

**IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE**

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 114/2000

BETWEEN:

CHANDRA NARAIN DOOBAY

Appellant

- and -

ATTORNEY GENERAL

Respondent

BEFORE:

Hon. Madam Justice Desiree Bernard	-	Chancellor
Hon. Madam Justice Claudette Singh	-	Justice of Appeal
Hon. Mr. Justice Ian Chang	-	Justice of Appeal

Mr. R. McKay, SC with Mr. W. Murray & Mr. G. Elias for Appellant
Mr. R. Ramkarran, SC and Mr. B. DeSantos, SC for Respondent

2003: January, 13
June, 6

J U D G M E N T

BERNARD, C.:

In January, 1994 the Respondents instituted proceedings against the Appellant for possession of a portion of land being within Block B of Pln. Nootenzuil, East Coast Demerara, of which the Government of Guyana is the owner under transport No. 1447 of 1975. The said Block B was purchased from Sankar Bros. Ltd. for the purpose of housing development, and was allegedly not subject to any leases or other encumbrances.

The Appellant is owner of lots 120, 121, 126 and 127 of the said Block B, but the Respondent alleged that he was and still is illegally

occupying a portion situate between the public road and the railway reserve outside of the lots of which he is owner.

The Respondent alleged that the Appellant had sought approval of the then Prime Minister in 1990 to purchase or lease the said tract of land, but the Central Housing and Planning Authority to whom the letter had been referred and under whose administration Block B fell, refused the Appellant's request, and by letter dated 17th May, 1991 informed him that he should discontinue his occupation. At the hearing of the Respondent's action the learned trial judge made a declaration that the Appellant was not entitled to possession of the tract of land, and issued an injunction restraining him from continuing his occupation thereof after a period of nine months. The Appellant has appealed to this Court.

Counsel for the Appellant submitted that the learned trial judge fell into error in finding that the land was State land and that the State Lands Act Cap. 62:01 applied no evidence having been led that the land was in fact State land. He made reference to the Lands Department Act, Cap. 59:01 and "the Development of Land Law in British Guiana" by Dr. Fenton Ramsahoye. Further, the learned trial judge wrongly exercised his discretion in permitting the Respondent to reopen his case and lead evidence from one Harry Singh. He also failed to consider the Appellant's evidence about meetings with Minister Collymore, and so made no findings on this. Counsel submitted that the issue of promissory estoppel arose out of a letter of permission to occupy the land given by the late former President Burnham to the Appellant. He referred among others to the cases of Ramsden v. Dyson (1866), 1 H.L., 129, 170; Dillwyn v. Llewellyn (1861-1873) ALL ER Reprint, 384, 388; Errington & Errington v. Woods (1951) 1 ALL ER, 149; Inwards v. Baker (1965) 1 ALL ER, 446, 448 G;

Pascoe v. Turner (1979) 2 ALL ER, 945; Taylor Fashions Ltd. v. Liverpool Victoria Trustees Co. Ltd. (1981) 1 ALL ER, 897 and Gillett v. Holt (2000) 2 ALL ER, 288.

In his submissions Counsel for the Respondent contended that the Appellant ought not to be permitted to raise the issue of proprietary or promissory estoppel at this hearing as it was not raised in the Court below. He submitted that an application for amendment of a counterclaim cannot be regarded as raising the issue of proprietary estoppel, and there is no evidence that the Appellant acted on a promise by Minister Collymore to his detriment. Counsel made reference to the cases of The Owners of the Ship "Tasmania" & Another v. Smith & Others (1890) 15 AC, 223; Connecticut Fire Insurance Co. v. Kavanagh (1892) AC, 473 and Ramberran v. Mohamed (1964) 7 WIR, 142 among others and Spencer Bower & Turner on "Estoppel by Representation", 2nd Edition, p. 332.

The history of this matter began in 1975 when the Government of Guyana purchased from Sankar Bros. Ltd. Blocks A & B, Pln. Nootenzuil, East Coast Demerara, comprising approximately eighty-four (84) acres. The area was surveyed and sub-divided into house lots. The Appellant alleged that at that time he was in occupation of sixteen (16) acres which had been previously occupied by his parents. He was also in occupation of an additional nineteen (19) acres all of which formed part of the 84 acres owned by the Government of Guyana and which he claimed he was permitted to continue to occupy by the late President Burnham. From a letter dated 24th February, 1983 tendered in evidence it seems that the Appellant had spoken with President Burnham about his occupation of the 35 acres, and the letter was written permitting him to continue to occupy and cultivate the said lands which were east of his house. President Burnham, however, advised that he

initiate action to obtain a lease of the said lands. Pursuant to this the Appellant on 4th November, 1990 wrote then Prime Minister, Mr. Hamilton Green, indicating that he was willing to purchase or lease the said 35 acres and that he had applied to the Minister of Agriculture to do so, but was advised that the area was previously zoned for housing, and unless this was changed he could not obtain a lease for farming; he sought the Prime Minister's intervention for a change of the zoning. The result of this was a letter dated 17th May, 1991 from the Secretary of the Central Housing & Planning Authority to the Appellant indicating that the land was not available for sale or lease and hence his application could not be entertained. He was thereby requested to discontinue occupation of the land.

