

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CIVIL JURISDICTION**

Civil Action No.: HBC 41 of 2015

**BETWEEN** : **VIMLA WATI aka BIMLA WATI** of Boca, Bulileka, Retired as the Administratrix De Bonis Non with the Will Annexed of the Estate of Madho, late of Boca, Bulileka, Labasa, Fiji, Cultivator

**PLAINTIFF**

**AND** : **JITENDRA PRAKASH** of Bulileka, Labasa, Salesperson

**DEFENDANT**

**Appearance** : **Mr. S. Sharma for Plaintiff**  
**Ms. Devi for Defendant**  
**Date of Hearing** : **8<sup>th</sup> August, 2017**  
**Date of Judgment** : **27<sup>th</sup> March, 2018**

**JUDGMENT**

**INTRODUCTION**

1. The Plaintiff filed this action for vacant possession. The land is under an Approval Notice of Lease (ANL) described in Land Department LD Ref 4/9/1274 being Lot 1 on T 1175 Bulileka in Labasa with an area of approximately 1.4794 ha. It is a State land and the Plaintiff had obtained the leave of the Director of Lands to institute the action. The Defendant is residing on a part of that land allegedly with leave of the Defendant, but no consent of the Director of Land obtained. Any agreement for a dealing without the consent of the Director of Land is null and void in terms of the Section 13 of State Lands Act 1945 (former Crown Lands Ordinance). The Defendant had taken the risk of occupying an agricultural land belonging state without consent of the Director of Land, and had constructed a house.

**FACTS**

2. Following facts are admitted in the pre-trial conference

- a. The Plaintiff was on 30<sup>th</sup> day of January, 1995, granted letters of Administration De-Bonis with the Will Annexed of the Estate of Madho, son of Chaturi, Late of Boca, Bulileka, Labasa, Fiji, Cultivator who died on the 23<sup>rd</sup> July, 1987.
  - b. The Plaintiff was issued with the ANL being Lot 1 on T 1175 Bulileka in the District of Labasa, Province of Macuata containing an area of approximately 4794 hectares (subject to survey)
  - c. The Defendant is a salesperson at New World Supermarket, Labasa.
  - d. In 2007, the Defendant with the consent of the Plaintiff built an iron and timber house on the property and moved in with his family.
  - e. The Defendant was served with a Notice to Vacate on 15 of May, 2015.
3. In the evidence Defendant stated that he had obtained consent of the Plaintiff to build a house on the land under ANL and for her to exclude the same from ANL. Before this a subdivision needed and a survey needed to be done. This was not completed, though more than 10 years have lapsed.

#### **ANALYSIS**

4. Since the land is a Protected Lease, terms of ANL marked as P2 no dealing relating that land or portion of it can be done without the approval of Director of Lands in term so Section 13 of State Lands Act, 1945. It reads as follows,

*13.-(1) Whenever in any lease under this Act there has been inserted the following clause:-*

*"This lease is a protected lease under the provisions of the Crown Lands Act"*

*(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease*

***Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.***

*(2) On the death of the lessee of any protected lease his executors or administrators may, subject to the consent of the Director of Lands as above provided, assign such lease.*

*(3) Any lessee aggrieved by the refusal of the Director of Lands to give any consent required by this section may appeal to the Minister within fourteen days after being notified of such refusal. Every such appeal shall be in writing and shall be lodged with the Director of Lands*

*(4) Any consent required by this section may be given in writing by any officer or officers, either solely or jointly, authorised in that behalf by the Director of Lands by notice published in the Gazette. The provisions of subsection (3) shall apply to the refusal of any such officer or officers to give any such consent. (Inserted by 21 of 1959, s. 2)*

*(5) For the purposes of this section "lease" includes a sublease and "lessee" includes a sublessee. (emphasis added)*

5. Clause 1 of the ANL states

*'Lease to be subject to conditions set out in the Crown Lands Leases and Licenses) Regulations summary of which conditions are attached herewith. This is a protected lease under provisions of Crown Lands Act.'*

6. The Section 13 of Crown Lands Act contains a statutory prohibition for dealing with the land comprised in ANL without written consent of Director of Lands.
7. So any agreement made by the Plaintiff and Defendant for subdivision and of the land contained in ANL is null and void in terms of proviso to Section 13 of Crown Lands Act.
8. There is a statutory prohibition that prevents any form of dealing of alienation, of the land without written consent of the Director of Land, hence, the Defendant's counter claim for the specific performance fails.
9. Since the Plaintiff could not deal with 'protected lease' in ANL without consent of Director of Lands the occupation of the Defendant is without any legal basis.

10. Since the occupation of the Defendant can be no more than a licensee due to statutory prohibition of dealings relating to protected land, he cannot claim damages on equity. He had taken the risk of occupying a land under a Protected Lease, without obtaining the consent of the Director of Lands. So, he is precluded from claiming equitable relief of specific performance, and or damages for his deliberate action of building on a state land without consent of Director of Land.
11. The ANL is an Agricultural Lease and conditions are attached to the said ANL. The Defendant should have seen these conditions and ought to have done his due diligence before building any structure on the said land.
12. The Conditions for Agricultural Lease are as follows  
*(6) Only such buildings shall be erected on the demised land as are necessary for*
  - (a) a dwelling or dwellings for the lessee;*
  - (b) accommodation for implements, vehicles, horses, and other stock used in connexion with farm, or plantation or any building directly connected with the work of a farm, plantation.*
13. The Defendant's defence as well as claim for specific performance is based on an agreement that is null and void, ab initio.
14. The Documents Marked D3 was purportedly signed by the Plaintiff, but the signature was not admitted by the Plaintiff. This was a letter written by the Plaintiff to the Divisional Surveyor, indicating her desire to subdivide the land, for a 750 square meters for the Defendant.
15. If this document is accepted as evidence it only proves that the Plaintiff had consented to grant 750 square meters to the Defendant, without seeking consent of the Director of Land and this agreement is null and void, in terms of law.
16. No such subdivision was done and no plan was produced at the trial. According to the Plaintiff he had also paid a \$3,000 to the Plaintiff. There is a receipt issued in the name of

the Plaintiff for subdivision of the land marked as D3 and it is dated on 6.7.2006. But none of that grants the Defendant a right to build a residential house in Protected Lease under ANL.

17. The case that was submitted by Defendant cannot be applied to facts of this law as this land is State land under ANL as opposed to freehold land and transfer for fee simple.

### CONCLUSION

18. The ANL is subject to State Lands Act 1945. The land is designated as agricultural land and also governed under Agricultural Land and Tenants Act. ANL only grants permission for the lessee to build a dwelling and for such other structure for the purpose of agriculture. Any building on the land built by the Defendant was at his own risk. He cannot rely on an agreement which is null and void in law for specific performance and or for damages. Considering that Defendant had stayed on the land for nearly decade and had also build a house, I would grant him sufficient time to vacate the land and find suitable alternate accommodation. He can remove the structure at his own expense within this time period of one year. I will not award any cost for this action.

### FINAL ORDERS

- a. The Plaintiff is granted vacant possession of the land from the Defendant.
- b. Considering the circumstances of the case the Defendant is granted 1 year time to vacate the land, till then the execution is stayed.
- c. No costs

Dated at Suva this 27<sup>th</sup> day of March, 2018



*[Signature]*  
Justice Deepthi Amaratunga  
High Court, Suva