

Premchand Nathu & Co. Ltd. - - - - - Appellants  
v.  
The Land Officer - - - - - Respondent

FROM

**THE COURT OF APPEAL FOR EASTERN AFRICA**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 27TH NOVEMBER, 1962

*Present at the Hearing:*

LORD MORTON OF HENRYTON.

LORD KEITH OF AVONHOLM.

LORD PEARCE.

[*Delivered by LORD MORTON OF HENRYTON.*]

This is an appeal from a judgment of the Court of Appeal for Eastern Africa, dismissing an appeal from an order of the High Court of Tanganyika, ordering the appellants to deliver up possession of a plot of land at Moshi to the respondent.

The appellants were occupiers of the plot in question under a Certificate of Occupancy signed by both parties to this appeal, giving the appellants a right of occupancy for a term of ninety-nine years from 4th April 1952 at a rent of Shs. 435/- a year, subject to revision as therein mentioned.

The conditions of occupancy contained in the Certificate provided (*inter alia*) as follows:—

“ 2. The Occupier undertakes:—

- (i) To erect buildings on the said land of a value of not less than Shillings Sixty thousand (Shs. 60,000/-).
- (ii) Within a period of six months from the date of commencement of the said Right of Occupancy to submit to the Township Authority, Moshi (hereinafter called “ the said Authority ”), such plans of the proposed buildings (including block plans showing the position of the buildings) drawings elevations and specifications thereof as will satisfy the said Authority and as will ensure compliance with the building covenant contained in sub-paragraph (i) supra. Such plans and specifications shall be submitted in triplicate.
- (iii) To commence building operations within a period of Three months from the date of notification in writing by the said Authority of approval of the plans and specifications, such buildings to conform to a building line decided upon and notified by the said Authority.
- (iv) To complete the buildings according to the said plans and specifications so that the said buildings are ready for use and occupation within a period of Twenty-four months from the date of commencement of the said Right of Occupancy.”

“ 6. Failure to comply with any of the terms or conditions herein contained or implied will be deemed to constitute good cause for revocation of the said Right of Occupancy.”

The words “ good cause for revocation of the said Right of Occupancy ” refer to section 10 of the Tanganyika Land Ordinance of 26th January 1923 (Cap. 113) which their Lordships will quote later.

There was considerable delay in compliance with these conditions, and certain extensions of time were granted. On the 11th March 1954 the respondent wrote to the appellants extending the time for submission of detailed plans to the 30th April 1954, and saying that if this was not done the right of occupancy would be revoked. The appellants complied with the requirements of this letter by submitting detailed plans for a godown or store on the 11th April 1954 and detailed plans for the whole plot on the 29th April 1954. These two sets of plans were approved on the 3rd May and 20th May 1954 respectively.

On the 26th January 1955 the respondent wrote to the appellants extending the time for completion to the 31st July 1955, and indicating that the right of occupancy would be revoked if the building was not completed by that date. This represented an extension of nearly sixteen months beyond the original date for completion. By September 1955 the godown had been completed and the appellants had received permission from the Township Authority to occupy it. But the building of the shops and flats shown on the detailed plans had not been commenced and on the 21st November 1955 the respondent granted a further extension of time to the 31st January 1956, for completion of these buildings. The appellants then submitted altered plans, which were subsequently approved by the Township Authority on the 15th February 1956. The appellants also asked the respondent, through their architects, for an extension of six months in which to erect the remainder of the buildings.

