

OATU -v- REGISTRAR OF TITLES & ATTORNEY GENERAL

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 140 of 1989

Hearing: 18 April & 3 May 1990

Judgment: 28 May 1990

P. Tegavota for the Appellants

R. Teutao for the Defendants

Ward CJ: In 1984, the Government decided to sell a number of its houses and the Ministry of Agriculture & Lands set up a committee for the sale of those properties. A substantial number of properties were transferred, many of them to public servants. Following these sales, there was considerable public disquiet about the manner in which they took place and suggestions were made that the committee was not properly exercising its power. As a result a Commission of Inquiry was set up and produced a report on the matter.

In many cases, the allegations were of such impropriety that the registration of titles could have been challenged by using the procedures under section 209 of the Land and Titles Act. However, the number was so large and the time involved and resulting period of uncertainty was likely to be so great, that Parliament decided to pass an amendment act to deal with the specific properties which are listed in the schedule to the Act. The Land and Titles (Amendment) Act 1988 sets out to provide a machinery whereby, in relation only to the scheduled properties, the Registrar may rectify the register in any case where he feels the grant of the fixed term estate ought not to have been registered. (Section 208 (2A)). Before he can do so, by section 208 (2B), he must bring to the attention of the person registered as the owner his intention to rectify and the reasons for it and give that person an opportunity to be heard.

The remaining provisions are to attempt to return the parties to the position in which they would have been if the transfer had not taken place.

The appellant was registered as the owner of the fixed term estate 191-012-50 on 11th November 1985. That property is one of those included in the schedule to the 1988 Act. In accordance with the Act, the Registrar considered his case and considered the title should not have been registered. I do not need to go into the reasons because the appeal does not challenge those but the result was that, on the 28th November 1988, the Registrar wrote to the appellant stating his opinion that the grant of the fixed term

estate to the appellant ought not to have been registered and advising him of his intention to rectify the register by cancelling the registration. As required by section 208(2B) he gave his reasons and also an opportunity for the appellant to be heard. This was not taken up and so the registration was cancelled with effect from the date of the original registration.

A number of grounds of appeal were filed some of which have now been abandoned and some of which are really no more than statements of fact. As the appeal was argued by Mr Tegavota, he raised two grounds. First he said that the original transfers, having been registered, were valid and, second, that the 1988 Act contravened section 8(1)(a), (b) and (c) of the Constitution.

On the first matter, he is, of course, right. By section 99 of the Act, once the title was registered, the appellant has the right. By section 100, his title cannot be defeated except under the provisions of the Act.

It was for this reason Parliament amended the Act to make this possible. In order to do so the provisions of the Act needed to be retrospective in effective and that, as Mr Tegavota agrees, is something Parliament is entitled to do by section 59 of the Constitution.

Thus the only ground that remains is that the provisions of the amending act contravene section 8(1) (a), (b) and (c) of the Constitution.

"8. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say -

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town or country planning or the development or utilisation of any property in such a manner as to promote the public benefit; and*
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and*
- (c) provision is made by a law applicable to the taking of possession or acquisition -*
 - (i) for the payment of reasonable compensation*

(the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) within a reasonable period of time having due regard to all the relevant circumstances; and

- (ii) *securing to any person having an interest in or right over the property a right of access to the High Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession of his interest or right, the legality of the taking of possession, or acquisition of the property interest or right, and the reasonableness of the compensation and the period of time within which it shall be paid."*

I can deal with the matter shortly because the point is based on a misconception of the meaning of compulsory acquisition. There are a number of ways under the Act whereby a registered owner may lose his property rights. Thus, by section 209, the High Court can order rectification of the register where the registration has been obtained by fraud or mistake. Similarly, by section 126 the Commissioner has the right to forfeit an estate for failure to pay the rent. In these cases, the title may be lost but it is not compulsory acquisition.

The same applies in this case. Parliament has provided a procedure whereby the register can be rectified and the title revert to the Commissioner of Lands. That is not a compulsory acquisition and the appeal is dismissed.

This appeal was brought in conjunction with a number of similar cases. The same point was raised on behalf of them all and all those appeals fail on the same ground.

(F.G.R. Ward)
CHIEF JUSTICE