

BEFORE THE HONOURABLE MADAM JUSTICE RAJNAUTH-LEE

APPEARANCES:

Mr. Ramesh Lawrence Maharaj S.C instructed by Mr. Garnet Mungalsingh for the Applicants.

Mr. Russell Martineau S.C leading Mrs. Deborah Peake instructed by Miss Glenda Edwards for the Respondent.

REASONS

The Application:

Before the Court was the application of the Applicants for leave to apply for judicial review. In the Statement dated the 14th August, 2003 and filed on behalf of the Applicants, the relief sought was as follows:

- “(1) An order of certiorari to bring into this Honourable Court and quash the decision of the Respondent to refuse to give to the Applicants an undertaking that it would not demolish their homes and/or it would implement the promises and/or undertakings and/or assurances it gave to the Applicants on the 7th July, 2003 at the Tarouba Playground.
- (2) A declaration that the Applicants are entitled to have the promises and/or undertakings and/or assurances referred to below and made by the Respondent to the Applicants on the 7th July, 2003 honoured and /or implemented.
- (a) Not to displace the Applicants and for them to have permanency in their present condition.
- (b) Not to demolish their homes,
- (c) To regularize their occupation within 2 to 3 years.
- (d) That they would have deeds for lands.
- That they would be housed so that they would not become homeless.

- (3) A declaration that the Applicants are the beneficiaries of a legitimate expectation of a substantive benefit that they would be permitted to occupy their existing plots of land at Tarouba North, Marabella (as shown on the sketch marked "A" attached to the joint affidavit of the Applicants filed herein) until their occupation is regularized either on their existing plots or on alternative lands provided by the Respondent.
- (4) A declaration that the Applicants are the beneficiaries of a legitimate expectation of a substantive benefit that their homes on their respective plots of land would not be demolished by the Respondent.
- (5) An order that the Respondent honour and/or implement the representations made by the Respondent to the Applicants on the 7th July, 2003 at the Tarouba Playground.
- (6) A declaration that the Respondent is not entitled to resile from the promises and/or undertakings and/or assurances made on the 7th July, 2003.
- (7) A declaration that the Respondent is not entitled to demolish and remove the homes of the Applicants which are situate on their existing plots as described in the sketch plan marked "A" annexed to the joint affidavit of the Applicants.
- (8) An order of prohibition prohibiting the Respondent its servants and/or agents from demolishing the homes of the Applicants.
- (9) An injunction restraining the Respondent its servants and/or agents or howsoever otherwise from removing the Applicants from their existing plots of land and/or from demolishing and/or removing their houses which are situate on the said lands.
- (10) An interim injunction and/or order restraining the Respondent its servants and/or agents or howsoever otherwise from demolishing and/or removing the Applicants' homes which are situate on the said lands and which are described on the sketch plan marked "A" annexed to the joint affidavit of the Applicants until the hearing and determination of the said Application or until further order.
- (11) An order that the existing status quo be maintained until the hearing and determination of the Application or until further order.

- (12) Damages.
- (13) Costs.
- (14) Such further and/or other relief as the Honourable Court may think just.”

The grounds upon which the application was made were set out in the Statement. The application was supported by the affidavit of the Applicants sworn to on the 14th August, 2003, the affidavit of service of Amzad Sadar sworn to on the 19th August, 2003, the affidavit of Dennis Sampson sworn to on the 19th August, 2003 and the affidavit of Sita Seelal sworn to on the 25th August, 2003.

The Court deemed the matter fit for hearing during the vacation. At the hearing of the application for leave to apply for judicial review, the Respondent was represented by Senior Counsel who opposed the grant of leave.

The history of the matter:

The Applicants, together with other persons, had filed judicial review proceedings against the Respondent in High Court Action No. S. 157 of 2003. The matter was heard by Bereaux J. and judgment reserved. Judgment was delivered on the 31st July, 2003. Bereaux J. dismissed the application for judicial review. The Applicants appealed the decision of the learned Judge (Civil Appeal No. 96 of 2003) but did not seek interim relief in the Court of Appeal.

