

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0064 OF 1995S

(Lautoka High Court Civil Action No. 262 of 1989)

BETWEEN

NADI BAY BEACH CORPORATION LTD

APPELLANT

-and-

NADI TOWN COUNCIL

RESPONDENT

Mr. W.R. Davison S.C. and Miss V. Patel for the Appellant  
Dr. M.S. Sahu Khan for the Respondent

Date and Place of Hearing : 12 February 1997, Suva  
Date of Delivery of Judgment : 2 May 1997

JUDGMENT OF THE COURT

The appeal in these proceedings is against the judgment of Lyons J. ordering the appellant to pay \$602,197.24 to the respondent in respect of arrears of rates and interest thereon.

The sole point at issue in the appeal is the validity of an order made by the relevant Minister under section 5(1) of the Local Government Act 1972 (now Cap. 125) ("the Act") altering the boundaries of Nadi Town to include the area of land in respect of which the rates which were the subject of the respondent's claim in the High Court were assessed. Counsel for the appellant informed the Court that he was not pursuing the appeal on any other grounds.

Section 5(1), (3) and (4) of the Act reads :-

"5(1) Upon application in that behalf by the council of any district, or upon representations being received that an area not being a district be constituted a town, or upon similar application or representation being made that the boundaries of any town be altered, the Minister may make such order with regard to the definition or alteration of boundaries as he may consider appropriate, or he may decline to make such order, and in any case may refer the matter to the Local Government Committee for enquiry and advice before deciding on the application or representation.

.....

(3) Where a new town is constituted or the boundaries of a town are extended or any material change takes place in the population of a town, the Minister may of his own volition or shall upon application by the town council refer the question of the division of the town into wards or the redefining of wards or the creation of any new ward to the Electoral Commission which shall make such order in relation thereto as it shall think fit. In such an order the Electoral Commission shall provide that each ward shall contain nearly equal numbers of adult inhabitants as appears to be reasonably practicable:

Provided the Commission may depart from such principles as it considers expedient in order to take into account geographical features, means of communication and density and mobility of population.

(4) Where the boundaries of any town are extended the Minister may make such regulations as may be necessary or expedient for the transfer to the town council of property, rights and liabilities of any local authority of any place included in the town by such extension."

Section 7 of the Act, so far as is relevant in this appeal, reads:

"7(1). Before the boundaries, of any town are defined under the provisions of subsection (1) of section 5...or such boundaries are altered under the provisions of subsection (1) of section 5,...the Minister shall arrange that a notice of the proposal to define or alter the boundaries of any town...setting out details of such proposals be advertised once in the Gazette and four times in a newspaper published and circulating in Fiji calling upon all persons interested in the proposal to submit to the Local Government Committee within a period of two months from the date of the first of such advertisements, any objections which such person may wish to make, and .....

(2) The Local Government Committee shall after due enquiry advise the Minister on any objections referred to in sub-section (1).

The appellant has owned the land, albeit under a different company name initially, since before 1973. The land is situated between the sea and a road running a short distance to the west of, and parallel to, the western boundary of Nadi Airport. At the time when the appellant bought it, it was agricultural land and consisted of a number of separate but contiguous lots; it was bought, however, with the intention of developing the whole of it for urban-type residential and hotel purposes, including sub-division into smaller lots. It was not within or immediately adjacent to the boundaries of Nadi Town. On 29 June 1973 a notice was published in the Gazette that the boundaries had been altered so as *inter alia* to include that land. It is, however, still separate from the other land comprising Nadi Town. It is separated by land beneath the flight path of aircraft landing at Nadi Airport from the south which is not included within

the boundaries of Nadi Town. At no point is any boundary of the appellant's land contiguous with the boundary of any other part of the town, although it is separated from the nearest boundary by only the Nadi Airport runway and two narrow strips of agricultural land in private ownership.

The appellant says that the alteration of the town's boundaries in that manner was invalid, that the respondent had no power to seek it and that the Minister had no power to order it. Lyons J., having examined the Act, concluded that the boundaries of a town could be altered by including within them land separated from, and having no boundary contiguous with, the land already included within the town's existing boundaries, so that neither the respondent nor the Minister acted *ultra vires*. On the question whether the respondent's act of seeking to have the appellant's land included within the town's boundaries was initiated with *mala fides*, His Lordship found that there was no evidence before him of *mala fides*. We would add that the appellant did not draw to our attention any such evidence in the appeal book or press the matter at the hearing.

Lyons J. rejected an argument advanced on the appellant's behalf that an alteration of a town's boundaries by way of extension must be made in such a way that, as a result of such alteration, the town retains substantially the same form as before it, with any new land added being contiguous to land that was already within the town's

boundaries. He examined the meanings of the words "boundaries" and "alter" and concluded that their meanings in section 5(1) must depend on the context. He observed that no authority had been cited to him for what he termed "the test of contiguity" propounded by the appellant and decided that contiguity was not required by the Act.

Essentially, the only issue which we have to decide now is whether the block of land called Area B is within Nadi Town. That depends on whether the Minister's order in 1973 altering, or purporting to alter, the then existing boundaries of the town was valid. That in turn depends on the construction of section 5(1) of the Local Government Act.

