

COWALPARSAD D & 8 ORS v MINISTRY OF HOUSING & LANDS & 3 ORS

2007 SCJ 25

IN CHAMBERS

SN. 3265/06

IN THE SUPREME COURT OF MAURITIUS

In the matter of :

Dharamraj Cowalparsad & 8 Ors

Applicants

v

- 1. Ministry of Housing and Lands**
- 2. The Tourism Authority**
- 3. Sagar Hotels and Resorts Limited**
- 4. The Pamplémousses/Rivière du Rempart
District Council**

Respondents

JUDGMENT

This is an application by the heirs of Ramkurrun Cowalparsad for an order in the nature of an interlocutory injunction prohibiting and restraining :

- (a) the first respondent from granting a lease in respect of a plot of state land in favour of the third respondent;
- (b) the third respondent from trespassing on and constructing a hotel complex on the aforesaid plot of land; and
- (c) the fourth respondent from issuing a development permit and/or a building permit in favour of the third respondent for the construction of a hotel complex thereon,

pending a main case entered by the applicants.

The second respondent has been put out of cause.

The first and third respondents are objecting that such orders be granted whereas the fourth respondent will abide by my decision.

As appears from the affidavits and documents on record, the undisputed facts, relevant to the present application are as follows:

(1) Prior to his demise, Ramkurrun Cowalparsad occupied a plot of state land, known as lot E1 at Villa Valio Estate Balaclava, on which he cultivated vegetables and for which he was paying a yearly fee of Rs120 per arpent to the first respondent;

(2) There was no written lease agreement between Ramkurrun Cowalparsad and the first respondent;

(3) After his demise on 7 September 1997, his son, the first applicant, continued to occupy and cultivate vegetables on the plot of land and continued to pay the fee habitually paid by his father;

(4) On 25 April 2005, the first respondent, without notice, returned to the first applicant the fee paid for that year;

(5) In December 2005, the first respondent informed the third respondent that following its application for the lease of state land for a hotel project, it had reserved a plot of state land of the extent of 16 arpents 35 perches (which includes the land *in lite*) and that the reservation was subject to the condition, that all those in occupation of the land be compensated;

(6) On 4 October 2006, the third respondent informed the first respondent that except for the first applicant, all the other occupiers had agreed to vacate the premises against compensation; and

(7) By letter dated 20 October 2006, the first respondent informed the heirs to Ramkurrun Cowalparsad that it was terminating the verbal lease

agreement with the late Ramkurrun Cowalparsad and that they were given a delay of three months to harvest the food crop cultivation thereon and to quit, leave and vacate the land.

During the course of submissions before me, Counsel for the first and third respondents questioned the nature of the applicants' occupation, their title if any, their *locus standi*, and whether they held any lease or merely a licence. They finally submitted that the applicants had no right as such to be protected and could not therefore pray for an injunction.

Counsel for the applicants on the other hand submitted that the applicants were entitled to the remedy prayed for inasmuch as they held a valid verbal lease. Counsel stressed on the fact that the first respondent had been in bad faith and had made an abuse of its right to terminate the lease in breach of **articles 16 and 17 of the Civil Code**.

Now, it appears from the above stated undisputed facts and the documentary evidence on record, that late Ramkurrun Cowalparsad had occupied the land *in lite* by virtue of an unwritten lease which was passed on to his heirs when they were allowed to remain in occupation against payment of a fee. (Vide **article 1742 of the Civil Code**) It may well be therefore that at the date of entry of the application, in the absence of a notice in accordance with **article 1736**, the applicants had indeed a right to be protected. However the question now is whether following the first respondent's letter of 20 October, they may still claim that right.

As opposed to a written lease which comes to an end at the expiry of the period mentioned in the lease, an unwritten lease will come to an end when one of the parties gives notice of termination to the other after observing "les délais fixés par l'usage des lieux" in accordance with **article 1736 of the Civil Code** or a delay necessary to harvest the produce of the land in accordance with **articles 1774 and 1775**. (Vide **Bel Air Sugar Estate v Matadeen** [\[1991 MR 114\]](#)).

In the present case, the first respondent was entitled to put an end to the unwritten lease provided sufficient delay be granted to harvest the crop found thereon. Following the notice contained in the letter of 20 October 2006 and the reasonable delay of three months for crop cultivation, I find that the verbal lease handed down to the applicants has come to an end on 20 January 2007 and as such the applicants who no longer have a right to be protected are not entitled to the orders sought.

With respect to the issue of “abus de droit” raised by the applicants, there is no evidence that the first respondent had, in bad faith, terminated the verbal lease, nor that it exercised its right to terminate the unwritten lease “ en vue de nuire à autrui ou de manière à causer un préjudice hors de proportion avec l’avantage qu’il peut en retirer”. On the contrary, the letter of reservation in favour of the third respondent was issued with the express condition that the occupiers be compensated for their eviction.

For the reasons stated above, the present application is set aside with costs. I certify as to counsel.

N. Matadeen
Judge

7 February 2007

For Applicants: Mr S. Sakurdeep, Attorney-at-Law
Mr S. Teeluckdharry, of Counsel

For Respondent 1: Principal State Attorney
Mrs J. Moutou Leckning, Principal State Counsel

For Respondent 3: Mrs A. Ghose-Dawaking, Attorney-at-Law
Mrs U. Banymandhub Boolell and Mr J. Beeharry, of Counsel

For Respondent 4: Mr Y. Bissessur, Attorney-at-Law