

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civ. App. No. 108 of 2003

IN THE MATTER OF AN APPLICATION BY

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|---|------------------------|
| 1. BALROOP RAMLOCHAN | 2. KAMRAJ MAHARAJ |
| 3. TARA RAMROOP | 4. CINDY SANTOO |
| 5. JANE ELAHIE | 6. DAVID MAHARAJ |
| 7. RONALD RAMDASS | 8. INDAR SAMAROO |
| 9. JENNY LYNN DIAZ | 10. RYAN HEADLEY |
| 11. DENNIS SAMPSON | 12. RAJH BASDEO |
| 13. BALCHAN SAMAROO | 14. CHAITRAM DEONARINE |
| 15. DOWIN ALEXANDER and ANNE ALEXANDER | 16. WENDELL COLTRUST |
| 17. KENNETH COLTRUST | 18. ASHOOK SOOKDEO |
| 19. S. ASHOOK | 20. JUNIOR JACKSON |
| 21. GRACE GOPAUL | 22. SITA SEELAL |
| 23. TERRANCE KING and CYNTRA SEEPERSAD | 24. MARK PHILBERT |
| 25. BANSRAJ HARRILAL | 26. HOLLISTER PETERS |
| 27. PATRICIA AUSTIN | |

FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE PROMISES AND/OR UNDERTAKINGS AND/OR ASSURANCES GIVEN BY THE NATIONAL HOUSING AUTHORITY THROUGH ITS EXECUTIVE DIRECTOR, NOEL GARCIA, MADE AT A MEETING AT THE TAROUBA PLAYGROUND ON THE 7TH JULY, 2003 WITH THE APPLICANTS AND OTHER OCCUPIERS OF LANDS OF TAROUBA NORTH WHICH PROMISES AND/OR ASSURANCES AND/OR UNDERTAKINGS WERE TO THE EFFECT THAT THE APPLICANTS AND OTHER OCCUPIERS OF LANDS AT TAROUBA NORTH (HEREINAFTER REFERRED TO AS "THE OTHER OCCUPIERS") WOULD NOT BE DISPLACED AND THE NATIONAL HOUSING AUTHORITY WOULD NOT UNILATERALLY MOVE AND DEMOLISH THEIR HOMES AND INSTEAD THE NATIONAL HOUSING AUTHORITY WOULD COME UP WITH SOME COMPREHENSIVE PLAN AND ENTER INTO SOME ARRANGEMENT WITH THEM TO ALLOW THEM TO HAVE SOME KIND OF PERMANANCY IN THEIR PRESENT POSITION AND THAT THE APPLICANTS AND THE OTHER OCCUPIERS HAVE NOTHING TO FEAR THAT THE GOVERNMENT WILL BULLDOZE OR DEMOLISH THEIR HOMES

AND

IN THE MATTER OF THE DECISION AND/OR ACTION OF THE NATIONAL HOUSING AUTHORITY TO REFUSE AND/OR TO NEGLECT TO IMPLEMENT AND/OR HONOUR THE PROMISES AND/OR UNDERTAKINGS AND/OR ASSURANCES MADE TO THE APPLICANTS ON THE 7TH JULY, 2003 AS REFERRED TO ABOVE

BETWEEN

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|-----|--|-----|---------------------------|
| 1. | BALROOP RAMLOCHAN | 2. | KAMRAJ MAHARAJ |
| 3 | TARA RAMROOP | 4. | CINDY SANTOO |
| 5 | JANE ELAHIE | 6. | DAVID MAHARAJ |
| 7. | RONALD RAMDASS | 8. | INDAR SAMAROO |
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| 25. | BANSRAJ HARRILAL | 26. | HOLLISTER PETERS |
| 27. | PATRICIA AUSTIN | | |

APPLICANTS/APPLICANTS

AND

THE NATIONAL HOUSING AUTHORITY

RESPONDENT/RESPONDENT

PANEL:

R. Nelson, J.A.
W.N. Kangaloo, J.A.
I. Archie, J.A.

APPEARANCES:

Mr. Ramesh L. Maharaj S.C. and Miss V. Maharaj for Appellants
Mr. S. Russell Martineau S.C. and Mrs. Deborah Peake for Respondents

DATE DELIVERED: 9th December 2004.

