[2012] UKPC 1
Privy Council Appeal No 0092 of 2010

JUDGMENT

David Gopaul on behalf of HV Holdings Ltd (Appellant)
v
Vitra Imam Baksh on behalf of the Incorporated Trustees of the Presbyterian Church of Trinidad and Tobago (Respondent)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Hope
Lord Walker
Lady Hale
Lord Brown
Lord Wilson

JUDGMENT DELIVERED BY
Lord Walker
ON

1 February 2012

Heard on 6 December 2011

Appellant
Jonathan Small QC
Nat Duckworth

(Instructed by Simons Muirhead & Burton)

Respondent
Reginald T A Armour SC
Addison Khan

(Instructed by Collyer Bristow LLP)

LORD WALKER:

The background to the Land Tenants Act

1. The issue in this appeal is how the Land Tenants (Security of Tenure) Act, Chapter 59:54 ("The Land Tenants Act") applies to a rather unusual set of facts: a Presbyterian church and an adjacent manse (or minister's house) comprised in a single tenancy.

2. The Land Tenants Act is itself an unusual statute. Its main effect was a once-for-all transfer of rights from landlords to tenants holding under a particular type of tenancy. Parliament recognised that its enactment in 1981 might arguably impinge on landlords' constitutional rights to the enjoyment of property under section 4(a) of the Constitution, and it was passed by a special majority in each House as required by section 13(2) of the Constitution.

3. The Board was provided with a good deal of material about the statute's origins and passage through Parliament. None of that material meets the stringent requirements of *Pepper v Hart* [1993] AC 593. It cannot therefore be determinative of the particular issue of statutory construction that the Board has to decide. But the material does help to explain the general background, and the mischief (referred to in Parliament as a crisis) which the Land Tenants Act was intended to remedy.

4. The social and economic background is described in *Owusu*, *Commonwealth Caribbean Land Law,* (2006) pp 46-47, explaining the origins of "the peculiar structure of the chattel house":

> "It evolved as a result of the insecurity of land tenure which followed emancipation. While the workers attempted to escape from the hegemony of the plantation complex, the symbol of coercion and inferiority, they had difficulty in finding land and housing accommodation away from the plantation. The planters had a near monopoly of the land market. The plantations were the only institutions capable of meeting the workers' demand for accommodation. This helped the planters to secure labour. They then introduced a tenancy system where workers became tenants of land and houses on the several plantations under terms and conditions specific to the individual plantations. They were given the house and spot for which they rendered labour in part payment. They were tenants at will. They could

> be evicted at short notice. And on eviction they had to leave the plantation. What the worker needed was a moveable house, that is, something that the labourer could take with him if and when he was expelled from the dwelling land owned by the plantation owner.
>
> This is the origin of the chattel house."

There is a similar account by Justice H A Fraser of the Supreme Court of Trinidad and Tobago in "The Civil Law and its Administration," BIICL (1966) pp 91-93.

5. The picture that emerges is that by the 1970's large numbers of citizens of Trinidad and Tobago were tenants occupying small houses which they had erected at their own expense, with the consent or acquiescence of their landlords. But security of tenure (originally granted by emergency wartime legislation, the Rent Restriction Act, Chapter 59:50) was progressively withdrawn from different categories of tenancies under powers conferred by section 4(1) of the Rent Restriction Act. This can be seen from the Rent Restriction (Exclusion of Premises) Order as from time to time amended and extended, culminating in the whole statute lapsing under a "sunset clause" in 2002.

6. Meanwhile, as tenants became rather more prosperous, their houses became less like chattels and more like habitations permanently affixed to the land. Solid concrete foundations, concrete walls and built-in drainage replaced wooden panels attached by bolts to low concrete footings. Increasingly a tenant's house could no longer be removed without damage both to the house itself and to its foundations. Its removal by the tenant was no longer possible, either physically or as a matter of law. All this was considered at length in the judgment of Fraser J in *Mitchell v Forde* (1963) 5 WIR 409 and (in less detail) by the Board in *Ramdass v Bahaw-Nanan*, 14 December 2009, [2009] UKPC 51. A tenant whose tenancy came to an end was therefore at risk of losing the home that he had erected at his own expense.

