

IN THE COURT OF REVIEW

Appeal No. 9 of 1975

Between:

Edward Poy Leong	Appellant
- and -	
The Commissioner of Inland Revenue	Respondent

Mr. Peter Knight for the Appellant

Mr. Robin Nair for the Respondent

JUDGEMENT

The appellant was formerly the owner of a freehold property in Lautoka. He bought the property in 1969 for \$2100 plus legal fees and stamp duty totaling \$61. He sold it some five years later for \$11,000. Applying the formula prescribed in section 3(1) of the Land Sales Act, 1974, the Commissioner of Inland Revenue assessed his liability for land sales tax at \$1963.50.

The appellant appealed against the assessment on two grounds. The first ground was that the Land Sales Act, 1974, was ultra vires the Constitution and therefore void. The second ground was that there had been substantial development to the land in question by the appellant or a predecessor in title and that under the provisions of section 5(b) of the Land Sales Act, 1974, the transaction was exempted from land sales tax.

At the commencement of the hearing, counsel for the appellant sought to introduce a third ground of appeal. This was that the Minister had exercised his discretion unreasonably in ruling against an application by the appellant for exemption from land sales tax upon the grounds of undue hardship as provided for in section 5(f) of the Act. As I could not see that I had any jurisdiction in this matter, counsel did not pursue the point.

I also held doubts as to whether it was within my powers to hold that the Land Sales Act was unconstitutional and therefore void. Mr. Knight therefore agreed the second ground of appeal first.

The appellant gave evidence that when he bought the land comprised in Certificate of Title 12973 to which the appeal relates, it formed part of a subdivision carried out by the Lautoka Town Council. The subdivider had provided road access, drains and sewerage (although the appellant was unaware of the existence of any connection to the sewer) and the section had been levelled. The land enjoyed the benefit of the improvements and they were reflected in the purchase price.

The appellant said that he bought the section with the intention of building a house on it, having been transferred from Ba to Lautoka by his employers. Subsequently his employers transferred him to Suva. He therefore sold the land in Lautoka and bought a house property in Suva.

It was common ground that the appellant did not personally develop the land in any way.

Counsel for the appellant sought to quote extracts from the Land Sales Bill, 1973, to show differences between the Bill and the Act in its present form and to illustrate the meaning of section 5(b) and the term “development” as defined in section 2. Mr Nair objected to this, citing authorities. Being unaware of the precise submissions which Mr. Knight intended to make, I allowed him to make them, leaving their weight to be assessed later. Mr. Nair asked that his objection be recorded. After hearing submissions on the provisions of the Land Sales Bill, 1973, I found that they do not assist in the interpretation of the Land Sales Act, 1974, and I therefore treat them as irrelevant.

Section 5 of the Act states :-

“..... no land sales tax shall be charged on any profits arising in any of the following transactions or cases:

- (a)
- (b) on land on which there has been substantial development by the seller or any predecessor in title;”

Mr. Knight argued that there had been substantial development on the land by the seller’s predecessor in title, in this case the Lautoka City Council. He also argued that “substantial development” means “development in substance”.

Mr. Nair argued on the other hand that there had been no substantial development on the land to which the dealing related. The development had been the development of the subdivision of which this land formed part. He submitted that “substantial” means “major”.

I agree with Mr. Nair that although the land originally formed part of a subdivision which had been developed, the appellant’s land was not itself developed. It was cleared, and this does not amount to “development” as defined in section 2. As to the meaning of “substantial”, I think in this context it means more than “in substance”. All developments are in substance as development is a physical thing. The word “substantial” is not defined in the Act, and I take it to mean “considerable” in the context in which it is used.

The appellant therefore fails to gain exemption under section 5(b).

I now turn to the submission that the Land Sales Tax is unconstitutional.

If I thought that the Land Sales Tax was unconstitutional in toto, I would be unable to give judgement accordingly. If the whole Act were unconstitutional, section 13 relating to appeals would be a nullity and I would have no standing in the matter. However, for reasons which follow, I do not think the Act, or any provisions thereof relating to this case, contravenes the Constitution of Fiji.

Section 15(1)(a) of the Constitution states :-

“No law shall make any provision that is discriminatory either of itself or in its effect.”

Section 15(2) of the Constitution states :-

“In this section, the expression “discriminatory” means [discrimination by] descriptions by race, place of origin, political opinions, colour or creed, whereby person one such description are subjected to such disabilities or restrictions to which persons of another description are not made subject to or are accorded privileges or advantages which are not accorded to persons of another such description.

Mr Knight described sections 6(4), 7(4) and 18 of the Land Sales Act as discriminatory. Sections 6(4) and 7(4) exempt certain dealings in land, including native land, from part of the act, Section 18 declares that nothing in the Act affects the powers of the Native Land Trust Board under the Native Land Trust Ordinance or alters the Rotuma Lands ordinance 1959 or the Banaban Lands Ordinance and is expressed to be for the avoidance of doubt. It may well be merely a statement of the existing law and not a law-making provision.

Section 15(3) of the Constitution states :-

“Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection 1(a) of this section to the extent that the law in question makes provision whereby persons of such description as is mentioned in the last foregoing subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.”

The expression “reasonably justifiable in a democratic society” is perhaps capable of as many interpretations as there lawyers in Suva. I think however it is wide enough to save the Land Sales Act if it comes within the ambit of section 15 at all.

If on the other hands sections 6(4), 7(4) and 18 were unconstitutional (which is not my view), this would not help the appellant. The remaining provisions of the Act stand up on their own and are not in doubt constitutionally.

In any case, these sections do not confer any benefit on persons by race, place of origin, political opinions or creed. The most they do is exempt certain land and transactions from the Act.

Having said this, I still think my power to review tax assessments does not empower me to rule that laws are unconstitutional. If I am right, the proceeding paragraphs are merely obiter dicta. The end result is the same.

Mr. Knight drew attention to the long title of the Act – “An Act to provide for the regulation of certain speculative and other dealings in land and the taxation of profits thereon.” He submitted that his client was not a speculator. Mr. Nair said he had not shown this to be true, but his account of his transfers from Ba to Lautoka and Lautoka to Suva, corresponded with the purchase of a section at Lautoka, the sale of his house at Ba, the sale of his section at Lautoka and the purchase of a house at Suva, and did not suggest he was a speculator. But the long title of the Act is not part of the Act and we are not concerned with what the legislators’ intention or the taxpayer’s intention was. The Act treats speculators and non-speculators alike.

For the reasons stated above, the appeal is disallowed.

(D.C.Dunckley)
Court of Review
31.3.76