However, earlier on 24th September, 1990 the Commissioner of Lands & Surveys in his letter to the Minister of Agriculture had supported approval for the issue of a lease for twenty-five years to the Appellant for agricultural purposes, and had expressed the opinion that the area was never intended to form part of the assets of the agency NEOCOL which owns the rest of the land held under Transport No. 1447/1975.

On 22nd March, 1993 Mr. Clinton Collymore, a new Minister in the Ministry of Agriculture wrote the Appellant notifying him that he was to cease cultivation of rice on the lands. However, the Appellant testified that Minister Collymore in the presence of one Harry Singh later agreed on a settlement with him whereby he (the Appellant) would give up 16 acres and he would be granted a lease for 19 acres. As a result an occupational survey was carried out by the Lands & Surveys Department. Mr. Collymore was not called to either substantiate or refute this contention, but Harry Singh who was called by the Respondent with leave of the Court after the close of its case, denied that he ever met with the Appellant and Mr. Collymore.

Counsel for the Appellant made reference to Regulation 7 of the State Lands Regulations, Cap. 62:01, on which he contended the trial judge relied. The first issue to be determined is whether the lands in dispute were State lands or Government lands. A historical review of land tenure in British Guiana (now Guyana) reveals that where land in the territory is not claimed by an owner it is to be deemed the property of the Crown. This conclusion is stated in "The Development of Land Law in British Guiana" by Dr. Fenton H.W. Ramsahoye at page 114, and at page 119 he discussed the difference between Crown and Colony lands. Crown lands were vested in the Sovereign (now regarded as State lands vested in the Head of State) while Colony lands are lands purchased by the Colonial Government with moneys from the Colonial Revenue (now regarded as Government lands purchased by the Government with Government funds). Dr. Ramsahoye posited that Colony land is today in no different position from that held by a private owner.

The lands in question were purchased by the Government of Guyana from Sankar Bros. Ltd. and held under transport No. 1447/1975. They are therefore Government lands and not State lands. Thus, the State Lands Regulations will not apply to these lands as was assumed by the learned trial judge. However, it is apposite at this juncture to consider Regulation 7 of the said Regulations for the purpose of drawing an analogy with Section 10 of the Lands Department Act, Cap. 59:01 which relates to Government lands and provides for such lands to be rented or sold only with the sanction of the President on terms and conditions to be determined by him.

Regulation 7 empowers the Commissioner of Lands to grant to an applicant for a grant, lease, licence or permission, leave to occupy the land applied for pending approval. This power exercisable by the Commissioner

is reviewable by the President who has the ultimate power to grant or refuse such leave; in fact the grant of all State lands is made by the President who may authorise the Commissioner to act on his behalf.

What can be concluded from this is that in relation to all lands which are not privately owned but are held by the State or purchased with funds from the Government Treasury, the President is the ultimate arbiter of decisions pertaining to grants, licences, permissions, leases, purchases or leave to occupy such lands. In relation to the Appellant he was granted permission by President Burnham to continue to occupy and cultivate the lands. He was, however, advised to take action to obtain a lease but did not do so until 18th May, 1990, over seven years after obtaining Presidential permission for continued occupation.

Mr. Edward Anderson, Asst. Commissioner in the Department of Lands & Surveys, testified that Blocks A & B of the land in dispute were subdivided and a plan laid out. He stated under cross-examination that the land from the railway line to the public road at Nootenzuil (including Blocks A & B) were rice lands with some houses. A plan delineating these lands was tendered as well as one in 1996 demarcating the Appellant's occupation. In 1982 a plan No. 19617 formulated Mr. H.F. Roberts, Sworn Land Surveyor, showed house lots Nos. 48-260 being part of Block B.

It seems that even though the house lots had been laid out on a plan in 1982 they were not sold or utilised when the late President Burnham gave written permission to the Appellant to continue his cultivation of the 35 acres. It is not unreasonable or fanciful to presume that the late President must have been aware that the area was still available for agriculture. One cannot comprehend that the President would have given permission for continued occupation and cultivation of rice lands fully knowing that the

character of the area had changed. Further, he advised the Appellant to obtain a lease. Why would he tender such advice if he knew that the area had been zoned for housing?

