IN THE SUPREME COURT OF SEYCHELLES

PHILLIPE ALBERT **APPELLANT**

VERSUS

ALLAIN SAVY
VINCENT SAVY **RESPONDENTS**

Civil Appeal No 9 of 2004

Mr. F. Bonte for the Appellant
Mr. B. Georges for the Respondents

JUDGMENT

Perera J

This is an appeal from a decision of the Tenants' Rights Tribunal handed down on 21st July 2004. The Appeal to that Tribunal arose from a decision of the Registrar Tenants Rights dated 21st March 2003 provisionally registering Vincent Savy, *(the present Respondent)* as statutory Tenant of the premises owned by Victoria Lynn Albert and Taryn Albert of Anse Des Genets, and Mr & Mrs Philip Albert. The premises concerned is Parcel T. 772 with the house standing thereon which is being occupied by the present Respondent and his wife.

The Appeal before the Tenant's Rights Tribunal was based on the following grounds –

"1. The respondent (Vincent Savy) has failed to occupy the premises for continuous period of at least 5 years as a Tenant prior to the application.

2. *The Appellants being purchasers in good faith were not given notice of the application when they purchased the land and having made all reasonable search the same was not disclosed.*

3. *The respondent does not qualify for registration as he is in arrears of rent.*

4. *Mrs. Marie-Andre Savy, wife of the respondent who resides in the same household as the latter, has purchased property, namely Title C. 2292 at Anse Boileau, Mahe on 19th June 1997. The respondent has an interest in the above title and he is therefore owner of other premises within the terms of the act which disqualifies him from registration.*

5. *The Appellants aver that in the event the above grounds failed, the respondent is entitled only to his immediate curtillage and not the whole of the property as claimed".*

Learned Counsel for the present Appellants, however relied mainly on ground 4 before the Tenant's Rights Tribunal. Hence the issue before the Tribunal was whether ownership of a Parcel of land by the Tenant or his spouse disentitled him to seek registration as a statutory Tenant.

The object and purpose of the Tenant's Rights Act 1981, which came into operation by S.I. 1 of 1982 on 1st January 1982 was –

"to give security of tenure to Seychellois who own and occupy a home on another person's land or who are residential Tenants; to enable those Seychellois to purchase that land or those premises……".

This piece of legislation should be understood in the context of the period it was enacted, when there were no housing projects like now, and Tenants were at the mercy of the Landlords. The act created rights on the land or the house they occupied and *not against the owners*. Hence it was immaterial as to who the owner was as is evident from the wide definition of the term "*owner*" in Section 3. But that right was not absolute. Hence it could be defeated by any of the factors set out in paragraph 1 of Schedule 3. In the present case, the relevant factor was whether the Statutory Tenant *(Vincent Savy*) "*has another residence".*

The Tenants Rights Tribunal held that the mere ownership of a piece of land did not disqualify the Tenant from being registered as a Provisional Statutory Tenant. The Tribunal however held obiter, that had there been a house on such land, the date of application and the date of provisional registration were relevant in determining the disqualification.

As regards the owners, the Tribunal held that there was no restriction to sell or transfer the premises, until it becomes *"registered premises"* after the Tenant had been registered as a Provisional Statutory Tenant under Section 14. The Tribunal also

held that the "*new owners*" were bound by the application made by the Tenant.

The Tenant's Rights Tribunal therefore upheld the decision of the Registrar of Tenant's Rights registering the respondent Vincent Savy as a Statutory Tenant.

The Appeal before this Court is based on a single ground that the Tribunal had not acted according to the provisions of the Act. It was submitted that the Tribunal had relied on inferences and presumptions. In this respect, it was submitted that paragraphs 4(a) and (b) required the Tribunal to observe Rules of natural justice and also hear all evidence tendered and representations made by either of the parties hearing evidence.

In the case of ***Joseph v. Seraphine (1987) S.L.R. 89,*** a similar ground was advanced by Counsel for the Appellant. It was contended that the Tribunal instead of hearing only arguments, should have heard evidence from both parties before coming to its decision. Seaton CJ referred to Section 19(1) of the act, which states that a person may appeal to the Tribunal on a question of fact, and held-

> *'It will be observed that before a Registrar may grant the application provisionally to register a person as a Statutory Tenant, objections may be made by the persons and on the grounds specified in Schedule 3. If for example, a person objects that the applicant has*

another residence, the Registrar must investigate the matter and must be satisfied as to the facts before registering the Applicant provisionally."

In that case, one of the grounds before the Tribunal was that the Applicant *Tenant had been offered a plot of land by her husband on which she could suitably build a house*. Seaton CJ held that the record before the Registrar contained the grounds of objections, letters and interview notes, but if the Registrar had not heard the Tenant and considered her objections, she had the right to complain to the Tribunal, but it was not done. If it was done "*the Tribunal might have decided to remit the case for hearing or to call the parties and hear evidence itself".*

The Learned Chief Justice agreed with Counsel for the Appellant that as the procedure before the Tribunal was brief, the parties should be allowed to produce their title deeds, call witnesses, and that the proceedings should take the form of a re-hearing when the Appeal is on questions of fact. He therefore recommended that appropriate rules be made by the Minister under Section 44(g) and (h) of the Act. No rules were made up to 13th April 1992 when the Act was repealed by Act no 7 of 1992, saving only the rights of those who had applied to the Registrar before that date. Such pending applications were to continue to be dealt with under the Act as if the act had not been repealed. It is a moot point whether Rules could be made after the repeal.