7. This was seen as a grave social problem, as appears from the debate in the House of Representatives on what was originally called the Chattel Buildings Bill. It was introduced by the Attorney General and Minister for Legal Affairs, Mr Richardson. The Board cites these passages not as *Pepper v Hart* material but as a general indication of the legislative purpose. Mr Richardson said (20 March 1981, cols 1808 and 1809):

> "Everyone knows how widespread and deep-seated the practice of tenants building houses on the lands of their landlords has been in Trinidad and Tobago. It is as old as the abolition of slavery and the introduction of the indentured system in this country. With the progress

> of time, the movable one-room houses have given place to irremovable dwellings of steel and reinforced concrete, but the law has lagged behind, failing to catch up with and to reflect the realities of today.
>
> Because of the affluence, instead of having chattel houses tenants started to build real solid houses, houses of concrete and steel and as such they continue to call them chattel houses. This problem is peculiar to Trinidad and Tobago, so peculiar so grave, that what we have to do today is literally to change the Constitution so that those tenants would benefit. To do this, we would have to pass this Bill by a three-fifths majority in both Houses of Parliament."

The Bill was passed unanimously by the House of Representatives but ran into technical difficulties in the Senate, where it was committed to a select committee. It emerged from the select committee with a new name, the Land Tenants (Security of Tenure) Bill, and was passed unanimously on 19 May 1981. It was enacted on 1 June 1981, which was the appointed day for its coming into operation.

The provisions of the Land Tenants Act

8. The Land Tenants Act recites that it was passed under the procedure required by section 13(2) of the Constitution, and section 1(2) provides that it is to have effect even though inconsistent with sections 4 and 5 of the Constitution.

9. Section 2 contains a definition of "chattel house":

> "'Chattel house' includes a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction".

In this definition, the word "includes" is important. It is common ground that the definition extends to any building falling within the first part of the definition ("a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord") whether or not it is capable of being removed without destruction. Section 2 also contains a wide definition of "tenant", and "tenancy" is to be construed accordingly.

10. Section 3(1) provides as follows:

> "Subject to subsection (2), this Act applies to tenancies in respect of land in Trinidad and Tobago on which at the time specified in section 4(1) a chattel house used as a dwelling is erected or a chattel house intended to be used as a dwelling is in the actual process of being erected."

Section 3(2) contains five exceptions, including a tenancy of agricultural land, a tenancy of land owned by a local authority, and a tenancy for a term having more than thirty years unexpired on the appointed day. Section 3(3) provides that the Act does not bind the State, so that land owned by the State is another exception.

11. Section 4 provides as follows:

> "(1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act.
>
> (2) A statutory lease shall be a lease for thirty years commencing from the appointed day and, subject to subsection (3), renewable by the tenant for a further period of thirty years."

Subsection (3) required the tenant to give at least six months written notice in order to exercise his right of renewal, but under the Land Tenants (Security of Tenure)(Amendment) Act 2010 (No 10 of 2010) it is sufficient to give notice on or before the expiration of the original term of the statutory lease. Subsection (5) provides:

> "Nothing in this section shall operate so as to affect any mortgage, charge or security existing at the appointed date upon any land the subject matter of a statutory lease and such mortgage, charge or security shall attach to the statutory lease."

12. Section 5 provides as follows:

> "(1) The terms and conditions of any existing tenancy converted into a statutory lease by section 4 shall, subject to this section, be incorporated in the statutory lease as terms and conditions in such lease.

(2) On the conversion of an existing tenancy into a statutory lease, any term or condition of such tenancy inconsistent with the terms and conditions of a statutory lease set out in this section, or with any other provisions of this Act, shall be void to the extent of such inconsistency.

(3) Notwithstanding any other law, the rent under a statutory lease shall be the rent which was payable in respect of the land immediately prior to the appointed day or as varied under section 5A."

Section 5A, added by amendment in 1983, provides for the rent under a statutory lease to be reviewed by the Land Commission, a statutory body set up under the Land Registration Act (No 24 of 1981).

13. Section 5(5) provides:

"The tenant shall have an option to purchase the land at any time during the term of the statutory lease at a price not exceeding fifty per cent of the open market value of the land without the chattel house ascertained at the date of the service on the landlord of notice of purchase under section 9(1)."

Further provisions relevant to the exercise of this option are set out in section 5(6) and in section 9. Section 11 confers on the Land Commission a wide jurisdiction to determine questions and claims arising under the Act, including "all matters in dispute whether of law or fact between a landlord and a tenant capable of settlement under this Act irrespective of the value of the house or land."

14. The Land Tenants Act does not have any effect in relation to any chattel house whose construction is commenced after its coming into force. That is emphasised by section 16:

"From and after the commencement of this Act any agreement between a landowner and another person whereby such other person erects or agrees or undertakes to erect a building which is incapable of removal without destruction on the land of such landowner shall be void unless the agreement is in writing and expressly defines the rights of the parties in respect of the building."