The Appellant testified that in 1983 following the President's advice he sent an application for a lease to the Regional Chairman, Mr. Remington, but heard nothing. Apparently he did nothing until May 1990 when he applied to the Ministry of Agriculture for a lease, and also to the Commissioner of Lands and Surveys in June 1990. This was seven years after he had been given permission by the President to continue his occupation. His present predicament can be attributed to this delay and his failure to act promptly. It was in 1990 that he discovered that the area had been zoned for housing, and he sought the Prime Minister's help in having this changed; this did not materialise.

Of significance is a letter dated 24th September, 1990 written to the Minister of Agriculture by the Commissioner of Lands and Surveys in response to a letter dated 10th July, 1990 sent to him by the said Minister concerning the Appellant's application for a lease. In that letter the Commissioner of Lands & Surveys after reviewing all the facts advised and supported approval for the issue of a 25 year lease of the said lands to the Appellant for agricultural purposes. He mentioned that an officer of his department had inspected the area and confirmed that development was substantial, indicating considerable expenditure and occupation over a prolonged period of time. He also pointed out that the 35 acres were part of the area allocated for housing development and several families had already paid for house lots on which they had erected houses. He concluded that this area "was never intended to form part of the assets of NEOCOL which owned the rest of the land held under transport No. 1447/1975". This seems

to suggest that the 35 acres occupied by the Appellant was not intended to be part of the area specifically allocated for housing development.

I cannot discern how this squares with the plans that were tendered, and I have had considerable difficulty understanding the plan showing the Appellant's occupation and the one delineating the house lots. One can only conclude that the house lots laid out on a plan by Roberts, Sworn Land Surveyor, and dated 14th January, 1982, were never demarcated on the ground and the Appellant's occupation and cultivation continued as reflected in a plan by Colin Reid, Sworn Land Surveyor, dated 22nd April, 1996, drawn up at the request of the Commissioner of Lands & Surveys. Evidence from both Edward Anderson, Asst. Commissioner of Lands & Surveys, and Denise Hope, Secretary of the Central Housing & Planning Authority, indicates that there was no infrastructural work carried out on the ground. Ms. Hope in fact testified that the Authority had not assumed possession or control of the area, and no housing scheme was laid out.

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acres of land until such time as he was granted a lease for which he was advised to apply. He did take steps to secure a lease, but this never materialized. On the strength of President Burnham's letter the Appellant claimed that he expended large sums of money on development of the land.

This has led Counsel to raise the issue of estoppel. He relies on the permission to occupy granted by President Burnham, the recommendation of Mr. Archer, the Commissioner of Lands and Surveys, who supported approval of a lease to the Appellant, and the alleged offer by Minister Collymore to grant him a lease for approximately 19 acres if he surrendered 16 acres for which he would be compensated.

One has to decide whether the acts relied on in fact create an estoppel. This is an equitable concept, and is illustrated by dicta laid down by Lord Kingsdown in Ramsden v. Dyson (1866) LR 1 HL at page 170 to the effect that when a man under an expectation encouraged by a landlord had expended money on the landlord's land, a court of equity would compel the landlord to give effect to the expectation. This, of course, is not confined only to a landlord and tenant relationship. In Inwards and Others v. Baker (supra) Lord Denning, MR after reviewing other authorities on the equitable concept, expressed the view that "it was plain from those authorities that, if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity". He went on to consider a contention of Counsel for the plaintiffs in that case that the principle only applied when there was an expectation of some precise legal term, but Lord Denning, MR was of the view that the equity arising from the expenditure on land does not fail

“merely on the ground that the interest to be secured has not been expressly indicated.....the court must look at the circumstances in each case to decide in what way the equity can be satisfied”.

He came to this conclusion from an examination of the facts in Plimmer v. Wellington Corporation (1884) App. Cas., 699 where a lessor who had erected a wharf on land owned by the Government of New Zealand with its permission, was held to have occupied it under a revocable licence which ceased to be revocable at the will of the Government after he had incurred large expenditure for the extension of a jetty. This was held to be so because allowing him to incur such expenditure created in his mind a reasonable expectation that his occupation would not be disturbed; nothing was done to limit the use of the jetty in point of duration.