The respondent in a letter dated January 1956 replied that this was not approved. He granted the appellants an extension up to the 29th February 1956 to have their plans approved and commence building operations, stating that he would call for a further report during the first week of March 1956, and unless building operations were by then under way he would recommend to the Governor that the right of occupancy should be revoked. If the report revealed that building was proceeding satisfactorily a further short extension of time would be granted to complete the erection of the building. The appellants replied in a letter dated 8th February 1956 pointing out that they had already built a store costing Shs. 60,000/- but had not yet received approval from the Township Authority for shops; that they would require further time for inviting tenders; that it would not appear economical to build shops at that moment because there were many empty shops in the vicinity, and asking for another six months to arrive at a final decision. On the 31st May 1956 the respondent wrote to the appellants giving them thirty days in which to inform him of the reasons why construction of the main buildings had still not been put in hand. On the 4th May 1957 the right of occupancy was revoked. The learned trial Judge said in his judgment "I have no evidence of any further correspondence between these two dates. It is not disputed that no building other than the godown has ever been commenced on the plot."

The appellants refused to deliver up possession of the plot, and these proceedings were started by the respondent on the 8th April 1959, claiming possession, a revocation fee and damages. The appellants contested the validity of the revocation on various grounds. The learned trial Judge held that the respondent was entitled to possession and ordered accordingly. He also entered judgment for the amount of the revocation fee but awarded no damages, since the appellants would have to yield up the godown which they had built.

The Court of Appeal dismissed the appellants' appeal. Of the defences raised before the trial Judge and the Court of Appeal one only has been argued before their Lordships' Board. The appellants contend that section 14 (1) of the Conveyancing and Law of Property Act 1881 is applicable to the exercise by the Governor of any right of revocation and therefore, since no notice was served in compliance with that sub-section, the purported revocation was invalid. The sub-section just mentioned is in the following terms:—

" 14. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach

complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.”

The relevant provisions of the Tanganyika Land Ordinance 1923 are as follows:—

Section 2 “ occupier ” means the holder of a right of occupancy . . . The “ right of occupancy ” means a title to the use and occupation of land . . .

“ 3. (1) The whole of the lands of the Territory, whether occupied or unoccupied, on the date of the commencement of this Ordinance are hereby declared to be public lands:

Provided that . . . nothing in this Ordinance shall be deemed to affect the validity of any title to land or any interest therein lawfully acquired before the date of the commencement thereof and that all such titles shall have the same effect and validity in all respects as they had before that date.”

“ 4. Subject to the proviso to subsection (1) of section 3, all public lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Governor and shall be held and administered for the use and common benefit, direct or indirect, of the natives of the Territory, and no title to the occupation and use of any such lands shall be valid without the consent of the Governor.”

“ 6. The Governor may, where it appears to him to be in the general interests of the Territory—

- (a) grant a right of occupancy to a native or a non-native whether with or without the payment of a premium at the Governor’s discretion;
- (b) demand a rental for the use of any public land granted to any native or non-native;
- (c) revise the said rental at intervals of not more than thirty-three years:

Provided that before any public land in an area over which a native authority has been established is so disposed of the said native authority shall be consulted.”

“ 7. Such rights of occupancy shall be for any definite term not exceeding ninety-nine years, and shall be granted subject to the terms of any contract which may be made between the Governor and the occupier not inconsistent with the provisions of this Ordinance:

Provided that the Governor shall not (save in the case of a right granted in connection with a mining lease) grant rights of occupancy to any non-native free of rent or upon any conditions which may preclude him from revising the rent at intervals of not more than thirty-three years.”

“ 10. It shall not be lawful for the Governor to revoke a right of occupancy granted as aforesaid save for good cause. Good cause shall include—

- (a) non-payment of rent, taxes, or other dues imposed upon the land;
- (b) requirement of the land by the Government for public purposes;
- (c) requirement of the land for mining purposes or for any purpose connected therewith;
- (d) abandonment or non-use of the land for a period of five years;
- (e) breach of the provisions of section 14;
- (f) breach of any term or condition contained or to be implied in the certificate of occupancy or in any contract made in accordance with section 7;
- (g) attempted alienation by a native in favour of a non-native;

(h) breach of any regulations under this Ordinance relating to the transfer of or other dealings with rights of occupancy or interests therein.”

