2002 No. 16 - M DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

In the matter of an application by MORRIS BALGOBIN for Writs of Certiorari and Mandamus.

The Honourable Justices Navindra A. Singh, Puisne Judge

Mr. R. A. Forde representing the Applicant

The Attorney General Chambers representing the Minister of Agriculture and the Commissioner of Lands and Surveys, the Respondents.

Delivered April 11th 2014

RULING

Civil Action No. 16 – M of 2002 was instituted by the Applicant, Morris Balgobin, on January 25th 2002 by way of Motion seeking a Writ of Certiorari quashing the decision of the Senior Minister of Agriculture and/ or the Commissioner of Lands and Survey to issue provisional leases to certain persons to certain lands situate in Bartica, County of Essequibo and a Writ of Mandamus compelling the Senior Minister of Agriculture and the Commissioner of Lands and Survey to hear and determine the application of Morris Balgobin for a lease to the said lands situate in Bartica, County of Essequibo.

On January 28th 2002 the Honourable Justice B. S. Roy ordered that the Motion together with the Affidavit in support thereof be served on the Senior Minister of Agriculture and/ or the Commissioner of Lands and Survey to show cause why the Writs of Certiorari and Mandamus should not be issued.

The Court observed that the Order of the Honourable Justice B. S. Roy does not explicitly state that rules nisi of Certiorari and/ or Mandamus were granted. This is rather unfortunate since it is the rule nisi that quashes or compels and which would result in Writs being issued should the Respondent fail to show cause why such Writs should not be issued.

Nevertheless, the Court proceeded to determine the merits of the application on the basis that implicit in the Court's order "… *to show cause why a* ***Writ*** *of Certiorari and Mandamus should not be issued …*" is that rules nisi were indeed granted by the Court. It is the opinion of this Court that the most liberal interpretation within legally acceptable confines ought to be given to the Court's Order to have the matter determined on its merits. Just to be clear, if it was unambiguous that rules nisi were not granted, that would have been the end of the Application in this Court.

The matter, for lack of a better description, bounced around the Courts, mainly due to the delinquency of the Attorneys in the matter, until finally on February 25th 2008, it appears that all the papers, including written submissions were put in by the Attorneys. The matter then seemed to have disappeared from the Court's calendar until it came up on a Consideration/ Dismissal list before this Court on February 13th 2014.

Based on the affidavit evidence before the Court the facts are that the Applicant made an application to the Lands and Surveys Department for a lease of land situate at lot 119 Third Avenue, Bartica on May 8th 1998. He subsequently received a letter from the Ministry of Agriculture dated October 5th 2000 informing him that his application was not recommended. The Applicant then wrote to Mr. Duesbury, acting Senior Surveyor of the Department of Lands and Surveys on October 26th 2000, stating, in his opinion, that his application was dealt with unfairly and sought to have it reviewed. From that letter, the Applicant's grounds for his belief were that;

1. His family was in occupation of the said land for over twenty years, keeping it clear of bushes and utilizing it as a parking lot for their light and heavy duty vehicles, and;

2. He was among the first to apply for a lease to the said land.

He then received a letter dated December 1st 2000 from Mr. R. Jagernauth informing him that the subject of his letter was receiving attention.

The Applicant is employed by his father's firm, Maurice Balgobin Construction Firm and the firm utilizes the lot to park its light and heavy duty vehicles.

According to the Applicant's affidavit dated January 25th 2002, he and his family clean and upkeep the said land and his father has been in occupation of the said land for about twenty five years.

He states that unnamed officials of the Lands and Surveys Department in Bartica told him not to worry, that processing the application was a mere formality and as a result of this his father spent in excess of eight million dollars purchasing heavy duty equipment.

On February 28th 2001, one Raymond Khan (interestingly referred to as Defendant) started cutting down fruit trees on the lot. The Applicant went to Department of Lands and Surveys and was thereupon informed that two provisional leases were issued with respect to the said lot, one in favour of Harriet Glen Khan, who had filed an application for a Lease to the said land on February

26th 1999 and the other in favour of Bibi Nazeema Ramzan, who had filed an application for a Lease to the said land on May 5th 1999.

The Applicant claims that he then wrote to Mr. R. Jagernauth on January 30th 2001 since Mr. Jagernauth had written to him aforementioned. The letter exhibited, exhibit "E" to the Applicant's affidavit, was clearly penned by the Applicant's father and not the Applicant. The Applicant has no doubt prevaricated in this averment.

The Applicant then instituted Civil Proceedings in the High Court of Guyana by Action numbered 139/W of 2001 against Harriet Glen Khan, Raymond Khan, Bibi Nazeema Ramzan, The Commissioner of Lands and Surveys and The Attorney General on March 1st 2001 and therein, on an ex-parte application obtained an interim injunction on March 2nd 2001 restraining Harriet Glen Khan, Raymond Khan and Bibi Nazeema Ramzan from interfering with his occupation of the said land and also restraining The Commissioner of Lands and Surveys from processing, issuing or dealing with any document of title in respect of the said land.