In the present case, the objection was as regards the *Tenant's wife* owning a land. The Tribunal decided as a matter of law that ownership of a bare land was not a disqualification for a Tenant to be registered provisionally as a Statutory Tenant. Hence the term "*residence*" in Schedule 3 paragraph 1(b) was interpreted as meaning a "*house" or "home".*

A copy of a deed of transfer of Parcel C. 2292 at Anse Boileau, has been filed in the record of proceedings before the Registrar. According to that deed, one Lina Jules transferred the land to Mrs Marie-Andre Savy *(the lawful wife of Allain Savy)* for a sum of Rs45,000 on 19th June 1997. Under the provisions of Section 4(1) of the Status of Married Women Act *(Cap 231)* –

> *"A married woman shall ..... be capable of acquiring, holding and disposing by will or otherwise of any movable or immovable property, in the same manner as if she were a feme sole, without any intervention of any trustee or the consent of her husband"*

There was no evidence before the Registrar, or the Tribunal that it was the respondent who purchased the land in the name of his wife. Hence Parcel C. 2292 was legally owned by Mrs Savy, with the right to dispose of it at will.

Schedule 3 of the Act specified the grounds on which the owner could object to an application for registration as a statutory tenant. They are –

"(a) The applicant does not occupy the premises as his home.

(b) The applicant has another residence.

(c) The premises are exempt from registration under Section 8.

(d) Where the applicant has taken the premises on lease within the meaning of Section 7(2)

(that is on the basis of an oral lease agreement, or where such agreement could be inferred from the conduct of parties).

(e) (i) The applicant has not occupied the premises for a continuous period

of 5 years or more; or

(ii) The applicant is in arrears with rent; or

(iii) The applicant has not complied with a Court order against him relating to his obligations in respect of the lease; or

(e) The applicant has not complied with a Court order against him in respect of any nuisance created to the owner, landlord, or adjacent proprietors"

Generally, security of tenure was given to tenants who not only satisfied the requirements of Section 6 and 7 of the Act, but at the same time had fulfilled their obligations honestly and diligently. In the present matter according to particulars in the Registrar's record, Vincent Savy made the application under Section 7 on 1st February 1982 disclosing Mrs. Champsy Mondon as the landlord. She only held a usufruct of the property. In terms of a last will, one

Charles Lablache was to inherit the property after the death of Mrs Mondon. After the death of Charles Lablache, the property was to devolve on his two daughters, Therese and Monica. Objection was filed by Mrs Mondon. Mr Lablache and Marie Therese who were resident in Australia also filed objections on the ground that the premises were exempt under Section 9. The specific ground was that Mr Lablache would be returning to Seychelles and hence was relying on paragraph (e) (ii) (e) which entitled him to claim exemption as it was the only premises "he would have, and which he intended to use as his permanent home". The act granted exemption to a "*one house*" owner if he was employed abroad at the time the tenant made the application. However, while the application was pending the two daughters of Charles Lablache sold the property to the two daughters of Phillipe Albert, the present appellant, on 16th August 1996. Phillipe Albert and his wife bought the usufructuary interest from Mrs Mondon for Rs.1700 per month.

The original objections raised by Mrs Mondon and Mr Charles Lablache in 1982, therefore were no longer valid when the Registrar made the declaration of tenancy in 2003. The new owners were resident in Seychelles, and there was no evidence whether they owned other residential properties. Hence the decision of the Registrar cannot be faulted. The only ground relied on by the appellant was as regards the ownership of a bare land by the wife of the 2nd respondent. That had no merit, as that was her separate property, and in any event paragraph (b) in Schedule 3 cannot be extended to include bare land especially when it is owned by persons other than the applicant for statutory tenancy, as such

persons, be they spouse or otherwise had the right to dispose of it at anytime. Hence the finding of the Tenant's Rights Tribunal on that isue also cannot be faulted. The present appellant and his daughters in their grounds of appeal before the tribunal, averred inter alia that in the event the other grounds failed, the respondent *(Vincent Savy)* be made entitled to the immediate curtillage and not the whole property. According to a survey plan filed of record, Parcel T 722 on which the tenanted premises stands, is 7860 sq metres in extent.

The Court finds that this extent is out of proportion to the extent of land legally permitted to be owned by a statutory tenant under the provisions of Section 21 of the Act. Consequently, the Court leaves it to the Registrar of Tenants Rights to make a just and equitable determination under that Section, and limit the extent of the surrounding land to the bare minimum prescribed therein, so that the balance land remains with the present owners.

Subject to that variation, the appeal is dismissed, but without costs.

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A.R. PERERA

JUDGE

Dated this 15th day of November 2006