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NORMAN SNODGRASS & ANOTHER

v.

THE ATTORNEY-GENERAL IN AND FOR FIJI

B

and

THE DIRECTOR OF LANDS

[SUPREME COURT—Kermode J.—29 January 1985]

C

Civil Jurisdiction

Town and Country Planning—Approval of application for subdivision—plan registered in Titles Office—one lot therein to be dedicated to the Crown as open space—requirement by Director of Lands but subject to imposed condition that Landlord made satisfactory arrangements for future maintenance of the subject area with the Local Authority—no statutory mandate available to Director of Lands to accept the dedication but not empowered to impose further conditions—such condition unreasonable and ultravires.

D

D. J. Whippy for the Plaintiffs
J. K. L. Maharaj for the Defendants

E

Application by the plaintiffs sought an order that the Director of Lands (Director) be required to complete the dedication document in respect of the transaction referred to above.

F

Plaintiffs were subdividers of a certain land at Cakaudrove in Vanua Levu which subdivision was approved by the Director of Town and Country Planning on 17 July 1984.

On 26 July 1984 the plan was registered in the Titles Office. It comprised 17 lots 1–16 to be residential and lot 17 to be dedicated to the Crown as open space. Upon the said plan there was an endorsement thus:

G

“Lot 17 to be dedicated before any other dealings are accepted on this plan.

(sgd) M. Volavola
 for Director of Surveys.”

H

On 29 August 1984 a dedication document presented to the Director for acceptance was finally conveyed in a letter set out in the reasons for judgment.

As a result Counsel for the plaintiffs applied to amend the originating summons seeking in Paragraph 1 a declaration instead of the earlier order as follows:

"The condition stipulated by in the second defendant that the plaintiffs make satisfactory arrangements for the future maintenance of Lot 17 D.P. 5569 with the Local Authority before his acceptance of the Dedication of the said Lot as a Public Open Space, is unreasonable and ultra vires."

By S.8(3) of the Subdivision of Land Act the Director of Town and Country Planning had power to impose a condition that portion of the land to be subdivided be reserved as an open space, a matter not queried by plaintiff's Counsel.

S.160 of the Lands Transfer Act (LTA) referred to such dedication. It imposed on the Registrar of Titles a duty to register the dedication on application to him.

Held: The Director has no statutory mandate to impose the condition referred to above. All that remained to give effect to the direction that Lot 17 be dedicated to the Crown was for the Director to accept the dedication executed by the plaintiffs on 29 August 1984. It was mandatory under S.4 of the Crown Lands Act that the land so dedicated was to be taken in the name of the Director of Lands of Fiji for and on behalf of the Crown. The only duty remaining to the Director was to accept the dedication. He was not empowered to impose further conditions on the plaintiffs which was the province of the Director of Town and Country Planning. The powers of the Director were limited to ensuring that all conditions imposed on the plaintiffs by the Director of Town and Country Planning were complied with before he formally accepted the dedication.

Declaration made in terms of paragraph 1 (supra). Further declared that the condition stipulated by the director of Lands that the plaintiffs make satisfactory arrangements for the future maintenance of Lot 17 with the Local Authority before acceptance of the dedication was unreasonable and ultra vires.

Per Curiam: counsel should not swear affidavits in matters in which they themselves appear.

Cases referred to:

Candy & Another v. Coromandel County Council (No. 1, Town and Country Planning Appeal Board 1975).

KERMODE. Mr Justice.

Judgment

The plaintiffs are subdividers of their land comprised in C.T. 20824 tikina of Savusavu, Cakaudrove, in Vanua Levu.

The survey plan for the subdivision of the said land was approved by the Director of Town and Country Planning on the 17th day of July, 1984.

The said plan was registered in the Titles Office on 26th July, 1984, under D.P. No. 5569 comprising 17 lots, Lots 1 to 16 to be residential and Lot 17 to be dedicated to the Crown as open space.

In regard to the open space, the said plan is endorsed as follows:

A "Lot 17 to be dedicated before any other dealings are accepted on this plan.

(sgd) M. Volavola
for Director of Surveys."

B Since the 29th August 1984, when a Dedication document was presented to the Director of Lands for acceptance, the plaintiffs through their solicitors endeavoured to have the Director of Lands by letter and telephone messages complete the dedication document. He did not reply to letters or return telephone calls and the plaintiffs were forced to initiate this action when he replied to the last two letters.

C Before initiating this action Mr Whippy wrote to the Director of Lands with copies to the Minister of Lands on the 10th October, 1984, complaining about failure to respond to letters and threatening action.

