

Conoops v. Housing Committee

1981/13

Conoops -v- Housing
Committee

23rd July, 1981



JUDGMENT

DEPUTY BAILIFF: The relevant facts surrounding this action are these. Some years ago the plaintiffs obtained a loan from the States in order to allow them to buy No. 14 Don Farm, or at least the site on which No. 14 Don Farm was to be erected, along with a large number of other similar houses in the area. We were told by the Solicitor General, for the Housing Committee, that they had received a full loan of as much as one hundred per cent. On the other hand Mr. Yandell, for the plaintiffs, told us that Mr. Conoops, and possibly his wife but certainly Mr. Conoops, had carried out a considerable amount of labour on the premises. Be that as it may, in the course of time they defaulted, and we're not concerned with the reasons, but the fact is that on the 8th August, 1980, a vesting order was made by the Court which had the effect of transferring the ownership of No. 14 Don Farm into that of the States or, more precisely, into that of the Housing Committee of the States. As a result of that vesting order the Committee then had to apply Article 13 of the Building Loans (Jersey) Law, 1950, to decide what it was going to do with the property. Paragraph (5) of that Article requires the Committee to exercise its discretion in deciding how to sell the property, if it does decide to sell it because it is given power, I think, to retain it, but if it decides to sell the property it can sell either to a person who has made an application for a loan or put it up for sale by public auction. It was faced with a similar position some time ago in relation to an adjoining property. At that time the Building Loans Law was such that the ceiling was too low to enable a person wishing to acquire the adjacent property with the aid of a building loan to do so because, in short, the Committee was not able to lend enough money. Therefore on that occasion the Committee decided to sell the adjacent property by public auction.

Because of exemptions contained in the Housing Law itself, under section 6(2)(c) of that Law the Housing Committee was exempt from the ordinary restrictions which are imposed by that Law on private individuals in respect of the sale of properties and it followed that, at the time the Committee put up the adjacent property for auction, it could be bought by somebody over whom it could have no control and at a price which, again, the Committee could not regulate. That was not the position earlier this year when the Committee decided to sell No. 14 Don Farm to a person who had made an application for a loan.

When it made its decision the ceiling for building loans was sufficient if it chose to exercise its discretion in that way, to allow a purchaser to acquire the property with the aid of a building loan. Mr. Yandell has put forward the argument that the Committee wrongly exercised its discretion when, having decided that the property should be sold to somebody acquiring it through a building loan, it used the statutory method of assessing price suitable for transactions between private individuals subject to the controls as regards price of the Housing Law. It is that exercise of that part of its discretion which he attacks. He does so because he uses the example of the next door property which I mentioned briefly to show that if the Committee had adopted a different approach of a valuation, possibly by obtaining the advice of competent estate agents, and also by suggesting to us that the Court must have knowledge of the higher price of property generally. We know that properties are going up but to what extent and in what area and how we have no judicial knowledge of that. We only have a general understanding of the position. But before we would set aside the exercise of the discretion as exercised by the Committee we would have to be satisfied that, in some way, the Committee misinterpreted the Law or failed to ask itself questions which it ought to have asked itself or asked itself certain questions which it ought not to have done and generally in fact was guilty of some form of mal-administration which this Court of course, as Mr. Yandell rightly points out, can take cognizance of and can control. We sympathise with the plaintiffs when they see the next door property in fact being sold for a price which, if on the market today and applied to their property, might well be considerably more than the figure arrived at by the Housing Committee. Nevertheless we cannot say that the Committee in deciding to use the method of price fixing laid down by the Law for properties subject to the Housing Law was wrong. As the Solicitor General has said the Committee has a duty to the public of the Island when it acquires properties as the mortgagee, the formal mortgagee, to deal with that property or those properties under the requirements of the Housing Law itself. Should the Housing Committee, therefore, ignore the controls imposed on other people? On the other hand it has a duty, we think, somewhat higher, this of course is obiter, somewhat higher than that we understand to be the duty of a mortgagee in the United Kingdom who has foreclosed. The Solicitor General cited a passage from Halsbury but we note in that passage that Building

capacity. That of course is a higher duty but there again that is ascribable to the legislation in the United Kingdom. It is legislation and a statutory requirement as I understand it under the Building Societies Acts, which of course do not apply here. Nevertheless we would like to think that, as I repeat, the duty of a public mortgagee, in the sense that the Housing Committee is, is more akin to that of a Building Society than an ordinary private mortgagee in the commercial market. But as I say that is merely an expression of opinion and we cannot really find that the Committee erred in the exercise of its discretion and therefore the Order of Justice is dismissed. The question of costs probably doesn't arise under the circumstances, does it Mr. Solicitor? Do you ask for costs? No. But we note and we note the offer, which we think is very fair, of the Housing Committee that having dismissed the Order of Justice they will then ask the Board to re-assess the value of the property in accordance with the present replacement costs.