

IN THE SUPREME COURT OF FIJI  
Civil Jurisdiction  
Action No. 1031 of 1984

Between:

NORMAN SNODGRASS & ANOTHER

PLAINTIFFS

- and -

THE ATTORNEY-GENERAL IN AND  
FOR FIJI

1ST DEFENDANT

- and -

THE DIRECTOR OF LANDS

2ND DEFENDANT

Mr. D.J. Whippy for the plaintiffs  
 Mr. J.K.L. Maharaj for the defendants

D E C I S I O N

The plaintiffs are subdividers of their land comprised in C.T. 20824 tikina of Savusavu, Cakaudrove, in Vanua Levu.

The survey plan for the subdivision of the said land was approved by the Director of Town and Country Planning on the 17th day of July, 1984.

The said plan was registered in the Titles Office on 26th July, 1984, under D.P.No. 5569 comprising 17 lots, Lots 1 to 16 to be residential and Lot 17 to be dedicated to the Crown as open space.

In regard to the open space, the said plan is endorsed as follows :

"Lot 17 to be dedicated before any other dealings are accepted on this plan.

(sgd) M. Volavola  
for Director of Surveys."

Since the 29th August, 1984, when a Dedication document was presented to the Director of Lands for acceptance, the plaintiffs through their solicitors endeavoured to have the Director of Lands by letter and telephone messages complete the dedication document. He did not reply to letters or return telephone calls and the plaintiffs were forced to initiate this action when he replied to the last two letters.

Before initiating this action Mr. Whippy wrote to the Director of Lands with copies to the Minister of Lands on the 10th October, 1984, complaining about failure to respond to letters and threatening action.

Mr. Maharaj who appeared for the plaintiffs filed an affidavit which he swore himself.

Counsel should not swear affidavits for parties they represent. There would appear to be no apparent reason why the Director of Lands should not have made the affidavit himself.

Mr. Maharaj's affidavit had annexed to it a letter from the Director of Lands, the text of which is as follows :

" re: Dedication Lot 17 - DP.5569

Your letters of 2/10/84 and 10/10/84 on the above subject are acknowledged.

Please note that I will be in a position to accept the Dedication on condition that the Landlord makes satisfactory arrangements for the future maintenance of the subject area with the relevant Local Authority.

Stipulation of the above condition has become necessary because of lack of Government funds for the required maintenance and the likely Public objections that will arise when the Open Space is not maintained."

As a result of this letter Mr. Whippy applied to

amend the originating summons seeking a declaration instead of an order and substituting the following for paragraph 1 of the relief claimed :

"The condition stipulated by the second defendant that the plaintiffs make satisfactory arrangements for the future maintenance of Lot 17 D.P. 5569 with the Local Authority before his acceptance of the Dedication of the said Lot as a Public Open Space, is unreasonable and ultra vires."

Under Section 8(3) of the Subdivision of Land Act, the Director of Town and Country Planning has power to impose a condition that portion of the land to be subdivided be reserved as an open space. The subsection provides:

"(3) If the Director is of opinion, having regard to the health, amenity or convenience of the neighbourhood, that the establishment of any noxious or offensive trade, business or manufacture should not be permitted or that a portion of the land being subdivided not exceeding in any case one-twentieth of the total area thereof should be reserved as an open space, the Director may, in approving the application in whole or in part, impose such conditions as are necessary to give effect to such decision."

Counsel have not raised the issue or queried the Director of Town and Country Planning's powers to direct that an area be set aside or reserved as a public open space and that that open space be dedicated to the Crown.

The Director of Lands is also the Surveyor-General and presumably is also the Director of Surveys. Mr. Volavola presumably was authorised by the Director of Lands to insist that Lot 17 be dedicated before any other dealings are accepted on the plan.

Section 160 of the Land Transfer Act refers to dedication of roads and streets and imposes on the Registrar of Titles a duty to register the dedication on application made to him.

" "Street" or "road" under the Interpretation Act includes "passage or open space" to which the public are entitled or permitted to have access".

The Director of Town and Country Planning has very wide powers to approve or refuse applications for subdivision.

He directed that Lot 17 be reserved for public open space. He was in my view empowered to impose other conditions regarding Lot 17 such as conditions that Lot 17 be cleared or levelled. Mr. Maharaj referred to one case which supports this view Candy & Another v. Coromandel County Council (Number one Town and Country Planning Appeal Board 1975 p. 192) where it was held (inter alia) that a condition requiring a property owner to contribute towards the cost of sealing a public road in order to remove a dust nuisance could enhance the amenities of a neighbourhood by bringing about a condition contributing to the pleasantness of the environment and to its better enjoyment for permitted use.

Mr. Maharaj admits that the Director of Lands has no statutory mandate to impose the condition that he did. He argues further that there is no statutory obligation on him to accept any dedication but that if he accepts it voluntarily he then has the discretion to impose such terms as are reasonably necessary to effect the full consequences of such dedication.

The Director of Town and Country Planning and the Director of Lands in his capacity as Surveyor-General have directed that Lot 17 be dedicated to the Crown. All that remains to give effect to that direction is for the Director of Lands to accept the Dedication which the plaintiffs executed on the 29th August, 1984.

Where land is transferred to the Crown which is effected by a Dedication, it is mandatory under Section 4 of the Crown Lands Act that the land shall be taken in the name of the Director of Lands of Fiji for and on behalf of the Crown.

It is a statutory duty and the only remaining duty the Director of Lands has to perform that he accept the dedication of Lot 17 which he himself directed was to be dedicated to the Crown. He is not empowered to impose any

further conditions on the plaintiffs which is the province of the Director of Town and Country Planning. His powers to refuse acceptance are limited to ensuring that all conditions imposed on the plaintiffs by the Director of Town and Country Planning are complied with before he formally accepts the dedication.

There is no suggestion in this case that those conditions have not been complied with.

I grant the declaration sought and declare that the condition stipulated by the second defendant that the plaintiffs make satisfactory arrangements for the future maintenance of Lot 17 D.P. 5569 with the Local Authority before his acceptance of the Dedication of the said lot as a Public Open Space is unreasonable and ultra vires.

The plaintiffs are to have the costs of this application.

*R.G. Kermode*

(R.G. KERMODE)

J U D G E

S U V A,

27 JANUARY, 1985