Easter Term
[2022] UKPC 23
Privy Council Appeal No 0005 of 2019

JUDGMENT

St Nicholas Grammar School Ltd (Appellant) *v* Sylvie Arnulphy and another (Respondents) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Reed
Lord Briggs
Lord Leggatt
Lord Burrows
Lord Stephens

JUDGMENT GIVEN ON
23 May 2022

Heard on 9 May 2022

Appellant
Sandilen Calliapen
(Instructed by Doorgacharun Luchmun (Port Louis, Mauritius))

1st Respondent (Sylvie Arnulphy)
Naveen Dookhit
(Instructed by Saraswatee Bundhun Cheetoo (Port Louis, Mauritius))

2nd Respondent (The Fair Rent Tribunal)
Aidan Casey QC
Sulakshna Beekarry
(Instructed by RWK Goodman LLP (London))

LORD BRIGGS:

1. This is an appeal by St Nicholas Grammar School Ltd ("the School"), as of right, from the decision of the Supreme Court of Mauritius, on 11 May 2018, whereby it dismissed the School's appeal by way of case stated against the decision of the Fair Rent Tribunal ("the Tribunal") on 10 November 2015 fixing the market rent for the premises occupied by the School as tenant at Rs 94,000 per month.

2. Appeals from the Fair Rent Tribunal of Mauritius are limited to points of law: see section 15(1) of the Landlord and Tenant Act 1999 (then in force). Leaving aside a new point which the School sought unsuccessfully to introduce before the Board (to which reference is made below) the only point of substance raised by the appeal to the Board related to the extent of the property let to the School at the time of the rent determination. The Tribunal had concluded that there was "undisputed evidence" that this consisted of the whole of the property ("the Site") let by the Government to the School's landlord, the First Respondent Mrs Sylvie Arnulphy. The School's case, at least before the Board, was that the evidence did not demonstrate a tenancy to the School of more than a single concrete building on the Site. To the obvious difficulty that this appeared to be a purely factual issue, with concurrent findings by the Tribunal and the Supreme Court, Mr Calliapen for the school submitted, correctly, that a finding of fact may involve an error of law if either there was no evidence before the fact-finding tribunal upon which it could have been based, or if the finding was so unreasonable as to have been perverse.

3. The new point which the School sought to raise before the Board was that the rent had been determined on the basis that the premises were business premises, whereas they were residential premises. The point was first raised with the Board one day before the hearing of this appeal. The case had proceeded in the Tribunal and the Supreme Court on the agreed basis that these were indeed business premises. The Board did not permit this wholly new point to be pursued, in accordance with its well-known settled practice. No sufficiently exceptional basis for departing from that practice was put forward. The Board would add that, had it been available to be advanced, it would have faced formidable difficulties in surmounting the hurdle of being even arguable.

4. Returning to the main point, the underlying facts can be shortly stated. Mrs Arnulphy originally inherited her leasehold interest in the Site as successor to its original tenant under a lease from the Ministry of Housing and Lands. A new lease was granted to her by the Ministry on 19 December 2002. The Site measured 2.39 Arpents (about 10,111 square metres) and had originally been land used for defence purposes. The School was originally introduced to the Site as tenant on an informal basis, but the

terms were later set out in two successive lease agreements. The first was for 17 months from 1 August 2000, with provision for a year's renewal, under a lease agreement between the parties dated 31 July 2000, at a monthly rent of Rs 25,000. The second was a lease agreement dated 21 January 2003. It provided for a term of 24 months from 1 January 2002 at a monthly rent of Rs 30,000, with a renewal thereafter on such terms as might be agreed. The demised premises were identified in both lease agreements as "a concrete house situated at the corner of Gymkana & Willoughby Roads, Phoenix".

5. Mrs Arnulphy sought the determination of a market rent in March 2012, seeking a monthly rent of Rs 190,000, on the basis that the School was in occupation of the whole of the Site. The School sought a continuation of the then current monthly rent of Rs 30,000, on the basis that it rented only the single building on the Site referred to in both lease agreements as the concrete house. The fact that there appeared to be an issue between the parties as to the amount of the Site occupied as tenant by the School emerged during a preliminary hearing before the Tribunal on 27 June 2013.

6. The main hearing before the Tribunal took place on a series of discontinuous dates in 2014 and 2015. Evidence for Mrs Arnulphy was given by herself and her valuation expert Mr Ramjee. Evidence for the School came from its managing director Mrs Heerah and from the School's valuation expert Mr Nundalalee.

7. Mrs Arnulphy was examined in chief on the basis that the school was a tenant of the whole of the Site, although the issue was not raised with her in specific terms. While there was cross examination about the history of the School's occupation, no case was put to her that the School only occupied the concrete house. Mr Ramjee made two visits to the Site, at the second of which he carried out a survey. In his report he said:

> "The school uses the whole of the premises. There are a volleyball pitch and two football grounds. The whole of the premises is secured by chain links, fencing enclosures carrying three metal gates which are locked."

Mr Ramjee gave clear and repeated evidence under cross examination that the School occupied the whole of the Site.

8. Mrs Heerah gave no evidence (in chief or in cross examination) about the extent of the Site occupied by the School. Mr Nundalalee acknowledged in cross examination

that, apart from the concrete house, the remainder of the Site appeared to consist of a school playground. But he carefully declined to answer the question as to the amount of the Site actually occupied by the School, saying only that he had been instructed to conduct his valuation by reference only to the concrete house referred to in the tenancy agreements.

9. That being the evidence on this issue, it is plain to the Board that there was evidence of occupation of the whole of the Site by the School from which the Tribunal could properly come to the conclusion that the School was, at least by 2012, the tenant of the whole of the Site. That evidence came primarily from Mr Ramjee, but it was largely confirmed by Mr Nundalalee's evidence that the Site consisted entirely of the building and the school playground. The Tribunal was, in the Board's view, entitled to describe the evidence of occupation of the whole of the Site by the School as in substance undisputed. It was, on the evidence tendered by the parties, the only reasonable conclusion available. Likewise the Supreme Court was correct to describe that finding by the Tribunal as being free of any error of law sufficient to entitle it to intervene.

10. In those circumstances the sole surviving basis for the School's appeal (the other grounds having been sensibly withdrawn) is in the Board's view without foundation. The appeal must therefore be dismissed.