

IN THE SEYCHELLES COURT OF APPEAL

ROCH JEANNIE

APPELLANT

Versus

GOVERNMENT OF SEYCHELLES

RESPONDENT

Civil Appeal No:48 of 1997

.....
Mr. A. Derjacques for the Appellant

Mr. M. Vidot for the Respondent



JUDGMENT OF THE PRESIDENT

In a plaint entered before the Supreme Court appellant averred that he rented and farmed a plot of land known as block 18 at Anse Boileau which was owned by respondent. He developed the land, growing vegetables, fruits and reared cows, chicken and pigs thereon. On 9th July 1993, respondent promised to sell the said land to appellant. With the approval of the Town and Country Planning Authority and other authorities appellant built a butchery shop thereon. Appellant could operate the butchery shop only for three months as Respondent in breach of its promise to sell the land failed to transfer the ownership of the land to Appellant. The Seychelles Licensing Authority revoked the licence it had granted appellant as he did not have any title on the land.

Appellant complained that respondent was in breach of the agreement to sell and he is entitled to damages. Appellant claimed Rs 658,000 as damages which he contends he suffered as a result of the failure of respondent to transfer the ownership of the land to him. Appellant also prayed for a judgment ordering respondent to transfer the said plot No. 18 at Anse Boileau to appellant.

The case was heard "ex parte". No plea was filed. After hearing evidence adduced by appellant the learned trial judge dismissed the plaint. He was of the view that there was no valid promise of sale and respondent could not be held answerable for acts or omissions of a corporate body.

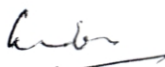
Appellant is challenging the decision of the learned trial judge. He contends that he has made out his case on a balance of probabilities.

The main issue in this appeal is whether there was a promise of sale as alleged by appellant or not. The record shows that the Government intended to sell certain agricultural blocks of land in occupation of farmers in a certain area. Appellant was such a farmer. The letter of the Department of Community Development dated 9th July 1993 referred to by appellant speaks only of "an intention of the government to sell Agricultural Blocks" and cannot be construed as a "promise to sell". Letter AP/WT/7/05 of 23/5/92 addressed to appellant reads as follows:- The Government has decided to sell you part of your existing block which you are actually occupying". There were conditions attached to the decision to sell. The land was to be demarcated by a surveyor. There was no acceptance of the conditions and no follow-up. The land was never demarcated or identified.

The Seychelles Licensing Authority requested appellant to produce documentary proof of his ownership of the land. The appellant failed to do so as he had none. The Licensing Authority revoked the license accordingly. As there was no evidence to support the allegations of appellant that there was a 'promise to sell' the learned trial judge rightly dismissed the plaint.

I wish to add that as appellant "de bonne foi" developed the land and built thereon, he would be entitled to adequate damages and compensation on a plaint differently drafted. I would dismiss the appeal and make no order as to costs.

Dated at Victoria, Mahe, this^{9th} day of **April** 1998.


H. Goburdhun
President
Court of Appeal

*Handed down
Adon JA*

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ROCH JEANNIE

APPELLANT

versus

GOVERNMENT OF SEYCHELLES

RESPONDENT

Civil Appeal No. 48 of 1996

(Before: Goburdhun P, Venchard & Adam JJA)

.....
Mr A Derjacques for the Appellant

Mr M Vidot for the Respondent

Judgment delivered by Adam J.A

The Appellant claimed transfer of agricultural plot No.18 at Anse Boileau and damages of SR.658,000/- (material and labour for building SR.120,000; idle and unused equipment SR.50,000; punitive damages SR100,000; economic loss for 2 years SR.288,000 and moral damages SR.100,000).

On 16th October 1985 the Respondent had certified that Mr Antoine Gill had officially surrendered that plot No.18 to the Appellant on being paid compensation of SR.18,000/- on the existing infrastructure. On 9th July 1993 the Respondent wrote to the Appellant about its intention of selling agricultural blocks to farmers of his area and that formalities were being undertaken to complete transactions and the Appellant "shall become the owner of your agricultural block" and that this commitment will be respected by the Respondent. On 23rd May 1994 the Respondent wrote to the Appellant that it has decided to sell him part of his existing block which he was occupying excluding the very steep and rocky parts; that the total land area for sale would be around 3 acres; that in the meantime while his permanent documents were being prepared he may consider that letter as a temporary document to guarantee that the parcel of land mentioned above would be his own property, that he must abide with the Land Acts of Seychelles on the use of the land (Town & Country Planning Act and Immovable Property (Transfer