The Land (Law of Property and Conveyancing) Ordinance of 19th January 1923 (Cap.114) provided as follows:—

“ 2. (1) Subject to the provisions of this Ordinance, the law relating to real and personal property, mortgagor and mortgagee, landlord and tenant, and trusts and trustees in force in England on the first day of January 1922, shall apply to real and personal property, mortgages, leases and tenancies, and trusts and trustees in the Territory in like manner as it applies to real and personal property, mortgages, leases and tenancies, and trusts and trustees in England, and the English law and practice of conveyancing in force in England on the day aforesaid shall be in force in the Territory.

(2) Such English law and practice shall be in force so far only as the circumstances of the Territory and its inhabitants, and the limits of Her Majesty's jurisdiction permit.

(3) When such English law or practice is inconsistent with any provision contained in any Ordinance or other legislative Act or Indian Act for the time being in force in the Territory, such last mentioned provision shall prevail.”

“ 10. The Governor may, if he thinks fit, from time to time by order published in the Gazette declare that any English Act of Parliament or part of an Act is or is not by virtue of this Ordinance in force in the Territory, and every such declaration shall be conclusive.”

If regard is to be had only to the provisions of the two Tanganyika Ordinances the revocation of the right of occupancy granted to the appellants would appear to be entirely in order. The appellants were clearly in breach of condition 2 (iv) in the Certificate of Occupancy, and this was “ good cause ” for revocation under section 10 (f) of the Land Ordinance.

Counsel for the appellants contended, however, that section 14 (1) of the English Act of 1881 was imported into the law of Tanganyika by section 2 of the Land (Law of property and Conveyancing) Ordinance 1923, that the section bound the Crown and that the Certificate of Occupancy had all the characteristics of a lease. Consequently, as no notice was served in compliance with section 14 (1) the Governor could not validly revoke the right of occupancy. Counsel conceded that the Act of 1881, as applied in England, did not bind the Crown, but contended that when the provisions of section 14 (1) were imported into the law of Tanganyika the Courts should infer, from all the surrounding circumstances, that they were intended to bind the Crown. He pointed out that all the land in Tanganyika had been public land since the date of the Land Ordinance of 1923, subject to the proviso in section 3 (1) of that Ordinance, and was vested in the Crown, and submitted that it was most unlikely that the legislature, having imported the English law of landlord and tenant into Tanganyika, should have intended it to apply only to the interests in land “ lawfully acquired before the date of the commencement ” of the said Ordinance. Counsel suggested that the lands coming within the proviso were small in extent compared with the total area of Tanganyika. No evidence on this matter was called by the appellants in the Courts of Tanganyika, but their Lordships are willing to assume that by far the greater portion of the country was made public land by the Land Ordinance of 1923.

The general principle to be applied in considering whether or not the Crown is bound by general words in a statute is well established and it is common ground between the parties that this general principle is applicable in Tanganyika. The principle was stated by the Board in the case of *Province of Bombay v. Municipal Corporation of Bombay* [1947] A.C. 58 at page 61 in the following terms:— “ The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein . . . but the rule so laid down is subject to at least one exception. The Crown may be bound, as has often been said, ‘ by necessary implication ’. If, that is to say, it is manifest from the very terms of the statute that it was the intention

of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions." There is nothing in the wording of the Conveyancing and Law of Property Act 1881 which manifests an intention that the Crown should be bound, but Counsel for the appellants submits that a necessary implication can arise from a consideration of the Ordinances in force in Tanganyika, and relies upon the decision of the Board in *Bashir v. The Commissioner of Lands* [1960] A.C. 44 and upon the judgment of Abernethy J. in *Director of Lands and Mines v. Sohan Singh* 1 Tang. L. R.(R) page 631.