In construing the Act the words of the section should be given their normal meaning. To the extent that they can bear more than one such meaning, the meaning that must be given to them is that which is most appropriate in the context and which best serves to advance the purpose of the Act.

The Act provides for local government in parts of Fiji. In it a town is the name given to a unit established for the purposes of local government administration. It is not proper, therefore, to approach the task of construing section 5(1) with any conception of a town that is based on the historical development of urban settlements over the centuries.

The Act makes provision for local government authorities to provide certain services to the inhabitants of their local government units. That is clearly one of the main reasons why provision needs to be made for local government and it is, therefore, in our view a principal purpose of the legislation. For a local government authority to be able to provide the services, its local government unit must be economically viable. That factor militates against the creation of units of local government that are very small. On the other hand, in a civilised country the services which it is the obligation of urban local government authorities to provide should be available, wherever possible, to those residing in urban areas. Such services include the maintenance of streets and drains and other services which promote the health, welfare and convenience of the inhabitants (see sections 88, 90, 108, 119 and 120 of the Act).

It will, therefore, further the purpose of the Act if substantially adjacent areas of urban development, some of them too small to be economically viable as independent units of local government, can be brought together into one economically viable unit. Likewise, if possible, areas being developed for urban-type residential purposes which are substantially adjacent to an existing local government "town" but are too small to be economically viable on their own should be brought within the existing "town". What is in issue is whether, in the circumstances of the present case, section 5(1) permitted the Minister to make an order having

that effect.

Section 5(1) provides both for the initial constitution of a local government unit called a town and for alteration of the boundaries of existing such units. So far as the initial constitution of the unit is concerned, it provides that "an area" of land which is not a district may be constituted as a town. Its provision in respect of alteration is in terms of the "boundaries" of an existing town. Lyons J. took the view that one area of land must of necessity have one continuous boundary so that the use of the plural "boundaries" was inappropriate if a town consisted of only one area. We cannot accept the validity of that reasoning as, if carried to its logical conclusion, it would require every local government unit called a town to consist of two or more areas. To construe section 5(1) in that manner might hinder rather than promote the attainment of the purposes of the Act.

However, underlying Lyons J.'s reasoning is a point which we consider to be of vital importance, namely that by virtue of section 2(4) of the Interpretation Act (Cap.7) words in statutes used in the singular include the plural and words used in the plural include the singular. That means that it is possible to read "an area" in section 5(1) as meaning either a single area or a number of areas. In the same way "boundaries" may be read as meaning either a number of boundaries or a single boundary. In our view, therefore, it is possible to construe section 5(1) as authorising the

constitution of a town consisting of, two or more separate areas, although clearly they would need to be in close proximity to one another. Because of that, it is also possible, we consider, to construe the provision relating to the alteration of the boundaries of the local government unit called a town by taking into the unit another area of land in close proximity to it.

In section 5(3) and (4) there is reference to "the boundaries of a town" being "extended". The provisions of those sub-sections are clearly intended to apply whenever an area or areas of land not already within the unit are to be added to it. That is relevant to the meaning to be given to "altered" and "alteration" in sub-section (1). It may be taken to indicate that the boundaries of an existing unit can be altered only so as to take in an area contiguous with the area or areas of that existing unit. In our view it need not have that effect.

The meaning of the word "extend" varies according to its context. In some contexts it requires that the extension be co-terminous with the area or period being extended. But in other contexts it has been held that it is not to be so narrowly construed (see e.g. Blue Metal and Gravel (Country) Pty Ltd v. Bombala Shire Council (1992) 26 NSWLR 292, per Handley J.A. at p.304).

It may be suggested that to construe section 5(1) as authorising the constitution of a local government unit called a town by including in it several separate areas would be unsatisfactory because the degree of proximity of such areas to one another that is required is not set by the statute.

In our view that is not so. The Minister is given a discretion whether or not to make an order constituting a town or altering its boundaries. He may seek the advice of the Local Government Committee before he exercises the discretion (section 5(1)). If it is proposed to alter the boundaries of an existing town, the proposed alteration must be advertised in advance (section 7(1)) and, if there are any objections, the Local Government Committee must hold an inquiry to consider them and then advise the Minister in respect of them (section 7(2)). Finally, if the Minister's order is grossly unreasonable, a remedy may lie by way of judicial review.

It is our concluded view, therefore, that section 5(1) can, and should, be construed as empowering the Minister to constitute a local government area called a town by including in it several areas in close proximity to one another and can alter the boundaries of an existing unit by adding to it another area separate from it, but in close proximity to it.

The appeal must, therefore, be dismissed. Costs should follow the cause.

Decision : Appeal dismissed  
Appellant to pay the respondent's costs of the appeal.

*I.R. Thompson*

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Mr. Justice I.R. Thompson  
Justice of Appeal

*Sir Ian Barker*

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Sir Ian Barker  
Justice of Appeal

*J. D. Dillon*

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Mr. Justice J. D. Dillon  
Justice of Appeal

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