Privy Council Appeal No. 30 *of* 1955

Ratu Taito Nalukuya – – – – – – – *Appellant*

v.

The Director of Lands and another – – – – – *Respondents*

AND

The Native Land Trust Board of Fiji – – – – *Intervener*

FROM

THE FIJI COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH MARCH, 1957

Present at the Hearing :

LORD OAKSEY
LORD TUCKER
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* LORD TUCKER]

In the year 1944 the Governor of the Colony of Fiji acting through the first respondent, the Director of Lands, compulsorily acquired some 434 acres of land in Fiji from the Tokatoka Nadrau, a native land holding unit of which the appellant is the head, under the provisions of the Crown Acquisition of Lands Ordinance (Cap 122 of the Laws of Fiji).

In March, 1953, the appellant issued an originating summons asking the Court to determine the amount of compensation payable in respect of this compulsory acquisition. The sum of £7,985 plus £3,393 1s. 6d. interest was subsequently agreed between the parties. On 7th July, 1953, the appellant issued a summons for directions seeking the Court's approval of the compromise on behalf of his infant children and directions as to the application of their share of the said sum, and for an order that the shares of the appellant and of the other adult members of the Tokatoka Nadrau be paid to them respectively to be applied by them as they think fit.

The summons was later amended at the instance of the Solicitor-General on behalf of the first respondent so as to provide for an order for payment into Court of the total sum of £11,378 1s. 6d. under Section 18 of the Crown Acquisition of Lands Ordinance. The said sum was by consent subsequently paid into Court with the result that the Government was by Section 18 of the Ordinance discharged from seeing to its application or being answerable for its misapplication.

The matter came on for hearing before the Chief Justice on 17th February, 1954, when the following issues were prepared and agreed:

1. Should the capital or any part of the fund in Court be paid to the present members of the Tokatoka Nadrau? and

2. If not, to whom should the same be paid?

The Chief Justice, after hearing evidence as to the nature of customary land tenure by the members of a Tokatoka, decided that the provisions of the Native Land Trust Ordinance were not applicable to this compulsory acquisition and that he accordingly could not order the payment of the money to the Native Land Trust Board. Having regard, however, to the nature of the tenure of land by a Tokatoka after providing for the disposal of the £3,393 1s. 6d. interest (as to which no question now arises) he ordered that the capital sum of £7,985, subject to certain deductions for costs and disbursements, be paid to the Public Trustee for investment and the interest therefrom distributed half yearly amongst the members of the Tokatoka living at the time of each distribution.

From this order the appellant appealed to the Court of Appeal. At the hearing of the appeal it was agreed by the parties and accepted by the Court that the Public Trustee had no power to deal with this sum as directed by the Chief Justice and accordingly his order could not stand. The Court decided that the provisions of section 15 of the Native Land Trust Ordinance applies to compensation money payable under the Crown Acquisition of Lands Ordinance and ordered that the said sum be paid to the Native Land Trust Board thereunder.

On 21st January, 1955, the appellant obtained leave from the Court of Appeal to appeal to Her Majesty in Council, and by Order in Council dated 22nd March, 1956, the Native Land Trust Board was granted leave to intervene.

The validity or invalidity of the Order made by the Court of Appeal depends upon the proper construction of the words " the purchase money received in respect of a sale or other disposition of native land " appearing in section 15. Is compensation money payable on the compulsory acquisition of land covered by these words?

The Crown Acquisition of Lands Ordinance gives power by section 3 to the Governor to acquire any lands required for any public purpose " paying such Consideration or Compensation as may be agreed upon or determined under the provisions of this Ordinance ".

This power is not confined to native land. Section 4 gives the Governor power to acquire native land without compensation to a certain amount and for certain purposes. The ordinance goes on to provide the necessary machinery for acquisition by service of notice and for determining the amount of compensation in default of agreement. Section 11 provides for the registration of the Crown as proprietor and the issue of a certificate of title in the name of the Director of Lands upon presentation to the Registrar of Titles of a certified copy of any judgment or order of the Court made under section 9 which section gives power to the Supreme Court to settle disputes as to compensation and title. The ordinance makes no provision for registration of title where compensation is agreed and no order of the Court obtained, nor does it provide to whom the compensation is to be paid in the case of acquisition of native land.

Turning to the Native Land Trust Ordinance, the following provisions require to be set out or referred to:—

> In section 2 if not inconsistent with the context " 'native land' means land which is neither Crown land nor the subject of a Crown or native grant but includes land granted to a mataqali under section 19 of this ordinance ".
>
> " 'Native owners' means the mataqali or other division or subdivision of the natives having the customary right to occupy and use any native land ".

Section 5 provides that all native land shall be vested in the Native Land Trust Board and shall be administered by the Board for the benefit of the native owners.

Section 6 enacts that "native land shall not be alienated by native owners whether by sale, grant, transfer or exchange except to the Crown".

