

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0033 OF 1996

(Judicial Review No. HBJ0017 of 1995)

BETWEEN:

THE COMMITTEE OF VALUERS
a Committee set up under the
AGRICULTURAL LANDLORD AND
TENANTS ACT CAP 270

APPELLANTS

-and-

THE FIJI CANE GROWERS ASSOCIATION
AND 10 OTHERS

RESPONDENTS

Mr. S. Banuve for the Appellants
Mr. A. Singh for the Respondents

Date and Place of Hearing : 9 May 1997, Suva
Date of Delivery of Judgment 16 May 1997

JUDGMENT OF THE COURT

The appellant's application for leave to apply for Judicial Review of a decision of the Central Agricultural Tribunal (Mr. Saunders) was dismissed by Lyons J. in the High Court at Lautoka on 8 March 1996 and it appeals against that judgment. We mentioned to counsel our concern over the fact that the Committee of Valuers appears to have no legal standing as an independent body able to bring these proceedings, which should have been more.

properly taken in the names of the members concerned or by the Attorney General. Similarly the "10 others" referred to as respondents should have been individually named. However, the matter has progressed to this level without such objections being taken and we are prepared to deal with it accordingly.

Section 21(1) of the Agricultural Landlord and Tenant Act 1967 (Cap 270) established a Committee of Valuers consisting of four persons from time to time appointed by the responsible Minister. Its function under subsection (2) is to determine and, by order published in the Gazette, to declare the unimproved capital values of the different classes of agricultural land the subject of an agricultural holding. Such orders are to be published every 5 years, and it is provided that the Committee may differentiate between different types or classes of land and in respect of land situated in different parts of Fiji. There is no definition of "unimproved capital values" in this section.

Agricultural Tribunals, established under s.16 of the Act, are given extensive functions regarding landlords and tenants of agricultural holdings, one of which is to assess and fix the maximum rent to be paid in respect of such holdings (s.22(1)(a)). Under s.22(2) a landlord is to be allowed a return of not more than 6% p.a. on the unimproved capital value of the holding, that value being defined in s.22(3) in considerable detail for the purposes of subsection (2) of section 22.

The Central Agricultural Tribunal appointed under s.48(1) of the Act hears appeals from Tribunal decisions and by "any person aggrieved" by an order of the Committee of Valuers.

On 22 September 1992 the Committee of Valuers duly published an order under s.21(2) declaring the unimproved values of the different classes of agricultural land in various parts of Fiji under appropriate categories, such as Grazing land, Arable land, etc. In each category it expressed the unimproved capital value of the particular class by stating a minimum and maximum figure per hectare; for example, the value of first class grazing land in Vanua Levu of flat contour with fertile soil was stated to be "Min \$350 - Max \$500". We were informed that this had been the usual practice of the Committee.

The Fiji Cane Growers Association and 10 individuals (un-named in the record, but described by the Tribunal as members thereof) appealed to the Central Agricultural Tribunal against the Committee's determination of the unimproved capital values. He dismissed the Association from the appeal, holding that it was not a "person aggrieved" within the meaning of s.21(2) of the Act. The other appellants (who appeared by counsel) did not give evidence themselves but called the Chairman of the Committee who described the method of valuation adopted, while the Tribunal also called evidence from valuers of the Lands Department. We have no doubt he was entitled to call and receive evidence in this way, in view of the wide powers conferred by sections 49(2) and (3), 18(1)(b), 19 and 27 of the Act.

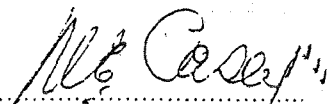
The Tribunal dismissed seven of the grounds of appeal but upheld the remaining ground that s.21(2) did not permit the Committee to fix a "sliding scale" of values - i.e. the minimum and maximum figures referred to above. Instead, he held that the word "determine" in that subsection meant that it had to stipulate a fixed figure for each class, so that both landlords and tenants could find out from the published Order the figure upon which the maximum rent may be calculated by the Agricultural Tribunal. Having reached this conclusion, the Tribunal had the options under s.49(2) (a) of referring the matter back to the Committee to make a fresh determination subject to his direction of law; or under (b) of varying its order. He decided against referring the matter back, remarking that the Committee no longer existed. (Mr. Banuve, whose instructions came from the Attorney General's chambers, was unable to enlighten us on this point: it may be that the members' appointments had lapsed.) After referring to the miscalculations and errors in the Committee's valuations disclosed in the evidence, the Tribunal varied the Order by fixing the stated minimum figure as the Unimproved Capital Value in respect of every valuation, as the determination and declaration made under s.21(2)

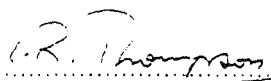
In seeking leave to apply for judicial review the appellant raised a number of grounds, all of which were rejected by Lyons J. We note that he took a narrower view of the Court's power to intervene in the case of errors of law made within the Tribunal's jurisdiction than current authority allows. In Ponsami v Dharam Lingam Reddy (CBV 1/1996; 12 September 1996), following R v Hull University Visitor; ex parte Page [1993] AC 682, the Fiji Supreme Court accepted that the distinction between error of law going

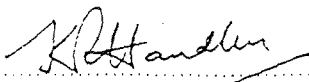
to jurisdiction and error of law in the exercise of jurisdiction is no longer material to the availability of the remedy. It will go to correct any error of law made by an administrative tribunal which is relevant to the decision under challenge, except in some circumstances where the decision is sufficiently protected by a privative clause.

In this Court the only ground relied on was that the trial Judge erred in holding that the Tribunal could make the decision to vary the Committee's Order, given there was no independent valuation evidence and that there were no "aggrieved persons" to necessitate such a valuation. Mr. Banuve accepted that if there were such persons they had the right to go to the Tribunal, which could make the order complained of. He was also prepared to accept that the Tribunal's view of the meaning of "determine" in s.21(2) was correct, but submitted that he should not have made a fixed determination in the absence of any persons, aggrieved by the Committee's Order. On this aspect the Tribunal stated that although the appellants had not produced "any persons aggrieved", nevertheless he accepted that counsel appeared for such persons without objection by the Committee. Furthermore, we are inclined to agree with Lyons J that as a matter of common sense, one or more of the 10 appellant members of the Association would be persons aggrieved as tenants by the uncertainty in rental calculations resulting from the "sliding scale". We do not think there is sufficient substance in this point to justify the grant of leave to apply for judicial review.

Nor is there any substance in the claim that the absence of independent valuation evidence invalidated the Tribunal's determination. It is plain from his decision that he heard such evidence from the Committee Chairman and other valuers, from which he formed the opinion that there were serious flaws in the Committee's methods, leading him to the conclusion that the appropriate Order was one fixing the minimum figure in all cases. We have not been persuaded that his decision was affected by "illegality", "irrationality" or "procedural irregularity", to adopt the terms used by Lord Diplock to describe the grounds justifying judicial review in Council of Civil Service Unions v Minister for the Civil Service [1985] 1 AC 374, 410. Accordingly the appeal is dismissed with costs to the respondent.


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Sir Maurice Casey
Judge of Appeal


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Mr. Justice Ian R. Thompson
Judge of Appeal


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Mr. Justice Handley
Judge of Appeal