Restriction) Act; that the Respondent reserves the right to lay and maintain water pipes, drains, telephone and electricity supply lines and posts and that from the date of the receipt of that letter he was permitted to renovate or reconstruct his house at the existing or new site. The Appellant on obtaining the necessary authority from statutory bodies responsible built a butcher's shop. On 20th December 1994 the Seychelles Licensing Authority granted the Appellant a license to operate the butcher's shop. On 20th March 1995 the same Licensing Authority revoked his license because he had failed to provide documentary proof of ownership or being lessee of that plot. The Respondent had made offers of settlement. Despite being given various opportunities by the Supreme Court to file its defence it did not do so. Mr Vidot on behalf of the Attorney General who represented the Respondent consented to the matter being heard ex-parte for a judgment in default of a defence.

In his judgment Alleear CJ indicated that in this claim for breach of agreement the following issues called for determination, (a) whether there was a promise to sell that plot and (b) whether the Respondent was responsible for the act or omission of the Town and Country Planning Authority rendering it liable to pay compensation for that Authority's decision. He found that the evidence led about alleged promise of sale was sketchy, that no purchase price for that plot had been stipulated. He then referred to Articles 1589 and 1591 of the Seychelles Civil Code. He held that it could not be said in law that there was a valid promise of sale between them. He referred to section 7 of the Town and Country Planning Act and held that the Respondent could not be liable for the acts and omissions of the Town and Country Planning Authority against whom action should have been brought. He did not indicate why the breach of agreement by the Respondent to transfer ownership to the Appellant involved the act or omission of the Town and Country Planning Authority.

From the Appellant's plaint he was certainly seeking damages for breach of agreement from the Respondent and was not holding it liable for the act or omission of the Town and Country Planning Authority and an order that the Respondent transfer that plot to him.

At the hearing of the appeal Mr Vidot for the Respondent informed this Court that the parties were agreed on the issue of quantum as it related to economic

loss (SR8000 monthly for 2 years from 1st April 1995) and moral damages (SR25,000) and that the Appellant was not pursuing his claim for the value of materials and labour for the building, for the idle and unused equipment and for the punitive damages. Mr Derjacques for the Appellant confirmed this and submitted that the Appellant was also entitled to a declaration that there was valid sale of that plot to the Appellant.

It is clear from the foregoing that Alleear CJ misconceived what the Appellant was seeking from the Respondent. The action was for a breach of contract. The letter of 23rd May 1994 from the Respondent clearly informed him that he may consider that letter, while his permanent documents were being prepared, as a temporary document which guaranteed him that plot No.18 would be his own property provided that he abide with Land Acts of Seychelles on the use of the land and that from the date of receipt of it he was permitted to renovate or reconstruct his house. He fulfilled the condition. The evidence before the Supreme Court does not disclose that he did not abide with the Land Acts of Seychelles. The Respondent did not enter a defence to the plaint which meant that it must be held to have not disputed his claim against them based on the agreement. Alleear CJ erred in referring to Articles 1589 and 1591 since the Respondent had not relied on this in any correspondence. The Respondent had not repudiated the letter of 23rd May 1994 which in the meantime had guaranteed him that plot No.18 would be his own property while his permanent documents were being prepared. The respondent could not go back on this. The Appellant had also made repeated requests for transfer of plot No.18 to him which again was not disputed by the Respondent who in fact tried to settle with him. Alleear CJ also was in error when he held that the Appellant had sued the wrong person and that action should have been brought against the Town and Country Planning Authority. But the Appellant did not indicate that he had an agreement with the Authority and was there was no agreement between that Authority and the Appellant. Nor was the Appellant asserting any obtaining the necessary permission under the Land Acts of Seychelles from that Authority the Appellant was merely carrying out or abiding by the conditions imposed by the Respondent upon him. The Appellant's Plaint was not seeking damages in tort. It follows that the Appellant's claim should not have been dismissed but instead Alleear CJ should have entered judgment for him for breach of contract by the Respondent.

IN THE SEYCHELLES COURT OF APPEAL

Roch Jeannie

Appellant

v/s

Government of Seychelles

Respondent

Civil Appeal No. 48/96

(Before Goburdhun P, Venchard & Adam JJA)

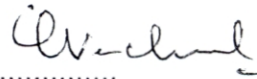
Mr. A Derjacques for the Appellant

Mr. M. Vidot for the Respondent

Judgment of Venchard J.A.

I have taken cognisance of the judgment of the President and I concur with his conclusions. I would also dismiss the appeal and make no order as to costs.

Dated 9th April 1998.


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L.E. VENCHARD
Justice of Appeal