Fifita v Minister of Lands and Fakafanua

Privy Council
Land Case 4/1972

11 February, 1974

Land - allotment in excess of area permitted by s7 Land Act not totally void, but void only as to excess

Land - allotment expressed to be for an area permitted by s7 Land Act but subsequently found by survey to be in excess of the permitted area not totally void, but excess reverts to owner of estate on which allotment granted

Statutes - principles of interpretation - manifest injustice or unreasonable result to be avoided

A grant of an area of land of 1r26p for a town allotment was made by the Minister of Lands to the predecessor in title of Mele Fifita. Later the Land Court held that the entire grant was null and void under s49 Land Act since the area was in excess of the 1r24p which was the maximum permitted for a town allotment by s7 Land Act. Fifita appealed to the Privy Council

HELD:

Reversing the decision of the Land Court

1. Statutes should be interpreted so as to avoid manifest injustice or unreasonbleness in a way which is consistent with the purpose of the statute.
2. Section 49 Land Act should be interpreted as rendering void only the area of a grant which was in excess of the area permitted by s7 of the Act, and not the entire grant..
3. Section 49 Land Act did not apply to a grant of land which was expressed in terms to contain an area permitted by s7 Land Act, but which subsequent survey showed to be in excess of the area permitted..

(Note: This case is also reported in [1962-1973] Tongan Law Report 30 (Land Court) and further in the same volume at 45 (Privy Council).

Statutes considered
Land Act, ss7, 49

Case considered
Mattison v Hart (1854) 23 LJCP 108

Privy Council

Judgment

This is an appeal against a decision of the Land Court holding that the grant of a town allotment known as Haesilakolo on the estate of the second respondent, registered originally in the name of Soane Malekihihau and on his death transferred to the appellant, is null and void under sec. 49 of the Land Act as covering an area in excess of that laid down in sec.7 of the Act. The maximum area for a town allotment under sec.7 is 1r.24p., plus a further half perch permitted under the proviso to sec.49. The area of the town allotment in issue is 1r.26p.. There is no dispute as to the facts, which are set out in the judgment of the Land Court and need not be repeated in detail. The whole question requiring determination by this Council is the construction of sec.49.

There are two classes of cases which may well arise under sec.49:

1. where the original grant is expressed to be for an area not exceeding the maximum permitted, but subsequent survey shows that the area of the named allotment, or that being used by the grantee, exceeds that limit;

2. where the original grant specifically covers an area greater than that permitted under sec. 49.

The first class is referred to at some length by the learned Judge in his judgment, and he properly and forcefully points out the great injustice which would be caused to an innocent grantee if he were evicted, after years of occupation, because a later survey showed that the original estimate of the area was too low. But in our view the section can be and should be constructed in such a way as to avoid any such result.

Under sec.99 of the Land Act all deeds of grants of allotments shall be in the form prescribed in Sched, V. The description of the land is set out in the form in these words:

> "All that parcel of land known as ..... and situate at (insert description of boundaries) being ..... acres more or less, coloured green on the plan drawn hereon."

It is clear that the area stated forms a definite part of the description. The phrase "more or less" is not intended to cover more than very small variations; certainly not so much as would convert a legal grant into an illegal one as being beyond the difference permitted in the proviso to sec.49.

In the result we hold that, where in the original grant the area is expressed to be one within the permitted limit, the grant is of an allotment of the stated aea and therefore not liable to be held null and void under sec.49. If a subsequent survey shows the area of the named allotment, or of the ground actually occupied by the grantee, to be greater than that stated, then the latter is not entitled to remain in possession of the excess, which must revert to the owner. Where a grant is made of a section of 1r.24p., that and no more is what the grantee is entitled to and even if a later survey shows that the area of the named allotment is 1r.26p., it cannot be said that a grant was made of an area greater than that specified in sec.7 of the Act and that the grant was therefore null and void.

The second class referred to above raises a question of considerable difficulty, that of the correct interpretation of sec.49. The learned trial Judge has held tht the only possible meaning which can be given to the section is that if a grant, on the face of it, is made of an area exceeding the permitted maximum then the grant is void in toto; and a grantee who has worked the land for many years relying on a duly registered deed executed by the Minister responsible, has no right to the land or its occupation unless it is found possible to grant him some form of equitable relief. It is hard to understand in what circumstances the Minister charged with the duty of carrying out the provisions of the Land Act could sign a document making a grant directly in violation of those provisions. If such should be the case, there would undoubtedly be a strong moral obligation on the Minister concerned - which, we were informed, has normally been acknowledged and acted upon - to cancel the invalid grant and immediately issue to the same person a grant which would valid within the wording of the statute itself. If no such action were taken in favour of the grantee, it is clear that the latter might well suffer grave injustice.

The question then arises: is it possible so to interpret sec.49 that a grantee in such a case would not forfeit all interest in the land, but would retain a right to such portion of it as came within the prescribed limit of area? Would such an interpretation be consistent both under the language used, and with the objects of the legislation? It is true, as is said in Maxwell 10 Ed. at p.260:

> "It is a principle in the English law, that an Act of Parliament, delivered in clear and intelligible terms, cannot be questioned, or its authority controlled, in any Court of justice."

But the Court have always been ready to give a statute a reasonable construction; so to interpret a provision, if the wording of it make it possible, that unjust or totally unreasonable consequences will not follow. It cannot be denied that grave injustice might be caused to an innocent party by applying the section literally in the direction of throwing off the land a man who, acting in good faith under the authority of a formal document executed by the Minister in terms of the Act, had lived and worked for many years on the land and brought it into a state of high-class cultivation. The principle to be followed by the Courts in the contruction of a statute is well set out by Jervis C.J. in Mattison v. Hart (1854) 23 L.J.C.P. 108 at p.114:

> "We ought... to give an Act of Parliament the plain, fair, literal meaning of its words, where we do not see from its scope that such meaning would be inconsistent, or would lead to manifest injustice."

The interpretation adopted inthe Court below could, in our opinion, lead to manifest injustice.

Sec.49 enacts that it shall be unlawful to grant an allotment in excess of the area specified in sec..7, in this case 1r. 24p., and any such grant shall be null and void. What is rendered null and void is the grant of an allotment in excess of 1r.24p., in the circumstances of this case. The word "allotment" is not defined in the Act.. Without doing any violence to the wording of the section the Court can, in our opinion, construe it as meaning "it shall be unlawful to allot to any person, under sec.7, an area exceeding 1r.24p." If this construction is adopted, it can well be held that what becomes null and void under sec.49 would be, not the whole grant, but such part of the grant as applied to the excess over the permitted area. That interpretation would appear consistent with the objects of the Act, which in this respect could be set out as -

(a) that every male Tongan subject by birth shall, upon making application, be entitled to a grant (inter alia) of an area of 1r.24p. in a town as a town allotment;

(b) that the area of the allotment granted shall not exceed the limits laid down.

It is therefore held that sec.49 must be read as enacting that, where a grant is made of an allotment in excess of the specified area, what is rendered null and void is the grant of the excess and not the whole grant.

Some question may arise as to whether appellant has, by her failure to occupy the land, forfeited all or some of her rights under the grant. We are not called upon to determine this question, which was not argued before us and must be left open.

The appeal is allowed, and the case remitted to the Land Court to enter such judgment as may be proper having regard to this decision. If the Judge wishes to hear the parties further he is at liberty to do so. There will be no order as to costs.