THE STATE

v

THE CENTRAL AGRICULTURAL TRIBUNAL
ex-parte
AHMAD

[HIGH COURT, 1994 (Scott J), 4 July]

Land-agricultural land-judicial review of decision of Agricultural Tribunal-jurisdiction of High Court-Agricultural Landlord and Tenant Act (Cap 270) Section 6 1(1).

The applicant sought judicial review of a decision of the Agricultural Tribunal. The High Court HELD: judicial review is not available in the face of a privative clause in the legislation when the alleged error of law is within jurisdiction.

Cases cited:

Anisminic Limited v Foreign Compensation Commission [1969] 2 AC 147
Asmat Ali v Mohammed Jalil (FCA Reps 86/36)
Eastern (Auckland) Rugby Football Club Inc v Licensing Control Commission [1979] 1 NZLR 367
Houssein v Under Secretary, Department of Industrial Relations (1982) 38 ALR 577
K.R. Latchan v Sunbeam Transport (FCA Reps. 84/261)
Manoa Bale v Public Service Appeals Board (FCA Reps. 85/249)
South East Asia Fire Bricks Sdn Bhd v Non Metallic Mineral Products Manufacturing Employees Union [1981] AC 363
New Zealand Engineering (etc) Union v Court of Arbitration [1976] 2 NZLR 283

Motion for judicial review in the High Court.

A.K. Narayan for the Applicant
V.P. Mishra for the Interested Party

Scott J:

The Applicant is a sugarcane farmer who since 1921 has farmed 16 acres of freehold land at Namaururu Ba which is owned by the Trustees of the Methodist Church in Fiji (the Interested Party) hereinafter called "the Church".

A bundle of agreed exhibits was tendered by consent and I will refer to these documents by the letters and numbers allocated to them.

In 1963 the Applicant entered into a share farming Agreement over the 16 acres with the Church's predecessors (Exhibit A-2). The Agreement was to

expire on 31 March 1970 unless previously determined by 12 months notice to quit.

A On 21 April 1969 the Applicant, who had received a notice to quit from the Church dated 25 March 1969, applied to the Agricultural Tribunal for an extension of tenancy under the provisions of section 13 of the Agricultural Landlord and Tenant Ordinance (now Act-ALTA - Cap. 270) (see Exhibit A-4).

B The Church opposed the application and in paragraph 15 of Form 2 to Exhibit A-4 stated that "this farm is urgently required for the establishment of a Home and Training Scheme for underprivileged boys".

In October 1969 the proceedings between the Parties were settled. As appears from Exhibit A-21 and a letter from the Agricultural Tribunal dated 3 October
C 1969 within Exhibit A-4 the Applicant agreed to surrender 6 of the 16 acres in return for being granted a 20 year lease over the remaining 10. Under the provisions of section 13 of ALTA the lease over these 10 acres would of course qualify for an extension of 20 years beyond the initial lease period. Unfortunately the 1969 settlement did not hold. Although the Church built a fence between the 6 acres and the 10 it did not actually construct the boys home and in about
D 1975 the Applicant uprooted the fence and reoccupied the 6 acres. Two further applications were made to the Agricultural Tribunal by the Applicant namely applications Nos. 15 and 16 of 1975. Both were discontinued. Two Civil Actions were also commenced in the High Court at Lautoka namely 144 of 1975 and 438 of 1977. The first was discontinued but the second, which sought to set aside the 1969 settlement on the grounds of fraud, was stayed
E pending the outcome of a fourth application to the Agricultural Tribunal reference N0.143A/85 (see Exhibit J). The Applicant sought a declaration of tenancy over the 6 acres pursuant to the provisions of section 5 (1) and 22 of ALTA.

On 19 November 1986 the Agricultural Tribunal (R.M. Nair Esq.) refused the
F application. As will be seen from the Record (Exhibit J pages 24 - 37) Mr. Nair found that the Applicant had surrendered his right to the 6 acres in 1969 and that he had not occupied the 6 acres for the 5 years following the surrender. He found that the Church had discharged the onus placed upon it by section 4 of ALTA and had proved that the Applicant was occupying the 6 acres without its' consent.

G On 8 December 1986 the Applicant appealed to the Central Agricultural Tribunal (Hon. K.A. Stuart) hereinafter called the CAT. The grounds of appeal are set out on pages 1-5 of the Record, Exhibit J. On 31 August 1987 the CAT delivered its judgment. It considered that there was "ample evidence" that the Applicant had not occupied the 6 acres as a bona fide tenant since he had removed the fence in 1974 or 1975 and that prior to removing the fence the 6

acres had been surrendered by operation of law, the 1969 settlement comprising as it did "the principal requisite of such a surrender, namely the giving of possession by the tenant". A

On 3 September 1987 the Applicant filed his ex-parte notice of motion for leave to apply for Judicial Review of the CAT's decision. Leave was granted the following day. The amended statement in support is Exhibit K-2 on the file. Unfortunately very little happened thereafter for a number of years. The Applicant remained in possession of the 6 acres rent free and the cane proceeds from the 6 acres were apparently paid into a Trust Account. B

The next development was in June 1993 when the Church sought an Order dismissing the action for want of prosecution. I dismissed the Church's application on 7 December 1993 on the main ground that the principal cause of the delay was the failure by the Secretary of the CAT to provide a copy of the Record. The hearing proper took place before me on 21 June 1994. C

Before turning to the arguments advanced before me it is important to be clear about the basis on which the High Court will accept jurisdiction in a matter such as this.

