

**HAMID KHAN & RAHMAT KHAN**

v.

**SIMON PRASAD**

[HIGH COURT, 1996 (Pathik J) 23 December]

## Civil Jurisdiction

*Landlord and tenant- summary proceedings for possession of land- whether Fair Rents Act available as a defence- state land- effect of failure to obtain consent to letting. Land Transfer Act (Cap. 131) Section 269; Fair Rents Act (Cap. 269) Sections 4, 5, 7 and 19; State Lands Act (Cap. 132) Section 13.*

A tenant whose tenancy had been determined by a valid notice to quit argued that he was entitled by law to remain in the premises. The High Court HELD: (i) that the Fair Rents Act could not avail the tenant, first because the property had never been valued for the purposes of the Act and secondly because the Act could afford no protection when the tenancy was itself void and (ii) the fact that the tenancy was void for want of consent to its creation by the Director of Lands was no bar to the registered owner taking summary proceedings for possession.

## Cases cited:

*Chalmers v Pardoe* [1963] 3 All .E.R. 552

*Gutniel Sharan v. Dal Ram* (Action No. 272/80 Western Division)

*Jai Kissun Singh v Sumintra* (1970) 16 F.L.R. 165

*Mistry Amar Singh v. Kulubya* [1963] 3 All ER 499

*Phalad v Sukh Raj* FCA 43/78- FCA Repts 78/741

*Ram Kali v. Saten* (Action No. 93/77)

Summary proceedings in the High Court for possession of land.

*V. Maharaj* for the Plaintiffs

*M. V. Bhai* for the Defendant

**Pathik J:**

This is a section 169 application under Part XXIV of the Land Transfer Act Cap 131 (the 'Act') for immediate vacant possession of a flat on all that piece of land comprised and described in Crown Land being C.L.66296 Lot 1 Samabula Rifle Range Part of C.T. 6582 (the "property") of which the plaintiffs are the registered lessees.

The first Plaintiff has sworn an affidavit in support of his application on his own behalf and on behalf of his brother the second Plaintiff.

The first Plaintiff states that he is the owner of one of the flats on the property which is presently occupied by the defendant as a tenant on a monthly basis

A paying \$280.00 per month as rent. The defendant has been served with a notice to quit but he has failed to vacate the flat. He deposes that the Fair Rents Act (Cap. 269) does not apply in respect of the property. Furthermore the defendant is in illegal occupation as no consent of the Director of Lands was obtained before the defendant went to occupy it.

B In his Affidavit in Reply the defendant says that the notice to quit given to him is "irregular and void" and that it does not comply with the provisions of the Fair Rents Act particularly sections 19, 21, 22 and 23. He further states that the Plaintiff has "failed to observe the terms and conditions of the lease when tenancy was granted" to him. Furthermore, he says that the present proceedings cannot be entertained as the Plaintiff is in breach of section 13 of the State Lands Act (Cap. 132) as no consent of the Director of Lands was obtained before letting the flat out on rent.

C In reply to the defendant's said assertion about Fair Rent, the Plaintiff states that the defendant is in arrears of rent and that the Plaintiff had found an alternative accommodation for him but he refuses to move. The Plaintiff has attached to his affidavit the Director of Land's consent to evict the defendant from the property.

Consideration of the issues

D The lease is a Crown Protected Lease and the necessary consent of the Director of Lands to institute legal proceedings against the Defendant for vacant possession has been obtained.

E The Plaintiffs have, as registered lessees, brought these proceedings against the defendant under s.169 of the Act which they are entitled to do. A valid notice to quit has been given and it is not denied that the rent is owing. The tenant is an illegal tenant as section 13 (which deals with consent of Director of Lands) of the State Lands Act has not been complied with by either the landlord or the tenant; but consent has been obtained to evict the defendant. The Plaintiff's claim for possession is based on the independent and untainted ground of their being registered lessees and hence they do not have to have recourse to the illegal tenancy to establish their case.

F The defendant argues on the assumption that the Fair Rent Act applies to the property but without any evidence in support of his assertion. The Plaintiffs say that it does not. In fact there is no evidence of any valuation to show that the property or the flat is valued at so much for the Fair Rents Act to apply. Here the Court is merely concerned with a small flat owned by the first Plaintiff without any indication of its value.

G The decision in this case rests on (a) the effect of lack of consent of the Director of Lands when the flat was let out and (b) whether the provisions of the Fair Rents Act apply to this case.

Application of Fair Rents Act

The defendant in his affidavit talks about a 'lease' but there is no evidence of any lease. It is a straight out tenancy agreement.

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On the facts before me I find that the Fair Rents Act ("FRA") does not apply here. To be able to come under it, there has to be an application for determination of fair rent under s.4 of FRA which provides, inter alia:

"4 - (1) The lessor or lessee of any dwelling-house to which this Act applies may apply to the Fair Rents Officer for the area in which the dwelling-house is situated to have the fair rent of the dwelling-house determined."

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In this case neither party has made an application. It is only upon receipt of an application that a valuer is appointed to value the property. The valuer values the property and then determines the fair rent in accordance with the provisions of section 5 of FRA.