I have read the draft judgment of Kangaloo J.A. and I agree with it.

R. Nelson
Justice of Appeal

I too have read the draft judgment of Kangaloo J.A. and agree with it.

I. Archie
Justice of Appeal

JUDGMENT

Delivered by W.N. Kangaloo, J.A.

1. On the 25th August 2003, Rajnauth-Lee J. refused the appellants leave to apply for judicial review. The hearing before her was an opposed ex parte application. The appellants have appealed her decision. The issue in the appeal therefore is whether the appellants have been able to demonstrate that Rajnauth-Lee J's refusal to exercise her discretion to grant leave was based on some wrong principle of law or on a misapprehension of the facts or alternatively that her decision was so plainly wrong that it could be said that she must have exercised her discretion wrongly, this being the test laid down by Nelson JA in Fishermen and Friends of the Sea v. Environmental Management Authority & Or. Civ. App. No. 106 of 2002 (unreported).

2. Rajnauth-Lee J's reasons for refusing to grant leave were:

- (a) she found that there was no evidence of the creation of a legitimate expectation of a substantive benefit;
- (b) she found that the representations made by the respondent were all to the effect that there would be discussions, consultation or dialogue between the parties before certain decisions were made or action taken by the respondent;
- (c) she found there was no breach or threatened breach of the promise or undertaking to engage in dialogue or consultation or discussion, so that the appellants could not complain that the respondent had resiled from any undertakings given to them;

(d) the respondents never promised to give an undertaking to the appellants so that its refusal to give an undertaking as requested by the appellants was not in breach of any legitimate expectation created;

(e) the appellants had failed to demonstrate an arguable case for the grant of leave because they had not shown that there was any breach of any legitimate expectation created.

3. The thrust of the grounds of appeal is that the learned judge ought to have granted leave because:

(a) she found that a case for a legitimate expectation of a procedural benefit had been made out; and

(b) the refusal of the respondent to indicate whether it was prepared to honour the expectations given to the appellants was consistent with a refusal to honour or enforce or implement those expectations and further showed that the respondent had resiled from those expectations.

The appellants' contention was that because of (a) above the learned judge ought to have granted leave because an arguable case was made out and that (b) only made the appellants' case stronger.

4. The respondent contends, as it did before the learned judge, that even if a legitimate expectation of a procedural benefit had been demonstrated, there was no threatened breach nor actual breach of the expectation to afford the appellants judicial review relief. It contends therefore that no arguable case has been made out and the learned judge exercised her discretion properly and that ought not to be interfered with on appeal.

5. To appreciate the rival contentions it is necessary to outline a brief history of the facts giving rise to the application for leave.

6. The appellants are some of the squatters on a parcel of land known as Tarouba North. The lands are leased to the respondent on a 999-year basis. The respondent is a state agency with certain statutory powers. Sometime in January 2003 the respondent issued notices to the squatters to remove their houses within a certain time frame. The appellants applied to the High Court in other proceedings (the Bereaux proceedings) for judicial review. They were granted leave and interim injunctive relief in January 2003. The substantive motion was heard in February 2003 and judgment was delivered on the 31st July 2003. Meanwhile, on the 6th and 7th July 2003 in the height of the run up to local government elections, the squatters in the Tarouba area were invited to a public meeting to discuss some of their concerns. At the meeting held in the evening of the 7th July 2003 the Executive Director of the Respondent, Mr. Noel Garcia, was one of a number of persons who addressed the crowd which included the appellants and in an election campaign style speech he gave the crowd certain assurances. The full text of the speech, so far as it is relied on by the appellants before this Court is set out in paragraph 9 below. On the 31st July 2003, Bereaux J. dismissed the appellants' application for judicial review. The appellants appealed that decision on the 31st July 2003 but sought no interim relief.

