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IN THE SUPREME COURT OF FIJI
AT LABASA
Appellate Jurisdiction
Civil Appeal No. 1 of 1982

BETWEEN: HARDAYAL son of Ganpat — Appellant

A N D : NATIVE LAND TRUST BOARD — Respondent

Messrs. Kato & Co. — Solicitors for the Appellant

J U D G M E N T

The respondent is a statutory body responsible for the control and administration of native land in Fiji. Lot 22 Rau Kanace at Tabia, Labasa is land controlled and administered by the Respondent. Part of that land is at present occupied and cultivated by the appellant and the appellant has built a house upon it. The respondent claims that the appellant is in unlawful occupation of the land and asks for an order for repossession.

The pleadings give no indication of the size of the plot occupied by the appellant, or what sort of land it is - whether it is agricultural land or land for development or other usage. Nor do they give any indication of the period of time during which the appellant has been in occupation.

In his pleadings the defendant claimed that he was in lawful occupation of the land, that he had built a dwelling house and carried out substantial development of the land after being given assurance by a representative of the respondent, and obtaining the consent of the mataqalis concerned. He claims to have applied to the Agricultural Tribunal for a tenancy of the land, but his application was rejected apparently because it was brought at the wrong time, but he had made a further application which was pending at the time of the hearing of this case in the lower court. At that hearing the appellant asked for an adjournment pending determination of the appellant's application to the Tribunal. His application for an adjournment was refused and the magistrate proceeded to determine the matter, giving judgment for the respondent. The appellant now appeals against that judgment.

There are two grounds of appeal. Firstly that the magistrate erred in finding that the land was not agricultural land to which the Agricultural Landlord and Tenant Act applied, and secondly in not staying the hearing till after the Tribunal had decided on the appellant's application for a tenancy.

So far as the first ground is concerned the magistrate made a finding that this was not agricultural land which is surprising since there was no evidence as to whether it was agricultural land or not.

He added "The fact that the defendant has done some cultivation does not make this agricultural land within the definition in the Agricultural Landlord and Tenant Act."
This is correct so far as it goes but that doesn't mean that it wasn't or couldn't be agricultural land. And if it was agricultural land of or exceeding $2\frac{1}{2}$ acres in extent it would certain come within the purview of the Agricultural Tribunal. As to the extent of the land occupied by the appellant no evidence on this was given by the appellant himself, but a witness for the respondent said that the appellant was occupying about 2 or 3 acres.

There was no dispute that apart from the house site he was cultivating this amount of land. So it would seem that the appellant's application for a tenancy could perhaps be considered by the Tribunal.

I was referred by counsel for the respondent to the case of Surat Singh v. Gurbachan Singh, C.A. 9/1980 where it was held that a stay so that an application to the Agricultural Tribunal could be dealt with would be refused because the Tribunal had no power to consider the application. But in that case the area of land effectively occupied by the application was only $\frac{1}{4}$-$\frac{1}{2}$ acre in extent so there was no way the Tribunal could assume jurisdiction. In this case although the matter is not entirely free from doubt, it seems at least probable that the Tribunal would have jurisdiction. I don't think I could presume that it would not have jurisdiction.

It is clear that if the Tribunal were to reject the appellant's application that would be the end of it, because the appellant cannot establish any other right to remain on the land.

As to the position of the Tribunal vis a vis the court, it has powers to award tenancies which are not available to the court, and so long as it does not exceed its statutory given powers the court cannot interfere with its operations. This has been set out by the Fiji Court of Appeal in the case of Azmat Ali v. Mohammed Jalil, Civil Appeal No. 44/81, and similarly as in that case there is no

reason to presume that the Tribunal will not and should not accept jurisdiction in accordance with the terms of A.L.T.A., or that if it does so it would not properly decide whether there is or should be a tenancy, exercising powers under Section 18 of A.L.T.A. which are not open to this court. In accordance with the views expressed by the Fiji Court of Appeal in Azmat Ali's case it would be unfair to deprive the appellant of the possibility of being granted a tenancy by the Tribunal. To dismiss the appeal would be to pre-empt any decision of the Tribunal. The matter is somewhat complicated by the fact that the appellant withdrew his application to the Tribunal after the magistrate ruled against him so at present there is no application pending before the Tribunal.

It is within the powers of the Supreme Court, as the Fiji Court of Appeal pointed out in Azmat Ali's case, to make any order which it considers just in all the circumstances. I think that the fairest order that I could make would be to suspend these proceedings to give the appellant the opportunity to make a new application to the Tribunal, and to have his application dealt with by the Tribunal, without in any way saying anything to influence the findings of the Tribunal. In order to ensure that there is no undue delay on the part of the appellant I will adjourn the present proceedings for two weeks. If by then application has been made I will consider a further adjournment to await the outcome of the application.

Labasa,
September, 1982

G. O. L. Dyke
Judge