

NAUSORI TOWN COUNCIL

A

v.

NATIVE LAND TRUST BOARD

[SUPREME COURT, 1978 (Kermode J.), 16th January]

B

Civil Jurisdiction

Land—Native Land within town boundaries—Liability for payment of rates—Local Government Act 1972 s. 60—Native Land Trust Ordinance (Cap. 115) ss. 2 and 4.

C

The plaintiff sought to recover arrears of rates from the Native Land Trust Board in respect of Native Land within its boundaries.

Held: The owners of the land and not the NLTB were liable.

Per curiam: The NLTB has a duty to see that the owners of Native Land pay their rates thereby ensuring that the owners do not additionally become liable for the payment of interest on the arrears.

D

No cases were referred to.

Action for the recovery of rates in the Supreme Court.

KERMODE J. :

E

In this action the plaintiff seeks to recover from the defendant the sum of \$1,391.61 being arrears of rates and interest thereon for the period 1st January 1968 to 31st December 1973 in respect of the land containing 1 acre and 19 perches situate in Miller Street, Nausori.

The following facts were agreed at the hearing:

F

1. The land at all relevant times was native land and had not been alienated.
2. The land is situate within the boundaries of the town.
3. The land was duly assessed for rates and notices of assessment were served on the defendant.
4. The sum of \$1,391.61 for rates and interest thereon is owing to the plaintiff.

G

It was agreed that the only issue to be determined is whether the defendant is liable to pay the sum of \$1,391.61 to the plaintiff.

All land within the Nausori Town municipality is, under section 60 of the Local Government Act, rateable except the lands expressly mentioned in the proviso to section 60 which are not assessable for rates. Native land is not excluded by the section and is assessable for rates.

H

The person liable for rates is the owner of the land. 'Owner' is defined in section 2 of the Local Government Act as:

" 'Owner' in relation to land means a person other than a mortgagee not in possession who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a registered lease or registered agreement; A

Provided that in the case of unalienated native land the term 'owner' shall mean the proprietary unit;"

The proviso to this section provides that in the case of unalienated native land the proprietary unit is the owner. B

In the instant case the land in question was, in the period when the rates accrued due, unalienated native land and the Fijian proprietary unit was by virtue of section 2 of the Act the owner of the land and liable for the rates.

The Act recognises the difficulties a council faces in collecting rates levied on unalienated native lands. Section 125 of the Act provides as follows: C

"A council may, subject to the approval of the Fijian Affairs Board and of the Minister, make by-laws concerning the manner in which Fijian villages may be incorporated in the municipality, for the method by which rates may be levied in such Fijian villages and for the minimum standard which is required to be attained in the construction of buildings therein." D

Village land would be unalienated native land and section 125 contains special provisions to deal with (*inter alia*) levying of rates in respect of such land.

The control of all native land is by virtue of section 4(1) of the Native Land Trust Ordinance vested in the Native Land Trust Board. Section 4(1) provides as follows: E

"4.(1) The control of all native land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the Fijian owners."

Section 4(1) does not vest native land in the Board as owner or as trustee for the owners of the land but only the control of the land. The section specifically refers to the "Fijian owners". "Native owners" is defined in section 2 of the Ordinance as: F

" 'Native owners' means the mataqali or other division or subdivision of the natives having the customary right to occupy and use any native land;"

The difficulties faced by a council in enforcing payment of rates levied on unalienated native land through the Courts is appreciated but the Local Government Act does provide a procedure whereby a council can obtain payment of rates to which I will refer later. G

I am of the view that in the instant case the Native Land Trust Board has failed in its duty to the Fijian owners in not ensuring that the rates were paid and allowing interest of \$264.25 to accrue on overdue rates. That failure, however, does not make the Board legally liable to the plaintiff for the sum of \$1,391.61 claimed by the plaintiff. It is the owners of the land who are liable. The land in question is part of the two acres and 30 perches in Nausori Town which at one time was leased by the Fijian owners to Alexander George Ross (Native Lease 32/445.) This lease expired on 11th July, 1966. H

- A Since 1966 the Board has leased a number of sections of this land to lessees. The Fijian owners have therefore since 1966 been in receipt of rent income from the sections which have been leased. Where the Board has failed in its duty in administering the land was not to pay the rates on the unalienated portion of the land as and when they fell due from income derived from the leased portions of the land.

- B The plaintiff is not however without a remedy. Section 81 of the Local Government Act provides that a council may, where rates in respect of land are in arrears, give notice to the lessee of such land to pay the rent due under the lease to the council until the arrears of rates have been paid.

- C While section 81 cannot be applied where the land remains unalienated, as and when portions of the land in question are leased the council may serve notices on lessees to pay their rent due under the leases to the council. The longer the Board fails in its duty to see the rates are paid the greater the sum the Fijian owners will have to ultimately pay due to interest accruing on overdue rates. In the interests of the owners and in performance of their duty in administering the land the Board should take early steps to ensure the arrears of rates are paid from income or other moneys received from the alienated portion of the land.

- D I hold that the defendant is not legally liable for payment of rates on Fijian land and the plaintiff's claim against the defendant is accordingly dismissed.

Since this is a test case and the Board itself is also anxious to have a ruling as to whether it is liable for rates I consider it a suitable case for making no order as to costs.

Judgement for the defendant