This section emphasises the once-for-all character of the creation of statutory leases. For the future, a tenant or prospective tenant building on land has to look after his own interests and see that his rights are defined in a written agreement.

The facts

15. The appellant is described as "David Gopaul on behalf of H V Holdings Ltd" and the respondent as "Vitra Imam Baksh on behalf of the Incorporated Trustees of the Presbyterian Church of Trinidad and Tobago." Why these two bodies corporate did not simply take proceedings in their own name has not been explained. Possibly it was because of the need for a sworn complaint under the Summary Ejectment Ordinance (Chapter 27:17) under which the appellant proceeded. The Board will refer to the appellant as "the landlord" and to the respondent as "the trustees".

16. The landlord owned a substantial area of land at Marabella, as appears from the plans to a conveyance dated 20 February 1974 which was put in evidence before the magistrate. The trustees (who were incorporated in 1893 by the Presbyterian Church Incorporation Ordinance) are the tenants of a piece of land now known as 36 Southern Main Road, Marabella. It is described in the trustees' written case as being an area of just over 21,000 sq ft, so that it is a good deal larger than the standard lot size of about 5,000 sq ft. Mr Byron Gopaul, the managing director of the landlord, described it as a very valuable piece of land.

17. It is common ground that there is a wooden Presbyterian church, built by the trustees at some time before 1946, on the land. At a later date (probably about 1954, and certainly by 1958) a manse was built by the trustees as a residence for the church minister and his family. On 1 June 1981 the manse was in the occupation of Mr Fitzroy Bachan, who was then minister, and his family. It appears from the evidence that the church was on the south side of the land, and the manse on the north side, but beyond that there is no evidence or agreed statement as to the relative sizes of the footprints of the two buildings, their means of access, or the layout of the open space around them.

18. No written tenancy agreement was in evidence and there was no suggestion that there ever was a written tenancy. But it is common ground that there was a single contract of tenancy at an annual rent of 48 cents, payable in June every year. Mr Gopaul agreed that there was "no separate letting".

19. On 14 June 2002 the landlord gave the trustees notice to quit expiring on 31 December 2002, and on 23 April 2004 the landlord made an ejectment complaint against the trustees. The complaint was heard by the magistrate, Mr Harripersad. Evidence for the landlord was given by Mr Gopaul. The trustees had two witnesses,

Mr Lionel Matura, an elder of the church, and Mr Vitra Baksh, the trustees' general secretary.

20. There is no verbatim transcript of the evidence, but the Record contains what appear to be careful notes of the evidence heard by the magistrate. The notes of counsel's submissions are less clear, but it appears that the trustees relied on their rights under the Land Tenants Act. The landlord's counsel argued that the Land Tenants Act should not apply, because the primary purpose of the tenancy was for the church, with the manse being merely complementary. The landlord's counsel did not argue that the manse had been built without the landlord's consent or acquiescence. The magistrate dismissed the complaint on 12 December 2005. In his short written reasons he emphasised that there had been no separate letting.

21. The landlord appealed to the Court of Appeal (Archie CJ and Weekes JA) which dismissed the appeal on 1 December 2009 in a short judgment delivered by Archie CJ. The Chief Justice said that the appeal turned on one narrow issue, that is the application of the Land Tenants Act:

> "There is no dispute or at least the evidence has not been seriously challenged, which points to the fact that a manse was actually in use as a dwelling on the relevant date, which would have been 1 June 1981. So the question turns, then, on what is the proper interpretation of the expressions 'chattel house' and 'tenant' in this particular context."

He went on to say that the language of section 3 of the Land Tenants Act was plain. Unlike the Rent Restriction Act there was nothing in the Land Tenants Act to indicate that the use of the chattel house as a residence had to be the only or the primary use. There was therefore a statutory tenancy and the magistrate was right to dismiss the ejectment complaint.