Whilst the judgment of Bereaux J. was being awaited, and on the 7th July, 2003, the Applicants, among others, were invited to a meeting at the Tarouba Playground. At that meeting, Mr. Noel Garcia, Executive Director of the Respondent, among others, addressed those present. Mr. Garcia’s speech was tape recorded. A copy of the transcript was placed before the Court as Exhibit “C”. The following statements made by Mr. Noel Garcia contained in Exhibit C are highlighted:

At page 1:

- (1) “Further down the road there is a Court matter involving the NHA and some of your existing Squatters. It is the intention of the Government not to displace persons we will not unilaterally move and demolish people homes. Our intention is to sit with the representatives of Tarouba and to come up with some comprehensive plan that will enable us to end up with a win win situation, that is the NHA will be able to construct the 300 dwelling units that is proposed and at the same time to enter into some arrangement with the Squatters to allow them to have some kind of permanency in their present condition.”

At page 3:

- (2) “I hear you on that but I am going to answer you and the NHA policy at least under me is a policy of dialogue. I am giving you the undertaking that let the elections fever cool we will come back to you prior to the start of any construction ... we would listen to you.”

At page 8

- (3) “There is another issue and that is the issue of the Court matter and when I say a win win what I am saying is that the present situation with the squatters we have to sit down and resolve where and how they are going to occupy certain pieces of land.”

At pages 10 and 11:

- (4) “That is a matter as I said, it involves as far as I am aware and advised 25 persons. That judgment is supposed to come out very shortly because it was promised in March and now in July. My undertaking is that regardless of what the judgment says we have to sit down and work out a win win situation. It is not to my benefit or to your benefit the NHA or

any government to get up a morning and send a bulldozer through people's property. So that we have to sit down regardless of what the decision is. I am giving you an undertaking and I have said so to your lawyers that we will sit and discuss the matter and see how best we can fit you in and you can fit yourselves into the NHA's plan for the area. The brother up there made a very excellent suggestion. Let us do a survey among the residents and see how many of the residents are willing and capable of purchasing a lot so that when whatever we do here in the final analysis it is not something we are imposing on the residents of Tarouba but its something that comes out of consultation with the residents and that is the most I can say at this time"

Subsequent to the judgment of Bereaux J, and by letter dated the 4th August, 2003, Attorneys for the Applicants wrote to Messrs. Gopeesingh, Martineau, Edwards and Co., Attorneys for the Respondent, in the matter

"Re: Civil Appeal No. 96 of 2003
H.C.A. No. S-157 of 2003
Vashti Sampson & Ors –v-
The National Housing Authority."

By the said letter, the Applicants' Attorneys wrote as follows:

"On behalf of the Appellants/Applicants we respectfully request an undertaking that the Respondent/respondent would not demolish the homes of the Appellants/Applicants on the respective plots of land failing which our instructions are to file an application for hearing before a single judge of the Court of Appeal for an injunction restraining the Respondent/respondent from demolishing the homes of the Appellants/Applicants until the hearing and determination of the Appeal and for an order that such an application be deemed fit for hearing during the Court's Long Vacation."

Reference was made in the said letter to an undertaking given by Mr. Garcia on the 7th July, 2003 “not to demolish the homes of the Respondent/Respondent.” (*sic*)

On the 12th August, 2003, the Respondent’s Attorneys replied in a “Without Prejudice” letter which was placed before the Court by consent. The letter read as follows:

“We refer to your letter dated 4th August, 2003.

We have taken our clients instructions and are unable to accede to your request for an undertaking. However the Authority is willing to hold without prejudice discussions at an appropriate time with those persons who were among those finally represented at the hearing before the Honourable Mr. Justice Beraux. Such discussions will relate to possible accommodation for those persons.”

By letter dated the 11th August, 2003, the Applicants’ Attorneys wrote to the Respondent referring inter alia to the “promises and/or undertakings given by Mr. Noel Garcia on behalf of the National Housing Authority on the 7th July, 2003”, and, calling upon the Respondent to indicate “whether you are prepared to honour the expectations given to our clients and for you to give us an answer within 24 hours of the date of this letter failing which we will advise our client to take whatever steps necessary to seek judicial review to enforce the said expectations.”

By letter dated 12th August, 2003 the Respondent replied to the letter of 11th August, 2003 through its Attorneys as follows:

“Your letter dated 11th August, 2003 to the National Housing Authority has been referred to us in order to respond to the same.

Our clients have been advised that there is no ground on which your client can successfully pursue judicial review proceedings against them.

Please be guided accordingly.”

