Kiribati

Attorney-General v. Nei Mina Highland

Court of Appeal of Kiribati
Gibbs V.P., Frost, Donne, Dillon, and Mitchell J.J.A.
19 April 1988

Property law—leases—rent reviews—whether Magistrates' Court (Lands) has power to determine rental where parties to lease disagree—Rent Review Ordinance, cap. 90, s. 5.
Statutes—interpretation—whether the Republic of Kiribati bound by a statutory provision expressly or by necessary implication—Rent Review Ordinance, cap. 90, s. 5—Interpretation and General Clauses Ordinance, cap. 46, s. 7.
Constitutional law—whether statutory provision binding upon Republic of Kiribati by express provision or necessary implication—Rent Review Ordinance, cap. 90, s. 5—Interpretation and General Clauses Ordinance, cap. 46, s. 7.

The Republic of Kiribati was lessee and Highland was lessor under several leases dating from the 1950s. The rent was due for review under the leases and the two parties had failed to agree. Some of the leases provided that if the parties could not agree then the matter should be submitted to the District Commissioner for arbitration, and the remaining leases implicitly required the same procedure. The office of District Commissioner had, however, ceased when the Republic of Kiribati was established under a new constitution. Highland had initiated proceedings in the South Tarawa Magistrates' Court (Lands) to have the rental determined, pursuant to section 5 of the Rent Review Ordinance, cap. 90 which provided that the Magistrates' Court had power to set rents when parties could not agree. The Magistrates' Court made an order for an increased rent. The Attorney-General then sought to quash that decision by writ of *certiorari* on the ground that, under section 7 of the Interpretation and General Clauses Ordinance, cap. 46, the Republic of Kiribati was not bound by the Rent Review Ordinance, being neither expressly made subject to the Rent Review Ordinance, nor subject to it by necessary implication. The trial judge refused to make an order, holding that section 7 merely raised a rebuttable presumption of law (that the Republic was not bound by the Ordinance) and, since the argument that the Republic was not bound could have been made at the Magistrates' Court hearing but was not, that Court did not act without jurisdiction by fixing the new rental.

HELD:

(1) Section 5 of the Rent Review Ordinance clearly provided a means for fixing rental in the absence of agreement so as to replace the system which prevailed when there was a District Commissioner. By necessary implication the section did bind the Republic in respect of the leases in question.

(2) It was accordingly not necessary to decide whether *certiorari* ought to have been refused on the ground that the Attorney-General could have taken the point in the Magistrates' Court but did not.

Other cases referred to in judgment:
R. v. *Magistrates' Court of Lilydale ex parte Ciccone* [1973] V.R. 122
R. v. *Sussex Justices ex parte McCarthy* [1924] 1 K.B. 256

Legislation referred to in judgment:
Interpretation and General Clauses Ordinance, cap. 46, section 7
Rent Review Ordinance, cap. 90, sections 3 and 5

Civil appeal:
This was an appeal by the Attorney-General from the High Court's refusal of an order of *certiorari* to quash the decision of the Magistrates' Court fixing a rent under the Rent Review Ordinance, cap. 90.

Counsel:
V.R. Aliments for the appellant (Attorney-General of Kiribati)
Sam Highland for the respondent (N.M. Highland)

GIBBS V.P., FROST, DONNE, DILLON and MITCHELL J.J.A.

Judgment:
This is an appeal from an order of the High Court made on 8 August 1986 refusing an application for an order for leave to issue a writ of *certiorari* to quash an order made by the South Tarawa Magistrates' Court (Lands) on 11 June 1986.

The proceedings before that court were initiated by the respondent, Nei Mina Highland, upon a claim under section 5 of the Rent Review Ordinance, cap. 90, for the revision of the rent payable under a lease of land by the appellant.

The section is in the following terms:

(1) Where the rent reserved by a lease is required by this Ordinance or otherwise to be reviewed by agreement between the parties then in the absence of agreement they shall refer the matter to the Magistrates' Court for determination unless the lease expressly states that the matter shall be referred for determination to some other body or person.

(2) Notwithstanding subsection (1), where in any lease it is provided that in the absence of agreement between the parties on the review of the rent reserved by the lease the matter shall be referred to the administrative officer in charge of the district for determination the matter shall be so referred to the Magistrates' Court.

As appears from the claim and defence, in the Magistrates' Court it was admitted by the Attorney-General that, as claimed by the respondent, she was a landowner on Betio and leased land to the appellant, that pursuant to the provisions of section 4 of the Rent Review Ordinance, the rent payable under the lease was due to be reviewed in April 1985 and that the parties had been unable to come to any agreement as to the amount to be paid.

