Vakameilalo v Vakameilalo & Minister of Lands

Privy Council
Appeal No.2/1988

24 February 1989

Land - surrender of tax allotment - consent fo heir not necessary
·Land - surrender of tax allotment - heir must lodge claim within 12 months
10 *Limitation of actions - claim of heir to surrendered allotment must be within 12 months of surrender.*

In 1970 and 1971 the first respondent surrendered parts of his tax allotment, which were later granted to people having no connection with his family. The eldest son and heir of the first respondent was not aware of these surrenders and did not consent to them, but the consent of Cabinet was obtained. The Supreme Court hold that the surrenders were valid, but the appellant appealed to the Privy Council.

20 **HELD:**
Affirming the decision of the Supreme Court.
- (i) The consent of an heir is not necessary to a surrender of an allotment under section 54 Land Act;
- (ii) The combined effect of sections 54 and 81 Land Act is that an heir must lodge his claim to an allotment which has been surrended within 12 months of the surrender.

<u>Statutes considered</u>
Land Act, ss.54, 81
30

Counsel for appellant : Mrs Palelei
Counsel for second respondent : Mrs Taumoepeau

Judgment

In this case Martin J. was asked to decide a preliminary question of law on certain facts, which, for the purpose of the exercise, were accepted as established. These are the facts:-

The Appellant is the oldest son and rightful heir of the First Respondent. In 1939 the First Respondent became the registered holder of a tax allotment of over four acres, and in 1970 surrendered 1 ac. 28.4p. of the allotment, with the consent of Cabinet; and in 1971 surrendered a further area of 1 ac. 36.6 p. again with Cabinet's consent. The Appellant was unaware of these surrenders and did not give his consent to them. The surrendered portions of tax allotment were subsequently granted to people having no connection with the Appellant's family.

40

The question of law involved a consideration of S.54 of the Land Act (Cap 63) which, at the time of the surrenders, read:

"Whenever the holder of a town or tax allotment desires to surrender such allotment is shall be lawful for such holder with the consent of Cabinet to surrender the allotment aforesaid and any allotment so surrendered shall subject to the provisions of this Act immediately devolve upon the person who would be the heir of the holder is such holder had died ...".

50

It appears from Counsel's submission in the lower Court that the question of law posed for consideration was - is a surrender effective without the consent of the heir of the holder of the allotment?

That is the question of law Martin J. dealt with. He reached the only conclusion open on a reading of S.54, namely that there is no requirement in law that the heir's consent be obtained. Martin J. then went on to consider the effect of S.81 of the Land Act although he did not see it as necessary to the disposal of the case.

S.81 reads:-

"If no claim to a tax or town allotment has been lodged by or on behalf of the heir or widow with the Minister of his Deputy within twelve months from the death of the last holder such allotment if situate on Crown land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder."

60

Martin J. concluded that the provisions of S.81 apply to land surrendered by a landholder as they do to the land of a deceased holder.

It is our opinion that because of the way the matter was presented by Counsel in the lower Court the real issue in the case was all but overlooked. Although Counsel for the Appellant had stressed the Appellant's lack of consent and approval it is clear from the Statement of Claim that the Appellant was seeking to enforce his rights of ownership as heir. That requires a rather more careful consideration of the provisions of S.54 than the mere question of "consent" required.

70

The effect of S.54 is that on surrender the heir immediately becomes entitled to exercise his rights of inheritance <u>subject to the provisions of the Act</u> which we take to mean the provisions relating to the devolution of allotments. It follows, for example, that on surrender succession would be governed by S.76, which sets out the rules of succession; and S.101, which dealt with registration on succession, would apply.

We are therefore drawn to the conclusion that S.81 must also apply in the case of devolution following surrender adn basically for the reasons expressed by Martin J. - "It would create an impossible situation if after surrender an heir could come along at any

80

time within the 10 years limitation period and claim the land. After a reasonable period to allow claims to be made the land must be available for allocation".

The present case is a clear example of the injustice that could result if there was no limit on the time within which an heir could exercise his rights. The present holders of the surrendered lands have been in possession now for some 19 years and it was seven years after the surrender before the Appellant took action.

We acknowledge Counsel for the Appellant's argument that the fact of surrender may not come to the notice of an heir with the speed and certainty of notice of death of a holder, but it is a matter of weighing up conflicting interests and ensuring certainty and justice. Greater injustice would result if there was no limit on the time within which an heir could exercise his rights and uncertainty would reign.

90

The appeal is therefore dismissed with no order for costs.

To meet the problem which arose in this case, and to put the matter beyond doubt, we recommend that the Land Act be amended as follows:-

1. By adding a subsection to S.54 to provide "Notice of Cabinet's consent to the surrender shall forthwith be given to the heir of the holder by the Minister".
2. By adding after the words "from the death of the last holder" in S.81 of the Act the words "or within twelve months of receiving notice pursuant to S.54 of Cabinet's consent to a surrender".

100