The Respondents replied through an affidavit drawn by the Attorney General of Guyana and sworn to by Toolsie Ramdial, the Manager of the Guyana Lands and Survey Commission and therein, the Respondents state that the said land, which is zoned for residential purposes, was held by Sophia Culville under State Land Lease No. A9867, which expired on February 3rd 2000.

During the existence of Lease No. A9867 six persons applied to lease the said land, namely, Ann Seebalack, Hector Smith, Stella Balgobin, Morris Balgobin, Harriet Glen Khan and Bibi Nazeema Ramzan.

Shortly after the expiration of Lease No. A9867, the Regional Land Selection Committee of Region 7, an advisory body appointed by the Minister of Agriculture, invited all of the Applicants, except one Hector Smith who was deceased, to a meeting which was convened on April 26th 2000. Thereafter the Committee reviewed and considered all of the applications and supporting documentation.

After an evaluation of the arguments of each applicant the Committee recommended that Harriet Glen Khan and Bibi Nazeema Ramzan be granted leases to the western half and eastern half of the said land, respectively.

All of the applications and the recommendations were then submitted to the Minister of Agriculture on September 6th 2000 who endorsed the recommendations of the Regional Land Selection Committee and approved the

applications of Harriet Glen Khan and Bibi Nazeema Ramzan and refused the others, including the application of the Applicant herein.

The applicable law in this case is the State Lands Act, CAP 62:01 of the Laws of Guyana and the State Lands Regulations made under Section 17 of the State Lands Act in conjunction with Clause 2 of the Delegation of Functions Order, No. 60 of 1979.

Certiorari is a discretionary remedy which operates in the area of Public law whereby the legality of the procedure adopted by a tribunal or as in this case a member of the Executive is scrutinized. What the Court is being asked to investigate is whether the procedure adopted by the Respondent/s was in accordance with law and not whether the decision arrived at was right. It is the exercise of the supervisory jurisdiction of the Supreme Court. See In the Application of the Minister of Commerce and Technology Civil Appeal No. 18 of 1998 (Jamaica) per Downer JA and In the Application of Aubrey Roberts Civil Appeal No. 53 of 1998 (Guyana) per Chang JA.

The grounds raised in this Application are;

1. The Applicant was not given an opportunity to be heard.

2. That the Applicant was treated unfairly.

3. The decision was biased and not in good faith.

4. That the Applicant had a legitimate expectation of receiving a lease.

5. No reasons were given to the Applicant for the refusal of his application for lease.

Was the Applicant given an opportunity to be heard?

The Respondent stated by affidavit evidence that all of the Applicants, abovementioned, except Hector Smith, by then deceased, were invited to a meeting convened on April 26th 2000 and this was not refuted by the Applicant in his Affidavit of Reply or otherwise.

The Court can only conclude that the Applicant was indeed and in fact invited to be heard on his application for lease. Whether he made use of that opportunity is a matter for him but it certainly would not support a ground for judicial review.

Was the Applicant treated unfairly?

Was the decision biased and not in good faith?

Having carefully studied the evidence before the Court, it appears that the instances/ circumstances giving rise to the Applicant's belief that he was treated unfairly in this process and the instances/ circumstances that the Applicant relies on to show that the Respondents decision was biased and not in good faith are the same and can be summarized as follows;

1. His family was in occupation of the said land for over twenty years, keeping it clear of bushes and utilizing it as a parking lot for their light and heavy duty vehicles, and;

2. He was among the first to apply for a lease to the said land.

It is undisputed that the period during which the Applicant claims to have been in occupation of the said land there was a Lease in existence, to wit, Lease No. A9867 held by Sophia Culville. It is inconceivable that squatting and trespassing on the land by the Applicant and his family members can give rise to **any** right, much less, a **superior** right to have a Lease issued to him (the Applicant).

It is noted that, in any event, it appears from the evidence that it was the Applicant's father who was using the land to park his machines and therefore the person who was in actual occupation of the said land.

It is undisputed that all of the persons who applied for a Lease to the said land did so prior to the expiration of Lease No. A9867. The applicable Statute and Regulations does not give any priority to the first person to apply for a lease, which in any event the Applicant does not claim to be, and in fact such a position would certainly be unreasonable.

In the circumstances the Court does not find on the evidence that the Applicant was treated unfairly in the processing of his lease application.

Did the Applicant have a legitimate expectation of being granted a Lease?

The Applicant claims to have a legitimate expectation of being granted a Lease to the said land because;

1. His family was in occupation of the said land for over twenty years, and;

2. He was among the first to apply for a lease to the said land, and;

3. By letter dated December 1st 2000 he was informed that his concerns about being refused a Lease were "receiving attention", and;

4. He was told by officers (unnamed) of the Lands and Surveys Department that processing the application was a mere formality.