In the instant appeal the Appellant alleged that he expended a considerable amount of money on developing the land in question having been given permission by President Burnham in 1983 to continue his cultivation, and must have expected that he would eventually be granted a lease. The licence to occupy which was given by President Burnham was not for a fixed period of time, and he made no attempt for several years to apply for a lease. Nevertheless, based on the authorities discussed earlier I am of the view that he acquired an equity in the licence which entitled him to continue his occupation. His expectation of being granted a lease must have been fostered by the failure of those who owned and controlled the land to take prompt action to terminate his licence since it must have been known both by President Burnham and the Ministry of Agriculture, the Department of Lands & Surveys and the Central Housing & Planning Authority that the land had been zoned for housing; it was a Cabinet decision taken presumably before or about the time when President Burnham purported to

grant him the permission to continue his cultivation. By their inaction he was lulled into a sense of security that there would be no objection to his securing a lease. It was not until after he applied for a lease in May 1990 that he must have learnt that the area was zoned for housing, and it was only in May 1991 that this was confirmed by the Secretary of the Central Housing & Planning Authority when he was informed that the land was not available for sale or lease.

The Appellant's evidence that Minister Collymore offered to grant him a lease for approximately 19 acres if he surrendered 16 acres was not tested under cross-examination neither was leave sought to call Minister Collymore to refute the Appellant's evidence; it therefore remains unchallenged.

The concept of proprietary and/or promissory estoppel is based on applying principles of equity to grant relief and confer legal rights in relation to immovable property on persons who would otherwise have been deprived of any right at all. Section 3(b) of the Civil Law of Guyana Act, Cap. 6:01 which made the English common^{law} applicable to Guyana also empowered our courts to administer the doctrines of equity in the same manner as the High Court of Justice of England administers them.

It has been postulated that since it has been held that equitable interests are not recognisable under our law of immovable property, the principles of equity ought not to be applied. I wish to point out that there is a difference between conferring equitable interests and utilising principles of equity to confer legal rights. In relation to the issue of estoppel it is for the Court in the particular circumstances of each case to decide how the equity can be satisfied.

With regard to the contention of Counsel for the Respondent that the Appellant ought not to be permitted to raise the issue of estoppel at this stage as it had not been raised in the court below, I have reviewed the cases cited. In The Owners of the Ship "Tasmania" & Another v. Smith & Others, (supra), Lord Herschell in the course of his judgment on the question whether a point not raised in the court below should be permitted to be raised in a Court of Appeal had this to say:

"It appears to me that under these circumstances a Court of Appeal ought only to decide in favour of an appellant on a ground there put forward for the first time, if it be satisfied beyond doubt, first, that it has before it all the facts bearing upon the new contention, as completely as would have been the case if the controversy had arisen at the trial; and next, that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity for explanation had been afforded them when in the witness box".

I find this view very instructive and of great assistance in determining whether the issue of estoppel can be raised for the first time before this Court. I have listed earlier the facts on which the Appellant rely to ground estoppel, and these facts were all led by evidence in the court below. The Respondent had the opportunity to cross-examine the Appellant fully on these factual issues and to seek leave to lead evidence to refute them, but in some instances did not avail himself in doing so. I made reference specifically of the evidence concerning Minister Collymore's offer of a lease of approximately 19 acres of the disputed land, and of the failure of then Counsel for the Respondent to cross-examine the Appellant or lead refutable evidence. This Court therefore has before it all the facts bearing upon the issue of estoppel which were before the court below.

In 1892 in Connecticut Fire Insurance Company v. Kavanagh (supra) Lord Watson who delivered the judgment of their Lordships of the

Privy Council formulated admirably the approach to be taken when a question of law is raised which had not been raised in the court below when he said:

“When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea. The expediency of adopting that course may be doubted, when the plea cannot be disposed of without deciding nice questions of facts, in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below. But their Lordships have no hesitation in holding that the course ought not, in any case, to be followed, unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the plea”.

I am satisfied that the evidence upon which the Appellant is asking this Court to decide, supports without doubt the plea of estoppel, and it is expedient in the interests of justice to entertain it.

In the case of Ramberran v. Mohamed (supra) also referred to by Counsel for the Respondent Connecticut Fire Insurance Co. v. Kavanagh (supra) was not considered, but mention was made of Tasmania v. Smith (supra) decided two years before Kavanagh. At the end of the day each case turns on its own peculiar circumstances which have to be examined carefully in determining whether the facts support the issue sought to^{be} raised before a court of last resort.

Having determined that the Appellant acquired an equity in the licence given to him by President Burnham and which arose also from his expenditure on the land, we have to look at the circumstances to decide in what way the equity can be satisfied in accordance with the view expressed by Lord Denning, MR in Inwards v. Baker (supra) mentioned earlier in