Submissions before the Board

22. The Board has had the advantage of clear written and oral submissions from counsel on each side. Mr Jonathan Small QC (for the landlord) submitted that the Land Tenants Act, even though passed by a special majority, should be construed so as to have no greater prejudicial effect on landlords than its language strictly required. In *Ramdass v Bahaw-Nanan*, para 24, the Board observed that "a statute which deprives landlords of property rights must be construed with some degree of strictness." All the members of the English Court of Appeal made similar observations in relation to the Leasehold Reform Act 1967 in *Methuen-Campbell v Walters* [1979] QB 525, 536 (Goff LJ), 541 (Roskill LJ), 542 (Buckley LJ). Mr Small

argued that the trustees' construction tended to absurdity. He put forward an extreme example:

> "Suppose a tenancy is granted to a substantial commercial entity of a warehouse (which the landlord had constructed previously at its own expense) . . . if this tenant then builds a small caretaker's flat on the land (eg to house a security guard), then on the respondents' construction, the tenant would acquire a 30 year lease of the whole of the demised premises *including the warehouse*."

23. Mr Small put forward two alternative constructions to avoid this perceived absurdity. One was to limit the operation of the Land Tenants Act to a case where the chattel house is (together with any strictly ancillary structure such as a garden shed) the only structure on the land comprised in the tenancy. The other was to treat the land as if it were comprised in two separate tenancies, and to apply the Land Tenants Act only to the notional separate tenancy of the manse, leaving the church building unprotected. Mr Small drew attention to a note on the statutory form, Form 3, issued for use by a tenant wishing to exercise his rights under section 9 of the Land Tenants Act:

> "'Land' to be included in the notice includes any garage, outhouse, garden, yard and appurtenances which at the time of the notice are let to the tenant with the chattel house and are occupied with and used for the purposes of the house or any part of it by the tenant."

24. Mr Small also sought to raise a new point as to the landlord's consent to, or acquiescence in, the construction of the manse not having been proved before the magistrate. But he rightly did not press it. It was a hopeless point.

25. Mr Armour SC (for the trustees) took his stand on the language of the Land Tenants Act. He submitted that it was not necessary or permissible to read words into the clear language of section 3(1), which was subject to a limited number of exceptions clearly set out in section 3(2). He cited *Mackay v Jesse Henderson Co Ltd* 26 May 2011, CV 2009 – 01602, in which Jones J observed (para 18):

> "It seems to me that if Parliament wished to exclude those buildings which were used for the dual purpose of commerce and residence it would not have been difficult to include in section 3(1) the word 'only' so as to limit the user to chattel houses used for dwelling only."

Mr Armour also submitted that the meaning of the primary legislation, the Land Tenants Act, could not be affected by a guidance note in a statutory form issued pursuant to the primary legislation.

Conclusions

26. In the Board's view the result for which the trustees contend might have occasioned some surprise, if this case had been drawn to Parliament's attention in 1981. But it cannot be supposed that Parliament would necessarily have considered it as an absurdity. Parliament was enacting far-reaching legislation in order to deal with an urgent social problem in a broad-brush manner, despite the fact that inevitably some landlords would feel aggrieved. The language of the legislation seems to have been chosen in order to be as simple and clear-cut as possible. The Rent Restriction Act provided a ready model of how to deal with mixed use tenancies, if that was the intention, but Parliament did not choose to take that route.

27. The once-for-all character of the statute's operation excluded the possibility of its being employed for abusive schemes devised after its enactment. The only case in which abuse might have been suggested (though it does not seem to have been put in those terms) was *Ghany Investments Ltd v Ward* 3 November 1995, Civ App No 5 of 1989, in which Mrs Ward demolished her house and replaced it with four flats in 1980, shortly before the enactment of the Land Tenants Act.

28. The language of the essential provisions of the Land Tenants Act is plain, as Mr Armour submitted. On the appointed day the trustees had a tenancy in respect of land (the plot of about 21,000 sq ft on Southern Main Road) on which a chattel house was erected and was in use as a dwelling house. That was the only relevant tenancy that the trustees had. The land *comprised in* the tenancy was different from the chattel house's *site* (the two emphasised expressions both occur in the definition of "chattel house"). The words "tenancies in respect of land" in section 3(1) could equally well have been shortened to "tenancies of land" but that would be a very slender foundation indeed on which to build Mr Small's argument for notional separate tenancies of the manse and the church.

29. The absence from the statute of any machinery for fixing boundaries, rights of way and other easements, and for apportioning rent, is strongly against the notional separate tenancies argument. If the statutory language had supported that argument, the Land Commission's powers under section 11 might have sufficed to fill the gap. But there is really nothing in favour of this construction beyond the argument from absurdity, which the Board considers to be exaggerated. Thirty years have now passed since the Land Tenants Act came into force, and there is no evidence that there has been any injustice of the sort exemplified by Mr Small's warehouse scenario.

30. For these reasons the Board dismisses the appeal. The landlord must pay the trustees' costs of the appeal to the Board.