Issues **1** and **2** were previously dealt with and for the reasons given under those heads (above), they also cannot give rise to a legitimate expectation to receive a Lease.

The letter states no more than the fact that the complaints are being looked into.

The statement that the Applicant avers was made to him by unnamed officers remains unproven.

In any event the Applicant has failed to prove that the statement was made by the decision maker or a person authorized by the decision maker to provide any information about the Applicant's application so as to give rise to a legitimate expectation.

In fact officers of the Lands and Surveys Department are not the persons responsible for the granting of Leases under the Statute and Regulations and cannot commit the Minister of Agriculture or the President to act in certain way or treat the Applicant's application favourably.

In the circumstances the Court does not find that the Respondents did anything that could reasonably have caused the Applicant to have a legitimate expectation of having a Lease to the said land granted to him.

Were the Respondents under a duty to give reasons for the refusal of the application for lease?

If there is a legal duty on the Tribunal or Executive to give a reason for its decision, then certainly the absence of such reasons being provided would be a good ground for the granting of prerogative writs, however in the absence of such a legal obligation the Applicant must convince the Court that there exist compelling circumstances to cause the Court to find that the failure to give reasons to be procedurally improper or even unfair.

See In the Application of Kenneth Lalla, Henley Wooding, Corinre Mohammed, Carlyle Walters, Sakal Seemungal (Members of the Public Service Commission) Civil Appeal No. 128 of 1999 (Trinidad) per Sharma JA; In the Application of Caribbean Book Distributors (1996) Ltd. High Court Action No. S 764 of 1997 (Trinidad) per Ramlogan J.; Judicial Review in the Commonwealth Caribbean (2007 ed.) by Rajendra Ramlogan.

In this regard the Court considered all of the reasons that the Applicant proffered as to why he ought to have been granted a Lease to the said land and the Court could not find that those circumstances provided any compelling reason to find that the Respondents ought to have provided reasons for the decision.

Further, the fact that the Respondent states that applications were for residential purposes and the Applicant has continuously insisted that he or more properly, his father, needs the land to use as a parking lot demonstrates that the Respondent and/ or decision maker would have had a valid reason to not grant a Lease to the Applicant. In such circumstances the Court will not interfere with the decision of the Minister. See R *v* The Air Transport Licensing Board ex parte Tropical Airlines Ltd. [1996] 33 JLR 278.

Abuse of Process

The Applicant instituted Civil Proceedings in the High Court of Guyana by Action numbered 139/W of 2001 against Harriet Glen Khan, Raymond Khan, Bibi Nazeema Ramzan, The Commissioner of Lands and Surveys and The Attorney General on March 1st 2001 and therein, obtained an ex-parte interim injunction on March 2nd 2001 restraining Harriet Glen Khan, Raymond Khan and Bibi Nazeema Ramzan from interfering with his occupation of the said land and also restraining The Commissioner of Lands and Surveys from processing, issuing or dealing with any document of title in respect of the said land.

The filing of this Motion on January 25th 2002 during the pendency of that action raises the question of whether this is not an abuse of the process of the Court.

It is prima facie vexatious and oppressive for a party to be concurrently in two courts seeking the same relief; Volume 37 Halsbury's Laws of England (4th edition) **@** para. 446.

Collins MR stated in Williams *v* Hunt [1905] 1 KB 512 @ 514;

> *"Where proceedings have been started, it is an abuse of the process of the Court to divide the remedy where there is a complete remedy in the Court in which the suit was first started".*

Buckley J. stated in Thames Launches Ltd *v* Corporation of the Trinity House of Deptford Strond [1961] 1 All ER 26 @ 33;

> *"Counsel for the defendants says that the principle is that a man should not pursue a remedy in respect of the same matter in more than one court. In my judgment, the principle is rather wider than that. It is that no man should be allowed to institute proceedings in any court if the circumstances are such that to do so would really be vexatious''.*

Khanna J. stated in Jai Singh *v* Union of India [1977] AIR SC 898;

> *"If the petitioner has actually pursued an alternative remedy and the questions which have been raised in the petition are agitated and pending before the*

proper authorities, the High Court may not think it proper to allow the petitioner to invoke its extraordinary jurisdiction under Article 226 and on that ground alone may refuse to grant relief. The underlying object is that the petitioner cannot pursue two parallel remedies in respect of the same matter at the same time".

The Court finds that the remedies sought in proceedings 139/W of 2001 are substantially the same and in fact, more comprehensive, than the relief sought herein. This coupled with the fact that interim injunctive relief was granted in that action and those interim injunctions were still in force on the date of the filing of this Motion makes the filing of this Motion an abuse of the process of the Court.

In the circumstances the rules nisi of Certiorari and Mandamus granted by the Honourable Justice B. S. Roy on the 28th day of January 2002 are hereby discharged and this Motion is dismissed with costs in the sum of $50,000.00 to the Respondents.

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Justice N. A. Singh