Section 8 reads:—

> "Subject to the provisions of the Crown Acquisition of Lands Ordinance, the Forest Ordinance, the Oil Mines Ordinance and the Mining Ordinance, no native land shall be sold, leased or otherwise disposed of and no licence in respect of native land shall be granted save under and in accordance with the provisions of this Ordinance".

Section 15 of 1944 read as follows:—

> "Rents and premiums received in respect of leases or licences in respect of native land shall be subject to a deduction of ten per centum, which shall be payable to general revenue as and for the expenses of collection and administration, and the balance thereof shall be distributed in the manner prescribed, and the purchase money received in respect of a sale or other disposition of native land shall either be distributed in the manner prescribed or invested and the proceeds so distributed as the Board may decide."

There follow certain provisos which need not be set out.

Section 17 reads:—

> "Subject to the provisions of the Crown Acquisition of Lands Ordinance, the Forest Ordinance, the Oil Mines Ordinance and the Mining Ordinance, no land in any Native Reserve shall be leased or otherwise disposed of", followed by a proviso.

Section 32 gives the Governor in Council power to make regulations for all matters required to be prescribed.

Under this section regulations have been made as follows:—

> Section 3 of the Native Land (Leases and Licences) Regulations, after providing for a percentage deduction from all monies received for rents and premiums in respect of leases or licences of native land for expenses of collection and administration, goes on to prescribe the proportions in which the balance is to be distributed amongst certain named bodies or persons of whom the final recipient of twelve shillings in every pound is the mataqali or, when the mataqali is sub-divisible into Tokatokas, the members of the Tokatoka owning the land in question. Sub-clause (2) of the section then reads:—
>
> > (2) "The purchase money received in respect of a sale or other disposition of native land shall, unless the Board decides that it shall be invested and the proceeds distributed in some other way, be distributed in the manner set out in the preceding sub-regulation for the distribution of the balance of rents and premiums".

Little assistance is to be obtained from the citation of authorities with regard to the meaning of the word "disposition" in other contexts, but it is perhaps worth noticing that several of the speeches in the case of *Kirkness* v. *John Hudson & Co., Ltd.* [1955] A.C. 696 recognise that in the field of compulsory acquisition of land such words as "sale" and "purchase" are frequently used in connection with transactions by which the transfer of ownership in land takes place in the absence of the element of mutual assent.

It is in this special context that the words "purchase money received in respect of a sale or other disposition of native land" in section 15 of the Native Land Trust Ordinance fall to be construed, since their Lordships agree with the Court of Appeal in thinking that the presence of the words "otherwise disposed of" in conjunction with a reference to the Crown Acquisition of Lands Ordinance in section 8 widens the context in which the words "other disposition" in section 15 appear.

The repetition of the language in Section 17 set out above gives further support to this view. Once the conclusion is reached that "other disposition" does not exclude a disposition which results from compulsory

acquisition the presence of the words "purchase money" without the addition of the words "or compensation" present little difficulty. The drafting is of course not as precise as it might be, but it is difficult to believe that it was intended that the careful provisions safeguarding the proceeds of voluntary sales of native land to the Crown should not equally apply to the compensation payable on compulsory purchase of such land. In the result their Lordships agree with the conclusion reached by the Court of Appeal on the construction of Section 15.

It has been argued at some stages in this case that payment to the Intervener would in some way infringe the rule against perpetuities, but assuming that this rule might otherwise apply to the proceeds of sale of native land, there is express statutory authority in Section 15 for the investment of such monies and the distribution of the proceeds as the Board may decide. Their Lordships are not required to give any decision as to the manner in which the intervener should dispose of the money in its hands but reference was made in the Court of Appeal to two decisions of the Privy Council in cases from West Africa to which the attention of the intervener was invited. Their Lordships have not sufficient material before them with regard to the tenure of native land in Fiji to judge whether these cases are likely to afford any guidance to the intervener in the present or any future case, but they would consider that the better course for the intervener would be to follow the relevant statutory regulations in force in Fiji in the light of local native customary tenure without reference to cases which have arisen in other jurisdictions.

The relevant regulations have been referred to above, and it is perhaps worth noting that unless the Board otherwise decides the purchase money is to be distributed in the same manner as rents and premiums. This would seem illogical having regard to the nature of the tenure by a Tokatoka and it may be that those responsible for these regulations might consider whether some amendment is not desirable.

For the reasons stated above their Lordships will humbly advise Her Majesty that the appeal be dismissed.

The appellant must pay the intervener's costs of the petition for leave to intervene and one set of costs of the appeal to be shared between the first respondent and the intervener as to one-third to the first respondent and two-thirds to the intervener.

(39004) 8075 17 °0 4/57 D.L.

In the Privy Council

RATU TAITO NALUKUYA

v.

THE DIRECTOR OF LANDS
AND ANOTHER

AND

THE NATIVE LAND TRUST BOARD
OF FIJI

[DELIVERED BY LORD TUCKER]

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