7. On the 4th August 2003, the appellants, through their attorneys wrote to attorneys for the respondent, requesting an undertaking to be given in the Bereaux proceedings that the respondent would not demolish their homes, failing which the attorneys had instructions to apply for an injunction pending the determination of the appeal. The respondent responded on the 12th August 2003 indicating that it was unable to accede to the request for the undertaking sought but was willing to hold without prejudice discussions relating to

possible accommodation for persons who eventually pursued the Bereaux proceedings.

8. The only other conduct relied on by the appellants in the instant proceedings as the basis of their claim for judicial review is the response by the respondent to another of their letters, this one dated the 11th August 2003. In this letter the appellants referred to the promises and/or undertakings given by the respondent on the 7th July 2003 and called 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 (sic) to seek judicial review to enforce the said expectations.*” The respondent tersely responded on the following day “*our clients have been advised that there is no ground on which your client (sic) can successfully pursue judicial review proceedings against them.*”

9. It is important to see exactly what were the undertakings given, if any, by the respondent at the meeting on the 7th July 2003. The full text of that part of the speech of Noel Garcia relied on by the appellants before this Court is therefore set out:

“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. So that the housing policy of the Government does not exclude anyone.”

There is nothing to fear that tomorrow morning you will get up and that the Government will come with a bulldozer and demolish your dwelling. What the NHA seeks to do is to have orderly development and to implement the Government housing policy and that housing policy and I previously said is to ensure that by 2020 all our citizens, and I emphasize all of both Trinidad and Tobago are adequately housed and have tenure for where they are. So that there is no plan to displace persons and to you know to just throw them on the streets. What we are about is orderly development, what we are about is to house all of our citizens to ensure that by 2020 Trinidad and Tobago would achieve Developed Country Status. The Land Settlement Agency, The Sugar and Welfare Labour Committee and the NHA in conjunction with UDICOTT is looking to implement that policy. For this year 2003 the target is 4,388 houses. Next year the Government hopes to build 6,000 houses in the year 2005 - 8000 houses and by 2006 10,000 houses. So that our policy, the Government's policy is to ensure that by in the next 5 to 10 years all of our citizens, every single one regardless of race, creed, party affiliation is adequately housed without exception. We know that the situation here have existed for a number of years but I give you the assurance tonight within the next 2 to 3 years all of you will be regularized. Some of you may not be regularized in your existing lot but certainly there is no intention to send you down to Princes Town or Tarouba South across the highway. Our intention is to have orderly development, to sit with you, to dialogue with you and to come up with our agreement, that at the end of day you walk away feeling you are a winner, the Government walks away feeling that it has provided housing for its citizens and that we achieve the common objective of making sure that all the citizens of Trinidad and Tobago are adequately housed. I want to end my short discourse tonight by inviting people who may have specific questions to approach me and to engage into a one to one, I may not have all the

answers tonight but certainly you are invited if I cannot answer all of your queries to come down either to the LSA SILWC or NHA and we can have further discussions. So ladies & gentlemen I end by saying come the process the process involves you. This Government have your interest at heart. There is no sinister plan to displace or to throw you on the road, we are here to provide accommodation for every citizen of Trinidad and Tobago. Goodnight.”

10. From this speech Mr. Maharaj relies on the following undertakings:

(a) It was the intention of Government not to displace persons (referring to the appellants and the other occupiers). The NHA will not unilaterally move and demolish their homes and those of the other occupiers.

(b) The Respondent’s intention was to sit with the Applicants and their representatives and to come up with some comprehensive plan that would enable it to end with a win-win situation that is the Respondent will be able to construct 300 dwelling units that is proposed and at the same time to enter into some arrangements with the Applicants and other occupiers to allow them to have some permanency in their present condition.

(c) They did not have to fear that the Respondent would come one morning and demolish their homes and there was no plan to displace them and just throw them on the streets.