The Law and Conclusions

The requirement for the grant of leave prior to the commencement of judicial review proceedings is designed to filter out applications which are either groundless or hopeless. According to the dictum of Lord Diplock in the case of **Regina v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses Ltd. [1982] A.C. 617, at page 643**, the purpose of the requirement for leave to be granted is “to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left...”

Although the threshold is low, the Applicants must demonstrate that there is an arguable case; that a ground for seeking judicial review exists.

It was argued on behalf of the Applicants that the statements of Mr. Garcia gave rise to legitimate expectations of a substantive benefit. The Court carefully considered the authorities placed before it and the statements made by Mr. Garcia.

The case of **Regina v North and East Devon Health Authority Ex parte Coughlan [2001] 1 Q.B. 213** was cited to the Court. In that case, the applicant, who was severely injured in a road accident and was a tetraplegic, along into seven comparably disabled patients, were moved from a hospital which the health authority wished to close to Mardon House, a National Health Service facility for the long-term disabled, which the health authority assured them would be their home for life. In 1996, the health authority published its eligibility criteria for long – term NHS care, and subsequently, concluded that the applicant and the other Mardon House residents did not meet those criteria.

In 1998, following public consultation, the health authority decided to close Mardon House and to transfer the long-term general nursing care of the applicant to the local authority, although no alternative placement for her was identified.

On an application for judicial review of the closure decision, the judge quashed the decision to close. On appeal, Lord Woolf M. R. in examining the court’s role in the issue of legitimate expectation stated at page 242:

- “(b) On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontroversial that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629) in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires.
- (c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.”

In **Coughlan**, the Court of Appeal held that the applicant had a legitimate expectation of a benefit which was substantive, rather than merely procedural, that the health authority would not resile from its promise unless there was an overreaching justification for doing so.

In the earlier case of **Council of Civil Service Unions and Others v Minister for the Civil Service** (1985) 1 A.C. 374 at page 415, Lord Roskill stated the law as to legitimate expectation as follows at Letters C – D:

“But this appeal is vitally concerned with the third, the duty to act fairly.

The particular manifestation of the duty to act fairly which is presently involved is that part of the recent evolution of our administrative law which may enable an aggrieved party to evoke judicial review if he

can show that he had “ a reasonable expectation” of some occurrence or action preceding the decision complained of and that that “reasonable expectation” was not in the event fulfilled.”

And at Letters F – G:

“I prefer the use of the adjective “legitimate” in this context and use it in this speech even though in argument it was the adjective “reasonable” which was generally used. The principle may now be said to be firmly entrenched in this branch of the law. As the cases show, the principle is closely connected with “a right to be heard.” Such an expectation may take many forms. One may be an expectation of prior consultation. Another may be an expectation of being allowed time to make representations especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of a particular power because of some suggested exceptional reasons justifying such a departure.”

Having regard to the statements made by Mr. Garcia, in the judgment of the Court, no legitimate expectation of a benefit which was substantive had been created. There was no promise, representation or undertaking given by Mr. Garcia that the Applicants’ homes would never be demolished or that the Applicants would be entitled to remain in those houses on their respective plots for the remainder of their lives. The representations of Mr. Garcia were all to other effect that there would be discussions, consultation or dialogue between the parties before certain decisions were made or certain actions taken.

The Court found on the evidence that there was no breach or threatened breach of the promise or undertaking to dialogue, consult or discuss. Accordingly, the Applicants could not complain that the Respondent had resiled from any promise which had given rise to a legitimate expectation. Further, the Respondent had not threatened to demolish the homes of the Applicants with or without consultation. In fact, by letter dated the 12th

August, 2003, the Respondent had indicated its willingness to hold discussions with the Applicants.

Moreover, the Court agreed with Senior Counsel for the Respondent that Mr. Garcia in his remarks never represented to the Applicants that he would give them any undertaking. Accordingly, the failure or refusal of the Respondent to give an undertaking was not a breach of any promise or representation made by Mr. Garcia.

In the judgment of the Court, having regard to the law and the evidence, the Applicants have not been able to make a case for the breach of any legitimate expectation. Accordingly, the Court held that the Applicants had failed to demonstrate that they had an arguable case. The Court refused the application for leave to apply for judicial review with no order as the costs.

Dated the 2nd day of October, 2003.

Maureen Rajnauth-Lee
Judge