

**IN THE CENTRAL AGRICULTURAL TRIBUNAL AT SUVA**

**Reference No. WD 04 and 05 / 2010**

**CAT Appeal No. 05 of 2020**

**BETWEEN**

**SHAKUNTALA DEVI of Buabua, Kautoka**

**APPELLANT (Original Applicant)**

**AND**

**RAJ PAL of 33 Sabre Crescent Holsworthy NSW, Sydney, Australia.**

**FIRST RESPONDENT (Original 1<sup>st</sup> Respondent)**

**AND**

**ASHMIN PRAKASH aka AZMIN PRAKASH of 33 Sabre  
Crescent Holsworthy NSW, Sydney, Australia.**

**SECOND RESPONDENT**

**AND**

**iTAUKEI LAND TRUST BOARD** of

431 Victoria Parade, Suva.

**THIRD RESPONDENT**

**Counsel** : Ms. Naidu J. for the Appellant  
Mr. Singh R. for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents  
Ms. Vokanavanua Q. for the 3<sup>rd</sup> Respondent

**Date of Hearing** : 07<sup>th</sup> December 2020

**Date of Judgment** : 19<sup>th</sup> January 2021

**JUDGMENT**

- [1] This is an appeal from the ruling of the Agricultural Tribunal (the Tribunal) made on 28<sup>th</sup> August 2020.
- [2] The Central Agricultural Tribunal earlier set aside the decision of the Tribunal made on 11<sup>th</sup> May 2016, on the substantive matter on the ground that the Tribunal made its decision without making the 1<sup>st</sup> respondent a party to the proceedings and sent the matter back to the Tribunal for a hearing afresh.
- [3] The 1<sup>st</sup> respondent, on 19<sup>th</sup> May 2020 filed a Notice of Motion seeking the following orders:
1. That the applicant's name be substituted by that of his lawful Trustee/Administrator.

2. That the said Trustee / Administrator and / or Solicitors Messrs Jyoti Legal of 3 Tukani Street, Lautoka do within 14 days deposit the sum of \$45,089.89 (Forty Five Thousand Eighty Nine Dollars and Eighty Nine Cents) being proceeds on Cane Contract No. 00199, Lovu Sector with Fiji Sugar Corporation at Lautoka.
3. And such other orders as would secure the sum of \$45,089.89 (Forty Five Thousand Eighty Nine Dollars and Eighty Nine Cents).
4. The time for service of this Motion be abridged to one day.

[4] The learned Tribunal heard the parties and mad the following orders:

25. The application sought is granted.
26. The applicant is ordered to return the proceeds of cane being the sum of \$45,089.89 (Forty Five Thousand Eighty Nine Dollars and Eighty Nine Cents) to Fiji Sugar Corporation within 14 days.
27. The status quo to remain until final determination of the substantive application.
28. Parties to bear own costs.

[5] Being aggrieved by the above orders the appellant appealed to the Central Agricultural Tribunal on the following grounds:

1. That the Tribunal erred in law and in fact in granting order in terms of the defective application filed on 19<sup>th</sup> May 2020.
2. That the Tribunal erred in law and in fact in not holding the application filed on 19<sup>th</sup> May 2020 was grossly defective.
3. That the Tribunal erred in law and in fact for relying on the defective affidavit for delivering his ruling dated 28<sup>th</sup> August 2020.

4. That the Tribunal erred in law and in fact for not considering it has been more than four years since the ruling was delivered on 11<sup>th</sup> May 2016 through which subject funds were released and there was no stay order made in this matter.
5. That the Tribunal erred in law and in fact for not taking into account that the respondents had not obtained any stay order in this matter.
6. That there has been a substantial miscarriage of justice by making such order and not taking into account the appellants are only cane farmers.
7. That the Tribunal erred in law and in fact by exceeding its jurisdiction in granting order for the application filed on 19<sup>th</sup> May 2020.

[6] 1<sup>st</sup> to 3<sup>rd</sup> grounds of appeal are based on the allegation that the Notice of Motion filed on 19<sup>th</sup> May 2020 was defective for the reason that the name of the attorney who affirmed the affidavit in support of the Notice of Motion on behalf of the 1<sup>st</sup> respondent is not the same name found in the power of attorney. In the affidavit his name is stated as "PRAVEEN CHAND" whereas in the power of attorney his name is given as "Pravin Chand".

[7] The question here is whether the Tribunal based its decision on the averments found in the affidavit. The tribunal has considered this objection and has struck out the affidavit. Therefore, the appellant cannot say that the decision of the Tribunal is based on the defective affidavit and the grounds of appeal 1 to 3 must necessarily fail.

[8] The Tribunal in making its decision has acted under the provisions of Section 3 and 13 of the Agricultural Landlord and Tenant Regulations (Tribunal Procedure) 1967 and Order 3 rule 2 of the Magistrates Court Rules 1945.

[9] Section 3 and 13 of the Agricultural Landlord and Tenant Regulations (Tribunal Procedure) 1967 provide:

- 3 Where no provision is specified by the Act or by these Regulations for the procedure to be followed or the conduct of proceedings by the parties, their barristers or solicitors or agents before the tribunal, the provisions of the Magistrates Court Rules 1945 shall be followed with such necessary



alterations as may be necessary to meet the circumstances of the case, provided that the provisions of Order 5 and 11 of the said Rules shall always apply to proceedings before a tribunal.

- [10] The above Rule makes provisions for the procedure to be followed when there is no specific provision provided for by the Act. However, Rule 13 of the Agricultural Landlord and Tenant Regulations (Tribunal Procedure) 1967 confers a wide discretion on the tribunal to make orders in the interest of justice whether such an order is expressly requested or not.
- [11] The Central Agricultural Tribunal delivered its judgment in appeal on 15<sup>th</sup> February 2018. When the judgment of the Tribunal is set aside and send it back to the Tribunal for re-hearing the status of the parties reverts back to its original position and the dispute between the parties remains undecided. There is no judgment in favour of the appellant to withdraw this money from the Fiji Sugar Corporation. In this matter the original applicant Prakash Chand passed away and the appellant was appointed as the sole administratrix of the estate of the estate of Prakash Chand.
- [12] The Tribunal in its ruling has considered whether any prejudice would be caused to the parties if the appellant is ordered to return the money to the Fiji Sugar Corporation. In my view the money once returned to the Fiji Sugar Corporation would be held by them until the matter is finally resolved. On the other hand if the appellant spend the money there is no guarantee that she would be in a position to return it if the Tribunal decides matter in favour of the 1<sup>st</sup> respondent.
- [13] The position of the appellant is that there has been a substantial miscarriage of justice by making the orders without considering that the appellants are cane farmers. I do not see how it become relevant to the issue before the Tribunal. They may be cane farmers but the question here is whether they are entitled to obtain this money when the dispute was yet to be determined by the Tribunal.

[14] Another ground of appeal is, the respondent did not obtain a stay order. In the Agricultural Landlord and Tenant makes no provisions for obtaining an order for stay of execution pending appeal from the Central Agricultural Tribunal. In this instance what the Tribunal has done is to secure the money pending the determination of the dispute between the parties.

[15] For the reasons aforesaid I make the following orders.

### ORDERS

- (1) The Appeal of the appellant is dismissed.
- (2) I make no order for costs of this appeal.





Lyone Seneviratne

**Central Agricultural Tribunal**

19<sup>th</sup> January 2021