The hearing, which appears to have been confined to the issue of the rent payable, was concluded on 4 June 1986 and adjourned for judgment until 11 June following. In the interval, and apparently on or before 9 June, the attention of counsel for the Attorney-General was directed to the provisions of the Interpretation and General Clauses Ordinance, cap. 46, which provides in section 7:

No Act affects the rights of or binds the Republic unless it is provided expressly or by implication that the Republic is bound by it.

It may be noted, as appears in an affidavit sworn on 10 June, that since the conclusion of the hearing on 4 June, the State Advocate had determined to raise the issue whether the Rent Review Ordinance bound the Republic and the Magistrates' Court had jurisdiction to try the case. He went on to refer to the stage that the proceedings had reached, that they were adjourned to 11 June for judgment, and said it was for that reason he proposed to raise the issue by way of an "application for *certiorari* rather than, for example, by applying to the South Tarawa Magistrates' Court (Lands) to amend (his) defence and for the opportunity to make submissions".

On 11 June the Magistrates' Court made an order that the rent be increased from $400 to $600 per acre.

The above-mentioned affidavit supported a motion before the High Court that leave be granted for the issue of a writ of *certiorari* to remove the order of the Magistrates' Court into the High Court for the purpose of it being quashed upon the grounds stated in the affidavit. On 15 July 1986 the motion was heard *ex parte* and leave was granted to the applicant "to bring his motion for certiorari".

At the hearing of the substantive motion the relevant leases of land were put in evidence but no argument was presented to the Court based on their terms so reference was not made to them by the learned trial judge, Maxwell C.J., in his reasons for judgment. In his reserved judgment given on 8 August 1986, the learned Chief Justice held that the issue raised under section 7 of the Interpretation and General Clauses Ordinance was merely a "rebuttable presumption of law", a defence which he held could have been taken at the hearing before the Magistrates' Court, and that it did not deprive that Court of jurisdiction to decide the matter. The application was accordingly refused.

The grounds of appeal before this Court are that the High Court:

1. erred in law in finding that the South Tarawa Magistrates' Court (Lands) had jurisdiction to hear the rent review suit under section 5 of the Rent Review Ordinance, cap. 90, in which the Republic is a party;
2. erred in law in refusing to grant an order for *certiorari* to quash the decision aforesaid of that Court.

To deal now with the proceedings before this Court, the respondent was represented by her husband, Sam Highland, who took no part in the case. The main argument put by Mr. Altments, who appeared for the Attorney-General in a very helpful submission, was again that based on section 7 of the Interpretation and General Clauses Ordinance.

All the leases in question were for long terms of ninety-nine years, and fifty years in the case of a sublease. Accordingly, it is not surprising that each of the leases provided for a review or reconsideration of the rent, the interval being in each case seven years. In a number of leases taking effect from 1 January 1954 and 1 January 1961, there was provision that if the parties were "unable initially to agree to a revised rental, they agree to submit the matter to the District Commissioner for arbitration and to accept his award".

The provision in a further three leases, all dated 26 July 1956, was that the rent should be reviewed "at seven yearly intervals, in accordance with the formula in use

for the assessment of rents under Government leases at the date of any such review". It was further provided that the first review should be made on 1 April 1961. That formula could only have been a reference to the existing practice of arbitration by the District Commissioner.

Thus the machinery for the determination of the rent at seven-yearly intervals, which bound both the Government as lessee and the landowner as lessor, depended on the continuance within the Republic, as Kiribati later became, of the office of
140 District Commissioner. With the course of constitutional change, however, in 1974 the office was abolished and the Rent Review Ordinance was enacted on 27 August 1974. That Ordinance applies to all leases of land excepting only land situated in Ocean Island (section 3), and provides for the rent reserved in leases commencing at a period which covers the leases in question to be reviewed by agreement between the parties at intervals of five years (section 4), and, in the absence of agreement, for reference of the matter for determination by Magistrates' Courts (section 5). Section 5(2) thus clearly provides a means for final review of the rent to replace the system of arbitration by the District Commissioner. We are satisfied that by implication the Rent Review Ordinance does bind the Republic in respect of the leases in question.
150 Accordingly the Magistrates' Court did have jurisdiction to determine the rents in question and its jurisdiction is found within the four corners of the Ordinance.

There is one final matter. Having reached this conclusion we find it unnecessary to consider whether in all the circumstances the conduct of the appellant in appearing before the Magistrates' Court without objection, and apparently accepting the jurisdiction of the Court, should have required the application for *certiorari* to be refused. See *R.* v. *Sussex Justices; ex parte McCarthy* [1924] 1 K.B. 256; *R.* v. *Magistrates' Court of Lilydale; ex parte Ciccone* [1973] V.R. 122.

The appeal is dismissed.