

Kalanivalu v Government of Tonga and Minister of Lands

Privy Council
Appeal Case 5/1973

12 February, 1974

Land - agreement by Government to grant land as part of estates of noble - not proved

Land - renewal of lease no right to renewal where lease provide that lease is renewable if the lessor shall be willing to again lease the land, but lessor is not willing to do so

Lease - renewal - no right of lessee to renewal of lease where lease provides that lease is renewable if the lessor shall be willing to again lease the land, but lessor is not willing to do so

A lease of land was granted by the Minister of Lands to the predecessor in title of the Noble Kalanivalu. After the expiry of the lease in 1972 the Noble applied to the Government for a renewal of the lease, or for the inclusion of the land concerned in his inheritable estate, but the Government refused.

The Noble Kalanivalu appealed to the Land Court which dismissed his appeal. He then appealed to the Privy Council.

HELD:

Affirming the decision of the Land Court:

1. There was no proof of an agreement by the Government that the land would be included in the Noble's estate in consideration of his allowing some other land in his estate to be leased by the Wesleyan Church;
2. There was no right of renewal where a clause in the lease provided that if the lessor shall be willing to lease the land again the lease shall be renewed, but the lessor was not willing to lease the land again.
3. The fact that the lessor was willing to lease part of the land again did not constitute a willingness to lease the land again for the purpose of the clause in the lease.

Cases referred to:

Quensell v Minister of Lands App No. 1/1972 [1962-1973] Tongan Law Report 4S
Privy Council

Judgment

This is an appeal against a decision of the Land Court holding that the appellant is not entitled to a renewal of a lease over the lands known as Fongoloa, which had expired on the 23rd May, 1972. This lease was granted to the appellants' predecessor in title, Siieli Pangia, by the Minister of Lands, in consideration of a grant of a lease to the Wesleyan Church by Siieli Pangia of certain lands at Toloa. The Toloa lease was renewed in 1970 by the appellant. The lease to Siieli Pangia contained a special covenant that the lessee was not permitted to transfer or assign the lease. It also contained the option for renewal clause set out in Form No.3 Schedule VIII to the Land Act, which is in these words:

"And it is hereby agreed by these presents if the Lessor shall be willing or his successors at the expiration of the term of this lease, to again lease this land, and the Lessee is willing or his heirs or representatives to pay the same rent which may be obtained by the Lessor or his successors from any other person or persons, the first offer shall be given to the Lessee, his heirs or representatives to lease the piece of land recorded in the Deed".

In 1972 the appellant applied for a renewal of the lease, but this was refused on the ground that the lessor was not willing again to lease the lands, which were required for development purposes.

The appellant then filed a claim in the Land Court for a renewal of the lease of Fongoloa, or alternatively for an order that Fongoloa be included as part of the appellant's estate. The Court held that the appellant was not entitled to a renewal, and dismissed his whole claim. It is from that judgment that this appeal is brought.

Counsel for the respondent raised the preliminary point that the full fees payable on an appeal under Schedule XI to the Land Act had not been paid within 60 days after judgment, as required under sec. 140 of the Act, and that therefore the appeal could not be heard. The point was reserved and the hearing of the appeal proceeded. In view of our judgment on the merits of the appeal we do not find it necessary to decide the preliminary point.

The claim that Fongoloa should be included in the estate of the appellant must depend on an alleged agreement that Government would grant him the land in consideration of his leasing to the Church the required area of Toloa. No such agreement has however been proved; and the matter seems to have been settled by the acceptance of a lease for a lengthy term. We find therefore that his claim to a tofi'a of the land Fongoloa has no foundation and cannot succeed.

With reference to the renewal of the lease, Counsel for the appellant contended that if the lease, contains an option for renewal in terms of Form 3 in Schedule VIII, and the lessee gives notice that he desires a renewal, the lessor is in duty bound to grant it. This argument overlooks the qualification "if the lessor shall be willing to again lease the land".

In this case the lessor has stated that he is not willing to lease the land, which is required for development purposes. It is this factor which distinguishes the present case from that of Quensell v. Minister of Lands, Appeal No. 1/1972, [1962-1973] Tongan Law Report 49 upon which Counsel for the appellant heavily relied. In Quensell's case the Minister had refused his request for a renewal under the terms of the lease, and then granted a new lease of the whole land to another person. The Privy Council held that the Minister was bound by the terms of the lease to grant a renewal to Quensell, as the lessor was "willing to again lease the land".

Counsel then proceeded to argue that as the Minister has already leased or agreed to lease part of the land, the objection to renewal in favour of the appellant does not apply. The question requiring determination is the meaning of the phrase "to lease the land". In our opinion this must mean to lease the land as a whole. If a renewal of the lease is granted, this necessarily means that the lessee will remain in possession of all the land included in the original lease. If the lessee were to take over any lesser area, this would be a new lease and not a renewal of the old one. If the lessor wishes to bring into operation a development plan involving the subdivision of the land into smaller allotments, there is nothing in the original lease or in the provisions of the Land Act to prevent it. In such a case the lessor has an undoubted right to notify the lessee is not entitled to a renewal.

For these reasons the appeal will be dismissed, with no order as to costs.

In the course of the proceedings it was stated that some buildings have been erected on the land, including the house occupied by the appellant. This Council notes with approval the offer of an allotment of a part of the land to the appellant so that he may retain possession of his dwelling-house, and understands that in carrying out the subdivisional plan the Minister will take steps as far as possible to avoid causing hardship or injustice to persons at present on the land.