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It is no use defendant saying that FRA applies without having taken steps to have fair rent determined when he had ample time to do so.

If FRA applied in this case, then the power of the Court to Order possession of a dwelling to which the FRA applies is restricted. A judgment for possession can only be made in certain cases which are set out therein.

D

I might mention that section 23 says that the FRA will apply to Crown Land and dwelling houses on Crown Land, but except for section 11, it must mean that the FRA applies to valid leases or tenancies under the State Lands Act. Therefore s.19 of FRA must apply only to valid leases or tenancies under the Crown Lands Act.

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In Gutniel Sharan f/n Bhawani Samuel Sharan and Dal Ram f/n Jai Ram (Action No. 272/80 Western Division) Dyke J was faced with a similar situation as here where the respondent raised the point that he was protected in accordance with section 19(1) of the FRA. There in the course of his judgment Dyke J said:

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"Section 19 for instance must apply only to valid leases or tenancies under the Crown Lands Act. Where Section 13 of the Crown Lands Act applies so as to render any purported lease or tenancy null and void, there is no lease or lessee for the purposes of Section 19 of the Fair Rents Act. It would make nonsense of Section 13 of the Crown Lands Act to think otherwise.

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Section 7 of the Fair Rents Act can only mean that the determination of fair rent is fixed for the next twelve months, not that the tenant is given security of tenure for twelve months regardless of whether he has a valid lease or not."

Effect of Absence of consent

A The property is a protected lease and therefore the consent of the Director of Lands is required under s.13 of the State Lands Act which, inter alia, provides as follows:

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

B “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 foresaid, shall the Registrar of Titles register any caveat affecting such lease.

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

E There is no evidence of any consent having been obtained either by the Plaintiff or the defendant. This ‘dealing’ therefore is null and void and the defendant’s occupation of the flat is therefore unlawful, null and void. The defendant cannot in the circumstances be regarded as a lawful tenant of the Plaintiffs (vide Chalmers v Pardoe [1963] 3 All E.R. 552; Jai Kissun Singh v Sumitra (1970) 16 F.L.R. 165 F.C.A.; Phalad v Sukh Raj (Civ. App. 43/78 F.C.A.-FCA Repts 78/741)

F The defendant submits that because there was no consent of the Director of Lands he cannot be evicted. I hold that the defendant is in unlawful possession of the flat on the property and he cannot justify remaining in possession. The defendant’s assertion will not stand as in Mistry Amar Singh v. Kulubya [1963] 3 All ER 499, a Privy Council case, it was held that a registered owner of land was entitled to recover possession because his right to possession did not depend on the illegal agreements in that case but rested in his registered ownership and as the person in possession could not rely on the agreements because of their illegality he could not justify his remaining in possession. That case concerned an illegal lease of ‘Mailo’ land by an African to a non-African which was prohibited by a Uganda Statute except with the written consent of the Governor. No consent was obtained to the lease. After the defendant had been in possession for several years the plaintiff gave notice to quit and ultimately sued him for recovery of the lands. He succeeded.

Also in Ram Kali f/n Sita Ram and Saten f/n Maharaj (Action No. 93/77) Kermode J. expressed a similar view:-

“It is not necessary to determine whether there was an alleged sale as the defendant contends or a tenancy as the plaintiff alleges. Either transaction was illegal without the consent of the Director of Lands. .... While the plaintiff did disclose the illegal tenancy her claim for possession is based on the independent and untainted grounds of her registered ownership and she does not have to have recourse to the illegal tenancy to establish her case”. (underlining mine)

#### Conclusion

Under section 169 of the Act the Plaintiffs fall into the category of persons who are entitled to institute ejectment proceedings under the said section.

As required under section 172 of the Act the onus is on the defendant to “show cause why he refuses to give possession of such land” and “if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessee or he may make any order and impose any terms he may think fit.”

It is not in dispute that the defendant is in occupation of the flat and that he has been served with Notice to Quit and despite that he continues in occupation. His tenancy was determined by such notice to quit. As stated above the Fair Rents Act does not apply in this case. On the authorities referred to hereabove despite the lack of consent the Plaintiffs are entitled to evict the defendant. In Kulubya (supra) it was held:

“that the appellant was not, and never had been in lawful occupation of the lands and could not rely on the illegal agreements as justifying any right or claim to remain in possession, and without, doing so he could not defeat the respondent’s claim. The respondent required no aid from the illegal transactions to establish his case; it was sufficient for him to show that he was the registered proprietor of the lands and that the appellant, a non-African, was in occupation without the consent of the Governor, and accordingly had no right to occupy.”

I therefore find that the defendant has not shown any right to remain in possession or that there are any triable issues, and therefore I grant the order for possession sought by the Plaintiffs.

I order that the defendant deliver immediate vacant possession of the said flat to the Plaintiffs but execution to be stayed for 14 days from the date of this judgment with costs against the defendant to be taxed if not agreed.

*(Judgment for the Plaintiff.)*

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