(d) The Applicants and the other occupiers would be regularized within the next two or three years.

(e) Although some of the Applicants may not be regularized in their existing plots, the intention was to regularize all of the Applicants and the other occupiers.

(f) The Respondent's intention was to have orderly development and to sit with the Applicants and the other occupiers to dialogue with them and to come up with a mutual agreement so that at the end of the day the Applicants and the other occupiers would walk away feeling that they are winners and the Government would also walk away feeling that it has provided housing for its citizens and the common objective achieved that the citizens of Trinidad and Tobago are adequately housed.

11. Mr. Maharaj contends from these undertakings that the appellants were the beneficiaries of a legitimate expectation of a substantive benefit viz. that they would be permitted to occupy their existing plots of land at Tarouba North until their occupation is regularised either on their existing plots or on alternative lands provided by the respondents. He further contends that Rajnauth-Lee J. erred in law when she found there was no creation of a legitimate expectation of a substantive benefit.

12. I agree with the learned judge that there was no creation of a legitimate expectation of a substantive benefit as contended for by the appellants because from the text of the speech set out, nowhere is that substantive benefit set out in terms which are '*clear, unambiguous and devoid of relevant qualification*' one of the criteria necessary for a specific representation to be binding. (See *Judicial Review of Administration Action* 3rd Ed. de Smith, Woolf and Jowell pp 571-574 and the case of R. v. Inland Revenue Commissioners, ex p. M.F.K. Underwriting Agencies Ltd [1990] 1 W.L.R. 1545, 1569, per Bingham L.J. cited therein).

13. The learned judge found that *'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'*. Although Mr. Maharaj contends that the learned judge found that there was a legitimate expectation of a procedural benefit viz. that dialogue would take place between the appellants and the respondent before the latter made any decision or took any action affecting the appellants, it is noteworthy that the learned judge has not said this in so many words. Indeed neither has the respondent conceded that there was any such legitimate expectation of a procedural benefit. But assuming for the moment that such a legitimate expectation of a procedural benefit was created by Mr. Garcia's speech, the question remains whether this by itself, without any evidence of a threatened or actual breach qualifies the appellants to be granted leave to apply for judicial review. The learned judge thought not and Mr. Martineau for the respondent agreed with her. Mr. Maharaj however argues otherwise but in effect contends that if he were wrong, the conduct of the respondent in its responses set out in the two letters referred to above demonstrates that either (a) the respondent does not intend to implement or honour its undertakings or (b) indicates an intention to resile from them.

14. I am unable to accept either of these contentions of the appellants. If it is that the mere creation of a legitimate expectation either of a substantive or procedural benefit without more, can give rise to the grant of leave for judicial review, then it is likely the Courts would be flooded with such applications, because the situations in which those legitimate expectations are created are myriad. I would think that before the admittedly low threshold for the grant of leave can be attained, the applicant must at least show a threat of the breach of the legitimate expectation created. That would render his case for judicial review at least arguable in which case leave will be granted. I would think that the test is similar to that set out in Section 14 of our Constitution Chap. 1:01 where a person may only move the Constitutional court when he alleges

that any of the provisions of Chapter 1 **has been, is being** or is **likely to be contravened** in relation to him. My reason for saying this is that it is well known that the Courts are not expected to make useless declarations. No authority has been cited before us in which there was the grant of a declaration that a legitimate expectation existed without it at least being threatened in some way and I doubt very much any would be found for the reasons I gave. Mr. Maharaj relies on the authority of R v. North and East Devon Health Authority ex parte Coughlan (2001) 1QB 213 to demonstrate the creation of a legitimate expectation of a substantive benefit. While that authority as well as paragraph 13-030 of Judicial Review of Administration Action 3rd Ed. de Smith, Woolf & Jowell make it clear that such a legitimate expectation is now well founded in Administrative Law, in Coughlan there was an actual resiling from the legitimate expectation created, so the declaration was granted. The position was similar in Emtel (Mauritius) Limited v. The Ministry of Telecommunication & Ors. Privy Council Appeal No. 56 of 1999 (unreported) another authority relied on by Mr. Maharaj. Again the propositions of law referred to by Mr. Maharaj in R. v. Secretary of State for Education and Employment Ex parte Begbie (2000) 1 WLR 1115 are all regarded as sound principles in judicial review, but none of them supports his contention here.

