

IN THE CENTRAL AGRICULTURAL TRIBUNAL FIJI
AT LAUTOKA.

Agricultural Tribunal Reference No. WD 11 of 2018
Central Agricultural Tribunal Appeal No. CAT 05 of 2022

BETWEEN

ANIL DEO formally of Raviravi, Ba but now of 11/113 Wallace Road,
Papatoetoe, Auckland, New Zealand and

PRAVIN DEO of Raviravi, Ba.

APPELLANTS

AND

SALWENDRA KALI NAIDU of Raviravi, Ba.

FIRST RESPONDENT

AND

DIRECTOR OF LANDS

SECOND RESPONDENT

Counsel : Mr. Padarath N. for the Appellants
Mr. Daveta F. for the First Respondent
Mr. Kant S. for the Second Respondent

Date of Hearing : 08th June 2023

Date of Judgment : 29th June 2023

JUDGMENT

[1] The 1st respondent filed an application before the Agricultural Tribunal (the Tribunal) seeking a declaration of tenancy.

[2] The 1st respondent, on 27th June 2022, filed a notice of motion seeking the following orders:

1. That the 1st and 2nd respondents (the appellants in this appeal) and the said respondents' solicitors namely Messrs Samuel K. Ram Solicitors do jointly and severally reimburse the Fiji Sugar Corporation Ltd at Lautoka in the sum of \$50,693.00 and the said sum to remain with Fiji Sugar Corporation Ltd, Lautoka until the determination of this here reference or until a further order of this Tribunal.

2. That the 1st and 2nd respondents do pay costs of this application.
3. That such other orders as this Tribunal deems just and expedient.

[3] After hearing the above application the Tribunal made the following orders:

- a. The 1st and 2nd Respondents along with Respondent Counsel are hereby jointly and severally ordered to reimburse the Fiji Sugar Corporation the full amount of \$50,693.00 being cane proceeds in Cane Contract No. 8091 within 14 days.
- b. The 1st and 2nd Respondents along with Respondent Counsel are further jointly and severally Ordered to pay indemnity cost summarily assessed in the sum of \$2,000.00 to be paid within 14 days.
- c. Subsequent sugar cane proceeds under Cane Contract No. 8091 are to be held by the Fiji Sugar Corporation hence forth until further orders of the Court.
- d. Appeal within stipulated time frame.

[4] Being aggrieved by the above orders of the Tribunal the appellant appealed to this Tribunal (C.A.T) on the following grounds:

1. That the Tribunal erred in law by holding that it had jurisdiction to hear the application filed by the applicant dated 27th June 2022, when jurisdiction was with the Central Agricultural Tribunal pursuant to Regulation 44 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations.
2. That the Tribunal erred in law and in fact by not making a finding in relation to the submissions raised by the 1st and 2nd respondents in their written submissions on Regulation of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967.
3. That the Tribunal erred in law by holding that it had jurisdiction to adjudicate on disputes in relation to Cane Proceeds by referring to

section 22 of the Agricultural Landlord and Tenant Act (hereinafter referred to as “ALTA”),when;

3.1 Section 22 of ALTA does not specifically provide power to the Tribunal to adjudicate on dispute in Cane Proceeds.

3.2 The power or jurisdiction under section 22 is limited to the powers provided for under ALTA and it does not extend or allow the Tribunal to extend jurisdiction to include cane proceeds.

4. That the Tribunal erred in law by not giving adequate reasons and failed in its duty to adequately address the doctrine of emblements when cane proceeds or sugar cane is a crop which comes within the doctrine of emblements.

5. The Tribunal erred in law by applying the principle of *Sub Judice* when principle of *Sub Judice* relates to a publication of matter before a court which would prejudice the proceedings. The principle of *Sub Judice* was not applicable a relevant consideration when the application was limited to the issue of cane proceedings.

6. The Tribunal erred in fact by holding that the 1st and 2nd respondents made a deliberate and calculated attempt to delay the hearing on 21st January 2021 when;

6.1 The basis of the release and authority was provided to Fiji Sugar Corporation in the letter dated 19th February 2021.

6.2 The Fiji Sugar Corporation has received a letter from the applicant’s solicitors in relation to the release of cane proceeds.

6.3 The Fiji Sugar Corporation after receiving legal advice as per the e-mail dated 20th August 2021 and 26th August 2021 and 8th September 2021 released the cane proceeds.

6.4 The Tribunal failed to give proper consideration to the above evidence.

7. The Tribunal erred in law and in fact by holding that the 1st and 2nd respondents prejudicially affected the proper administration of justice, when the issue before the Tribunal was a declaration of tenancy under section 4 of ALTA.

