been referred to the Agricultural Landlord and Tenant Appeal Tribunal.

The reference to the Tribunal in the first place was for a declaration of tenancy by the applicant in those proceedings. Before the reference was heard there was an application for an interim order in respect of the cane proceeds as referred to above.

The Tribunal is a statutory body set up by the Agricultural Landlord and Tenant Act. Its powers and its functions are set out in the Act, and it is trite law that a statutory body or tribunal cannot exceed the powers or functions conferred on it by the statute creating it. Some of the powers of a tribunal are set out in Section 16 -

"(1) A tribunal shall have power

- (a) to exercise all the powers of a magistrate's court in its summary jurisdiction of summoning and enforcing the attendance of witnesses, examining witnesses on oath, and enforcing the payment of costs and the production of documents;

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- (b) to admit evidence whether written or oral, and whether or not such evidence would be admissible in civil or criminal proceedings;
- (c) to award costs;
- (d) to extend any period of time, whether in relation to a notice or otherwise specified in the Act.

section 19(1) of the Act provides merely that a tribunal may regulate its own proceedings.

There is nothing in either of these sections giving a tribunal power to make an interlocutory order such as that which is the subject of this application.

The other relevant functions and powers and duties of a tribunal are set out in section 22. I do not need to set them out in full, because there is no doubt that none of those functions are relevant with the possible exception of section 22(1)(j) which reads as follows:

- ". . . a tribunal may, upon application of a landlord or a tenant of an agricultural holding . . .
- (j) decide any dispute between a landlord and tenant of agricultural land relating to such land, and to the provisions of this Act, and to exercise any power or duty, including the power to specify the period of time a decision shall be in force, necessary for the implementation of any power, duty or function conferred by or imposed under the provisions of this subsection or of this Act."

It was argued by counsel for the other party to the dispute referred to the tribunal that this provision was wide enough to cover an interlocutory order which was stated to be made in the interests of justice.

I cannot agree. The power to make interlocutory orders should not be presumed lightly. Even magistrate's courts have their power to grant injunctions specifically conferred by the Magistrate's Court Act (i.e. section 16(1)(f)). The Tribunal did not have power to make the interlocutory order and therefore acted ultra vires.

Section 61(1) of the Agricultural Landlord and Tenant Act does appear to exclude the proceedings of tribunals from control by the Supreme Court, but there is ample authority to show that this provision will not exclude cases in which the tribunal has exceeded its powers (see *Dezobner v. Keepers and Governors of Harrow School* [1979] 1 All ER 305 and all the cases therein cited).

It was argued by opposing counsel that in any case the appropriate action was to have appealed to a central appeal tribunal set up under section 48 of the Agricultural Landlord and Tenant Act. Whether or not an appeal of this nature could go to a central appeal tribunal, the jurisdiction of the Supreme Court to hear it cannot be denied, and it certainly seems to me that where the very jurisdiction of tribunals is concerned the most appropriate step is to appeal direct to the Supreme Court.

In the event therefore the application is granted, the proceedings are removed into the Supreme Court solely for the interlocutory order to be quashed as being ultra vires the powers of the tribunal to make it.

question of costs to be reserved.

Lautoka,  
4th February, 1982

(C. C. L. Dyke)  
Judge