15/1959

G.P.-S.1568732—1956-7—9,000. S. U.D.J. 445.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

CHAGAN NAROTAM JEENA & ORS.
Appellant.

versus/teen

THE QUEEN
Respondent.

Appellant's Attorney *Respondent's Attorney*
Prokureur van Appellant *Prokureur van Respondent*

Appellant's Advocate Q. V. Hoskins *Respondent's Advocate* D. C. Masters.
Advokaat van Appellant & P. Lawle *Advokaat van Respondent*

(Leave - NPD) *Set down for hearing on:* Wednesday 2nd Sept. 1959.
Op die rol geplaas vir verhoor op:

~~13578~~ (A)

C. A. V.

13578

25 September: Appeal dismissed.

[signature] - an. Reg.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

CHOTA NAROTAM JEENA & OTHERS ...Appellants

and

REGINA ...Respondent

Coram: Steyn C.J., Hoexter, Beyers, Van Blerk et Ogilvie Thompson JJ.A.

Heard: 2 September 1959. Delivered: September 1959.

J U D G M E N T

VAN BLERK J.A.:

The appellants were convicted by a regional magistrate of having hired land in the Amanzimtoti Mission Reserve, Umlazi, which is a scheduled Native area, during the period 1st January,1955, to 20th May, 1955, in contravention of section 1(2) read with section 5 of Act No.27 of 1913; of having carried on business on land in that area during the said period in contravention of sec.24 of Act No.18 of 1936; and of having done so without the necessary licence in contravention of sec.7 of Act No.32 of 1925. They were each sentenced to payment of a fine of £50 or three months imprisonment with compulsory labour in respect of the first contravention, and to a fine of £5.0.0. or seven days imprisonment with compulsory labour

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in respect of the second contravention, while in respect of the third contravention each of them was cautioned and discharged. On appeal to the Natal Provincial Division the sentences in respect of the first and second contraventions were reduced, but the appellants were unsuccessful as far as the convictions were concerned. With the leave of that Division the appellants are before this Court.

Section 1(2) of Act No.27 of 1913 prohibits inter alia the hiring of land in a scheduled native area by a person other than a native, without the approval of the Governor-General. It is common cause that the appellants are not natives, that during the relevant period they were hiring land in the scheduled native area in question, and that they were doing so without the approval of the Governor-General. Their contention that they were not thereby contravening the prohibition is based upon section 8(1) (a) and (c) of Act No.27 of 1913, which provides as follows:

> "8(1). Nothing in this Act contained shall be construed as-
> (a) preventing the continuation or renewal (until Parliament acting upon the report of the said commission has made other provision) of any agreement

or...../3.

or arrangement lawfully entered into and in existence at the commencement of this Act which is a hiring or leasing of land as defined in this Act; or
(c) prohibiting the acquisition at any time of land or interests in land by devolution or succession on death, whether under a will or on intestacy;"

As the provisions are in the nature of exemptions from the prohibition in sec.1(2) of the Act, the onus was on the appellants to show that their hiring fell within them. There is no proof that appellants acquired any right by way of devolution or succession on death as envisaged by sec.8(1)(c). It therefore remains to consider only the ~~applicability~~ effect of sec.8 (1)(a), which I shall assume, without deciding, is still applicable in this case, inspite of its repeal by Act 18 of 1936.

It appears that some three years before the commencement of the Act on 19th June 1913, the appellants' father, one Narotam Jeena, entered into a ten year lease of the land in question. In terms of this lease he had a right of renewal fot a further period of ten years. On the 30th May,1919, this right was exercised and the lease was renewed for a period expiring on 31st July,1930. Before the latter date, on 17th October 1928, Narotam Jeena entered into a further lease of the land for a period of ten years as from 1st August,1930. On 29th November,1929 he died. In the meantime his sons had become his partners in the business he was conducting on the land in question. On the 17th March,1928, the partnership had been registered under the Natal Act

No.35 of 1906 as "Narotam Jeena and Sons". After his death his estate was admitted as a partner from 29th September,1935. On 18th March 1938, before the lease last entered into by Narotam Jeena had expired, Narotam Jeena and Sons entered into a further lease of the land for the period 1st August, 1940, to 31st December, 1949, which lease was in turn renewed for a further period terminating on 30 June,1959. All the renewals purported to have been made in terms of express provision therefor. The charge relates to the currency of this latter lease.

On the assumption that section 8(1) (a) does not contemplate a single renewal only, it is clear from the above that the last renewal by the original lessee occurred on 17th October,1928, resulting in a lease expiring on 31st July,1940. The next renewal on 18th March,1938, was effected not by the original lessee, but by the partnership consisting of his deceased estate and his five sons. The question then is whether, in spite of the change in parties to the lease, this was still a renewal in terms of section 8 (1) (a).

The object of the Act is to prevent non natives from inter alia hiring land in scheduled

native...../5.

native areas. If therefore, to take the present case as an example, a non native lessee of land in a scheduled native area by virtue of a lease that was in existence at the date of the commencement of the Act were to have the right after this date from time to time to admit to the lease non native lessees, and such lessees would on subsequent renewals be entitled to the protection afforded by section 8(1)(a), then the object of the Act would clearly be frustrated; for any non native, or number of non natives, could then simply by being substituted lessees of an existing lease become tenants of land in scheduled native areas. That it could not have been the intention of the Legislature to assign to the word " "renewal" a meaning that would result in such a situation admits of no doubt. It could only have intended by section 8 (1) (a), as DE VILLIERS, J.A. said in Rex v Mokhatle (1923 A.D. 429) at p. 434, merely to safeguard the right to renew the lease by the parties thereto at the date of the commencement of the Act. See also Mahomed v Rex (1924 N.P.D407)

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There was, therefore, no "renewal" in terms of section 8(1)(a), with the result that the conviction on count 1 must stand; in which case appellants' counsel conceded that the appeal in respect of count 2 and 3 must also fail. The appeal is dismissed.

The Chief Justice was present at the argument of the appeal, but was subsequently called upon to assume the powers and authorities of the Governor- General of the Union of South Africa and is therefore not a party to the decision. My brother HOEXTER, who was also present at the argument, thereafter became indisposed, and for that reason is not a party to this decision. As, however, my brethren BEYERS and OGILVIE THOMPSON agree with this decision, it is in terms of section 110(2)(b) of the South Africa Act, as substituted by section 1 of Act 1 of 1959, the judgement of this Court.

P. J. Van Blerk

BEYERS ~~A.R.~~ J.A.

OGILVIE THOMPSON ~~A.R.~~ J.A.