[5] Regulation 44 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967 provides;

After a reference file of a reference being appealed has been transmitted to the central agricultural tribunal, all applications in the proceedings shall be made directly to that tribunal, provided that in cases of urgency, a tribunal may make any interim order to prevent prejudice to the claims of any party pending an appeal, but any such order may be discharged or varied by the central agricultural tribunal.

[6] In this case it is absolutely clear that the orders sought by the 1st respondent (applicant in the matter before the Tribunal) and the orders made by the Tribunal are not interim orders.

[7] It is also important to note that the Tribunal has failed to give reasons as to the basis on which it relied on section 22(1)(j) of the Act. The Tribunal has a duty to give reasons for all its findings.

[8] In considering whether the Tribunal has jurisdiction to deal with the matter in issue the Tribunal has relied on Section 22(1)(j) and (k) of the Agricultural Landlord and Tenant Act (the Act) which provides;

In respect of its agricultural district, a tribunal may, upon the application of a landlord or a tenant of an agricultural holding-

- (j) decide any dispute between a landlord and tenant of agricultural land relating to such land and to the provisions of this Act, and to exercise any power or duty, including the power to specify the period of time a decision shall be in force, necessary for the implementation of any power, duty or function conferred by or imposed under the provisions of this subsection or of this Act:
- (k) Exercise any other power or duty conferred or imposed by or under the provisions of this Act.

[9] The above provisions do not confer a discretionary power upon the Tribunal to make any order as it thinks fit. The Tribunal can make order under these provisions or under any such power if such power is conferred upon it by the provisions of the Act.

[10] Section 3(1) of the Act provides:

(1) This Act shall apply to all agricultural land in Fiji except-

(a) agricultural holdings having an area of less than 1 hectare:

Provided that the Minister may, on application by a tribunal or otherwise, by notice in the Gazette, specify agricultural holdings or classes of such holdings of a less area than 1 hectare to which the provisions of this Act shall apply;

(b) tenancies held by members of a registered co-operative society of agricultural land, where the society is the landlord;

(c) all native land situated within a native reserve:

Provided that the Minister, after consultation with the Native Land Trust Board, may prescribe any land set aside and proclaimed as a native reserve under the provisions of

the Native Land Trust Act to be subject to the provisions of this Act but, for the purpose of avoiding doubt, it is hereby declared that, notwithstanding the provisions of subsection (2) of section 59, the provisions of sections 16 and 17 of the Native Land Trust Act shall apply to such a prescribed and reserved land. (Cap. 134.).

(Amended by Ordinance 21 of 1967, s. 2; Legal Notice 112 of 1970; 94 of 1979.)

(2) The provisions of this Act shall prevail notwithstanding the provisions of any contract of tenancy created after 29 December 1967.

[11] As submitted by the learned counsel for the appellants section 3 of the Act does not deal with cane proceeds and therefore, the Tribunal does not have jurisdiction to make any order as to cane proceeds.

[12] The Tribunal in its ruling has found that the letter written by the appellant to the Fiji Sugar Corporation misled the Fiji Sugar Corporation to release the funds. The Tribunal has arrived at the above finding on the basis that the appellants had breached the principle *Sub Judice*. However, the Tribunal in its judgment does not say how this letter prejudiced the rights of the parties. It is more so because the Tribunal has no jurisdiction to deal with cane proceeds.

[13] The learned counsel for the respondent submitted that the power of attorney of Anil Deo (1st appellant) did not confer power on Pravin Deo (the 2nd appellant) to institute proceedings in any court or tribunal. It is the respondent who made Pravin Deo a party to these proceedings. Since he is a party he does not have to have a power of attorney to participate in these proceedings.

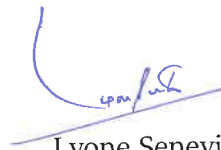
[14] Both counsel informed this tribunal that before the proceedings were instituted in the Tribunal the lease had already expired. However, since the substantive

matter has not yet been finally disposed of it is still within the powers of the Tribunal to decide whether the respondent is entitled to the orders sought in the reference.

[15] For the reasons aforementioned the court makes the following orders.

ORDERS

1. The appeal of the appellants is allowed and the judgment of the Tribunal dated 03rd November 2022 is set aside.
2. The 1st respondent is ordered to pay the appellants \$2,000.00 (\$1,000.00 to each appellant) as costs of this appeal.
3. The matter is referred back to the Agricultural Tribunal.



Lyone Seneviratne



Central Agricultural Tribunal

29th June 2023