Their Lordships will return to these cases later, but for the moment they will assume, without so deciding, that Counsel's submission is well-founded, and will consider how far the provisions of the two Ordinances of January 1923 give rise to the implication for which Counsel contends. Section 14 (1) of the English Act of 1881 deals only with "a right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease", and it is to be observed at once that in the Land Ordinance of 1923 the word "lease" appears to be deliberately avoided. It is discarded in favour of the words "right of occupancy", and there are other indications that section 14 (1) of the Act of 1881 was not intended to apply to the "public lands" of Tanganyika. For instance—

- (1) the right of occupancy can only arise under a grant by the Governor;
- (2) there is no mention in the Ordinances of a right of "re-entry or forfeiture". This again appears to be a deliberate avoidance of the words in the English statute;
- (3) the right of revocation conferred upon the Governor is a right which is quite unknown in the law of England and bears little resemblance to a lessor's right of re-entry or forfeiture. All that the Governor has to do is to execute a document saying that the right of occupancy is revoked, and the list of "good causes" deals to a large extent with matters of public policy which have nothing to do with any "breach" by the occupier of any "covenant or condition".

Other striking differences between a right of occupancy and a lease are contained in sections 7, 8, 11, 13 and 21. In their Lordships' opinion the intention of the Land Ordinance was to establish an entirely new interest in land, similar to leases in some respects but different in others. They think that the Act was intended to be a complete code regulating the respective rights of the Crown and the occupier.

For these reasons their Lordships are quite unable to find in the law of Tanganyika any necessary implication that section 14 (1) of the English Act of 1881, when incorporated therein, binds the Crown, even if it be assumed, in favour of the appellants, that it is legitimate to look outside the terms of the 1881 Act for the purpose of seeking such an implication. It is true that if section 14 (1) of the Act of 1881 does not apply to Crown lands that section will have a somewhat restricted operation in Tanganyika, but this fact is not sufficient to create a necessary implication that the Crown was to be bound thereby. They see no reason to doubt that section 14(1) applies to any leases, properly so-called, coming within the proviso to section 3(1) of the Tanganyika Land Ordinance. They have not overlooked the fact that the Law of Property Act 1925 expressly binds the Crown, with certain immaterial exceptions, but that Act is not incorporated in the law of Tanganyika by section 2 (1) of the Land (Law of Property and Conveyancing) Ordinance 1923 since that section applies the law in force in England on the 1st January 1922.

The cases of *Bashir v. The Commissioner of Lands* and *Director of Lands and Mines v. Sohan Singh* already mentioned afford no assistance to the argument on behalf of the appellants. The decision in *Bashir's* case depended on the interpretation of section 83 of the Kenya Crown Lands Ordinance. That section, so far as material, provides:

" . . . if there shall be any breach of the lessee's covenants . . . the Commissioner may serve a notice upon the lessee specifying . . . the covenant of which a breach has been committed, and . . . may

commence an action in the Supreme Court for the recovery of the premises, and, on proof of the facts, the Supreme Court shall, subject to relief upon such terms as may appear just declare the lease forfeited . . .”.

“ In exercising the power of granting relief against forfeiture under this section the Court shall be guided by the principles of English law and the doctrines of equity.”

It was clear that the section, dealing as it did with Crown lands, was intended to bind the Crown, and the Board held that the reference to “ principles of English law ” clearly applied to Crown lands section 14 of the Act of 1881. (See pages 61 Fin. and 62 of the report.)

In *Sohan Singh's* case, Abernethy J. did not hold that section 14 (1) of the Act of 1881 applied to Certificates of Occupancy, but held that in the circumstances of the case before him the respondent “ ought in all fairness to have been given an opportunity ” to answer an opinion which had been expressed by the executive officer. The learned Judge continued “ It is entirely contrary to justice that a Certificate of Occupancy should have been revoked on the mere opinion of someone that a building cannot be erected by a specified date.” In the present case it was not suggested that equity required the giving of notice of revocation or of intention to revoke; consequently their Lordships have not considered whether such a defence would or would not have been open to the appellants.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the costs of the respondent.



In the Privy Council

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**PREMCHAND NATHU & CO., LTD.**

v.

**THE LAND OFFICER**

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**LORD MORTON OF HENRYTON**

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