

In the High Court of Fiji at Suva

Civil Jurisdiction

HBJ 03 of 2016

The State

vs

The Director of Town & Country Planning

Respondent

Ex parte Edward Charles Woodward

Applicant

COUNSEL: Ms M. Chan for the applicant

Ms S Taukei with Mr V. Chauhan for
the respondent

Date of hearing: 10th July, 2017

Date of Judgment: 14th September, 2017

Judgment

1. This an application for judicial review of a decision of the respondent, the Director of Town & Country Planning,(DTCP) declining the applicant's application for subdivision of part of CT 5679. The applicant, in his leave application stated that his father sold part of CT 5679, which now forms part of the Naveria Balaga Road in Savusavu. A strip/s remained between the road and the high water mark in the sea. The applicant contended that the strip/s belonged to him.

2. The applicant seeks judicial review on the grounds that the respondent:
 - abused her discretion in failing to publicly notify the scheme, call for hearing of objections under sections 19 and 22 of the Town Planning Act and give a proper explanation or reason or reference to the applicable law for her decision.
 - erred in law and in fact in basing her decision on irrelevant considerations of two Proclamations of 1996 and 1978, and based her decision on a recommendation of the Director of Lands that the applicant does not own the land, failing to ascertain that the applicant is the owner and take into account the Land Transfer Act and the Roads Act Schedule, particularly that relating to the Naveria-Balaga Road.
 - reached an unreasonable decision without any Court order or statutory provision, or legal sanction.
 - acted in breach of natural justice without a proper hearing or opportunity of hearing.
 - acted contrary to the legitimate expectations of the applicant.

3. The applicant prays for the following reliefs:
 - i. *An Order of CERTIORARI to remove .. and quash the DTCP's decision in rejecting the scheme plan ..of the Applicant as proprietor of (CT) No. 5679 (part of).*
 - ii. *An Order of MANDAMUS to require the DTCP to reconsider the refusal of the scheme plan and issue approval of the scheme plan.*
 - iii. *Further, a DECLARATION that ..the DTCP decision is invalid, void and of no effect.*
 - iv. *Further, a DECLARATION that the DTCP is bound by the Land Transfer Act Section 39 as to the indefeasibility of his title,.. DECLARATION that the DTCP's deprivation of the Applicant ownership of Certificate of Title No. 5679 is unlawful and ultra vires.*
 - v. *Further, a Declaration under Land Transfer Act Section 39 and 40 and the Constitution Article 27(1) that the Applicant owns the balance of CT 5679.*

4. Losana Rokotuiba, the respondent in her answering affidavit states that a portion of CT 5679 was transferred to the Colonial Secretary in 1932 for the construction of roads. The applicant was duly compensated. On receiving the applicant's application, the respondent obtained recommendations from the local authorities, the Savusavu Town Council and the Ministry of Lands and Mineral Resources, as required under section 6 of the Subdivision of Lands Act,(SOLA). On the recommendations provided and other relevant factors, the applicant was advised on 27 August,2013, that the application was refused. The balance of the land was acquired by transfer by the State.

5. Asakaia Tabua, Acting Surveyor General in his affidavit states that in terms of the Road Ordinance Proclamation no 14 of 1966, known as the Fiji Road Gazette No. 90, a Survey Instruction 30/66 was prepared and issued to the Divisional Surveyor Northern stipulating that all lands for which roads were constructed running on coastal areas and located beside the sea, should be surveyed as close to the High Water Mark boundary with no unusable strips to be left between the road and the High Water Mark. All surveys conducted after 1956 refrain from identifying strips of lands as a balance of lands owned by the proprietor, as these are owned by the State. A copy of Survey Instruction 30/66 is annexed together with a letter from the Director of Lands and Surveyor General of 30th May,2013.

The determination

6. The applicant, in his statement filed after leave was granted, states that on “9 January,2012, after verification by the Director of Lands,(his) surveyor received approval of plan SO 6255. This approval substantiated the fact that the area between the Naveria-Balagga Road and the sea is a part of the balance CT 567”.The respondent denies receiving any approval from the Director of Lands.
7. The applicant contends that the respondent did not follow the process under the Town Planning Act.
8. Sections 19(1) of the Town Planning Act provides that any scheme submitted to the Director “*by a local authority*”(emphasis added) may be provisionally approved. Sub-section (2) requires the Director then to “*publicly notify the scheme*”. Section 20 enables a owner or occupier of land within the area “*by notice in writing, addressed to the local authority, give notice of such objection*”. (emphasis added)
9. Clearly, the Town Planning Act is inapplicable and irrelevant in the present case, as its provisions contemplate an application by a local authority, as quite correctly pointed out in the written submissions filed on behalf of the respondent.
10. Moreover, the applicant’s surveyor had made application to the respondent for approval in terms of the Subdivision of Lands Act,(SOLA). The application is attached to the respondent’s answering affidavit. The affidavit in support of the leave application attaches the applicant’s surveyor’s letter of the same date as the application.
11. I find it necessary now to examine closely the scheme of the SOLA, in so far as it is material to this application.

12. Section 5 provides that an application for subdivision of land must be made to the Director of Lands and Surveyor General,(Director). Section 6 requires the Director to send a copy of the application to the local authority. Section 8 empowers the Director “*to refuse or approve applications*”. Section 9 provides that the “*discretion of the Director*” may not in any way be limited. Section 14 enables an appeal to be filed to the Minister in these terms:

*When the Director has refused to approve an application under this Act or has approved an application in part or subject to conditions, the Director shall forthwith communicate his or her decision together with the reasons therefore to **the applicant who may, within 28 days after the receipt of such communication, appeal to the Minister whose decision shall be final**, provided that the Minister may –*

- (a) for good cause extend the said period of 28 days; and*
- (b) seek and obtain the advice of the Advisory Committee*
- (c) on such appeals or on any other matters under this Act. (emphasis added)*

13. The section I have reproduced provides for a statutory right of appeal to the Minister whose decision is final.

14. The applicant has appealed to the Minister of Local Government, Housing Infrastructure and Transport on 21 October, 2015. There followed a meeting of his solicitor with the Minister on 18 January,2016. The applicant states that he has not received a response to his appeal.

15. Judicial Review is exercised where there is no statutory right of appeal. In a judicial review, it is not for the Court to substitute its decision for that of the Minister nor exercise its discretion when an appeal is pending, as in the present case.

16. The application fails.

17. Orders

- a. The application for judicial review is declined.
- b. I make no order as to costs.



A.L.B. Brito- Mutunayagam
JUDGE
14th September, 2017