That the scope for intervention is narrow is immediately apparent from section 61 (1) of ALTA which reads as follows: D

> "The proceedings, hearing, determination, award, certificates or orders of the Central Agricultural Tribunal or of a Tribunal shall not be called in question in any Court of Law...".

The Fiji Court of Appeal has explained the basis on which the High Court may intervene. In Asmat Ali v. Mohammed Jalil (FCA 111/85 - FCA Reports 86/36) Mishra J.A. answering the first question raised in that case namely "Can the Supreme Court exercise supervisory jurisdiction over specially created judicial institutions like the two Tribunals?" said: E

> " (This) question does not present any great difficulty and we concur with the Learned Judge, for the reasons that he has given, that where the Tribunals act beyond their powers the Supreme Court can exercise its' supervisory powers to control them. The origin of the jurisdiction was discussed by this Court in K.R. Latchan v. Sunbeam Transport and Others (45, 51, 57 and 61 of 1983) and limitations are further set out in Manoa Bale v. Public Service Appeals Board (23 of 1985)". F G

Later in the same case Mishra J.A. said:

> " It is not for this Court to consider whether the correct Orders were made under the appropriate provisions of ALTA,

the sole issue here being whether it was within the powers of the Tribunal to make the Orders that they made.....".

A

These latter remarks are especially important since they clarify the limitations of the revisional powers exercisable by the High Court in respect to the CAT.

As is made clear by Manoa Bale's case the difficult questions which followed the decision of the House of Lords in Anisminic Limited v. Foreign Compensation Commission [1969] 2 AC 147 relating to errors within and
B without jurisdiction have been resolved in Fiji by the decision to follow the approach taken by the Privy Council in South East Asia Fire Bricks Sdn Bhd v. Non Metallic Mineral Products Manufacturing Employees Union [1981] AC 363, by the High Court of Australia in Houssein v. Under Secretary, Department of Industrial Relations (1982) 38 ALR 577 and in New Zealand (see New Zealand Engineering (etc) Union v. Court of Arbitration [1976] 2
C NZLR 283 and also Eastern (Auckland) Rugby Football Club Inc v. Licensing Control Commission [1979] 1 NZLR 367). The effect of this approach is that the Court will only intervene in the face of a privative clause in the legislation where the alleged error of law is an erroneous exercise of excess jurisdiction. It will not intervene to correct an error of law within jurisdiction.

D In the present case, Mr. Narayan, who had inherited the brief from Mr. S.M. Koya, submitted that the CAT had erred in law on the face of the record when dealing with the legal effect of the Applicant's surrender in 1969 of the 6 acres. He also generally adopted and advanced the other grounds of complaint set out in the Amended Statement which had been drafted by Mr. Koya but did not press them individually

E

Mr. Narayan argued that the CAT's error was its application of the law of surrender to the settlement in 1969. He referred to Halsbury 4th Edition Volume 17 paragraph 444 and note 13 thereto. He suggested that the 6 acres had only been surrendered subject to a condition precedent namely that the Boys Home would be built. Since the home was not built, it was argued, the condition had
F failed and therefore the Applicant was entitled to retake possession of what he had surrendered. Of course, if the Applicant was in fact entitled to take possession of the 6 acres then his prospects of succeeding on the application for a declaration of a tenancy over those 6 acres would have been vastly improved.

Now, I can understand that the Applicant might have a sense of grievance as to
G what has occurred or rather not occurred. He feels that he was cheated of the 6 acres by a false promise to build a Boys Hostel. But the fact is that the plan to build a Boys Home was never a condition included in the settlement and was nowhere else reduced into writing. (See Indemnity, Guarantee and Bailment Act - Cap.232-section 59). In my view the hope, wish or plan to build a Boys Home could not amount to a condition precedent and the CAT reached the

right conclusion. It should, furthermore, not be overlooked that it was not as if the Applicant did not derive a substantial benefit from the settlement. He started with a share farming agreement over 16 acres determinable at 12 months notice and ended up with a probable 40 year tenancy over 10 acres.

The more fundamental difficulty about Mr. Narayan's argument was, however, that even if I were satisfied that he had demonstrated that the CAT had made one or more errors of law then I would additionally and crucially have to be satisfied that those errors were without the CAT's jurisdiction. But the main thrust of Mr. Narayan's argument was that the error complained of was an error of law on the face of the record and he did not attempt to demonstrate that they were errors in excess of jurisdiction. Even had he made the attempt I do not think it would have been successful. Having read the record and compared it with the grounds of complaint listed in the amended Statement (a Statement which as pointed out by Mr. Mishra bore an uncanny resemblance to the grounds of appeal before the CAT) I am satisfied that each of the decisions and rulings made by the CAT was entirely within its jurisdiction and accordingly and following Manoa Bale's case they are not open to Review.

There is a further consideration. The decision which it is now sought to quash was made by the CAT in August 1987. While I accept that the delays that occurred in disposing of this matter were not entirely the fault of the Applicant I think he must bear some part of the blame for failing to bring the matter on to final resolution. Perhaps the fact that he is continuing to occupy the land rent-free has some bearing on the matter.

Even if I were not satisfied that Judicial Review is not available to the Applicant in respect of the decision which he seeks to impeach I would decline to exercise my discretion in his favour after such a long lapse of time.

In all the circumstances the Motion fails and is dismissed.

(Motion dismissed.)