Mr Maharaj who appeared for the plaintiffs filed an affidavit which he swore himself.

Counsel; should not swear affidavits for parties they present. There would appear to be no apparent reason why the Director of Lands should not have made the affidavit himself.

D Mr Maharaj's affidavit had annexed to it a letter from the Director of Lands, the text of which is as follows:

"re: Dedication Lot 17—DP. 5569

Your letters of 2/10/84 and 10/10/84 on the above subject are acknowledged.

E Please note that I will be in a position to accept the Dedication on condition that the Landlord makes satisfactory arrangements for the future maintenance of the subject area with the relevant Local Authority.

Stipulation of the above condition has become necessary because of lack of Government funds for the required maintenance and the likely Public objections that will arise when the Open Space is not maintained."

F As a result of this letter Mr Whippy applied to amend the originating summons seeking a declaration instead of an order and substituting the following for paragraph 1 of the relief claimed:

G "The condition stipulated by the second defendant that the plaintiffs make satisfactory arrangements for the future maintenance of Lot 17 D.P. 5569 with the Local Authority before his acceptance of the Dedication of the said Lot as a Public Open Space, is unreasonable and ultra vires."

Under Section 8(3) of the Subdivision of Land Act, the Director of Town and Country Planning has power to impose a condition that portion of the land to be subdivided be reserved as an open space. The subsection provides:

H "(3) If the Director is of opinion, having regard to the health, amenity or convenience of the neighbourhood, that the establishment of any noxious or offensive trade, business or manufacture should not be permitted or that a portion of the land being subdivided not exceeding in any case one-twentieth of the total area thereof should be reserved as an open space, the Director may, in approving the application in whole or in part, impose such conditions as are necessary to give effect to such decision."

Counsel have not raised the issue or queried the Director of Town and Country Planning's powers to direct that the an area be set aside or reserved as a public open space and that that open space be dedicated to the Crown. A

The Director of Lands is also the Surveyor-General and presumably is also the Director of Surveys. Mr Volavola presumably was authorised by the Director of Lands to insist that Lot 17 be dedicated before any other dealings are accepted on the plan. B

Section 160 of the Land Transfer Act refers to dedication of roads and streets and imposes on the Registrar of Titles a duty to register the dedication on application made to him.

" "Street" or "road" under the Interpretation Act includes "passage or open space" to which the public are entitled or permitted to have access". C

The Director of Town and Country Planning has very wide powers to approve or refuse applications for subdivision. C

He directed that Lot 17 be reserved for public open space. He was in my view empowered to impose other conditions regarding Lot 17 such as conditions that Lot 17 be cleared or levelled. Mr Maharaj referred to one case which supports this view *Candy & Another v. Coromandel County Council* (Number one Town and Country Planning Appeal Board 1975 p. 192) where it was held (inter alia) that a condition requiring a property owner to contribute towards the cost of sealing a public road in order to remove a dust nuisance could enhance the amenities of a neighbourhood by bringing about a condition contributing to the pleasantness of the environment and to its better enjoyment for permitted use. D

Mr Maharaj admits that the Director of Lands has no statutory mandate to impose the condition that he did. He argues further that there is no statutory obligation on him to accept any dedication but that if he accepts it voluntarily he then has the discretion to impose such terms as are reasonably necessary to effect the full consequences of such dedication. E

The Director of Town and Country Planning and the Director of Lands in his capacity as Surveyor-General have directed that Lot 17 be dedicted to the Crown. All that remains to give effect to that direction is for the Director of Lands to accept the Dedication which the plaintiffs executed on the 29th August, 1984. F

Where land is tranferred to the Crown which is effected by a Dedication, it is mandatory under Section 4 of the Crown Lands Act that the land shall be taken in the name of the Director of Lands of Fiji for and on behalf of the Crown.

It is a statutory duty and the only remaining duty the Director of Lands has to perform that he accept the dedication of Lot 17 which he himself directed was to be dedicated to the Crown. He is not empowered to impose any further conditions on the plaintiffs which is the province of the Director of Town and Country Planning. His powers to refuse acceptance are limited to ensuring that all conditions imposed on the planitiffs by the Director of Town and Country Planning are complied with before he formally accepts the dedication. G

There is no suggestion in this case that those conditions have not been complied with. H

A I grant the declaration sought and declare that the condition stipulated by the second defendant that the plaintiffs make satisfactory arrangements for the future maintenance of Lot 17 D.P. 5569 with the Local Authority before his acceptance of the Dedication of the said lot as a Public Open Space is unreasonable and ultra vires.

The plaintiffs are to have the costs of this application.

B *Declaration judgments for the Plaintiff.*