15. The only other issue is whether the respondent's conduct as demonstrated in its letters of response both dated the 12th August 2003, to the letters of appellants showed an intention not to honour any undertakings given by Mr. Garcia on the 7th July 2003. I am not of that view.

16. The first letter was in response to a request in the Bureaux proceedings for an undertaking not to demolish the homes of the appellants in that matter pending the hearing and determination of the appeal in that matter. It is the usual request made in matters of that kind to preserve the status quo until the matter is finally determined. The letter threatened if the undertaking was not

given an injunction would be sought in the Court of Appeal. Curiously the letter also says “*we enclose for your attention a tape recording of an undertaking given by Mr. Noel Garcia, Executive Director of the Respondent/Respondent on the 7th July 2003, not to demolish the homes of the Respondent/Respondent (sic) together with a true transcript thereof.*” It appears the appellants were contending that they already had the undertaking from Mr. Garcia, yet they were still seeking the identical undertaking from the respondent’s attorneys.

17. The response of the respondent as already set out above, if anything, is consistent with what the learned judge found i.e. that the respondent was prepared to sit and have dialogue before making a decision or taking any action. There not being the legitimate expectation of the substantive benefit contended for by the appellant, I cannot see how the respondent’s response demonstrates any intention either to resile from or not to honour and implement any of the undertakings of Mr. Garcia of the 7th July 2003.

18. The other response of the respondent’s attorneys of the 12th August 2003 simply tells the appellants’ attorneys that in respect of the threat of judicial review proceedings, it has advised its clients that the threatened proceedings ought not to succeed. It is a reasonable inference of this response that the respondent was not prepared to give an undertaking to the appellants that it would honour or implement the undertakings given by Mr. Garcia. But the legitimate expectation created by Mr. Garcia’s speech on the 7th July 2003 was not that the respondent will give an undertaking that it would honour and implement other undertakings or promises made on the occasion of the speech. So I cannot see how the refusal to give the undertaking sought by the appellants is any indication that it intends to resile from or not to honour any undertakings or promises made on the 7th July 2003. It might be that the respondent has been advised that no binding legitimate expectation arises out of Mr. Garcia’s speech so that it ought not to commit itself to give a binding

undertaking now. It may also equally be that the respondent intends to abide by any binding undertakings given by Mr. Garcia on the 7th July 2003, in which case there is no need to give another undertaking. It must be remembered there was no evidence from the respondent because this was an opposed ex parte application. But whatever the reason the respondent has for not giving the undertaking sought by the appellant's attorneys, the fact that it has not given the undertaking sought cannot of itself show an intention to resile from or not to honour or implement or to frustrate any legitimate expectation the appellants have. The appellants assert they have this legitimate expectation created for their benefit. If they can show positively that the respondent intends to breach it (as opposed to asking that the breach be inferred from inaction of the respondent), then any binding legitimate expectation they may have ought to be protected by the judicial process, but on the evidence adduced I am of the view that there is an onus on the appellants to demonstrate at least a threatened breach of a binding legitimate expectation for them to be entitled to the grant of leave and this they have not been able to do.

19. In the circumstances, I am of the view that it has not been demonstrated that the learned judge misapprehended either the relevant principles of law or the facts in this matter, neither has it been shown that the exercise of her discretion was plainly or palpably wrong. It must be remembered that any of these conditions must be met before an appellate court can interfere with the exercise of a judge's discretion, even though the appellate court would have exercised its discretion differently from that of the first instance judge.

20. I would therefore dismiss this appeal with costs fit for Senior and Junior counsel and I so order.

W.N. Kangaloo
Justice of Appeal